



# THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO



## Newsletter



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CONTENT.....1

SIX MONTHS WORKING REPORT.....2

ACTIVITIES OF THE CONSTITUTIONAL COURT.....4

EXPERIENCES AND PERSONAL PRACTICES.....7

ECtHR – IMPORTANT DECISIONS .....11

VENICE COMMISSION-IMPORTANT EVENTS.....13

JUDGMENT.....14

WHO MAY FILE REFERRAL WITH THE CONSTITUTION-  
AL COURT.....15

FILING OF THE REFERRAL.....16



**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.

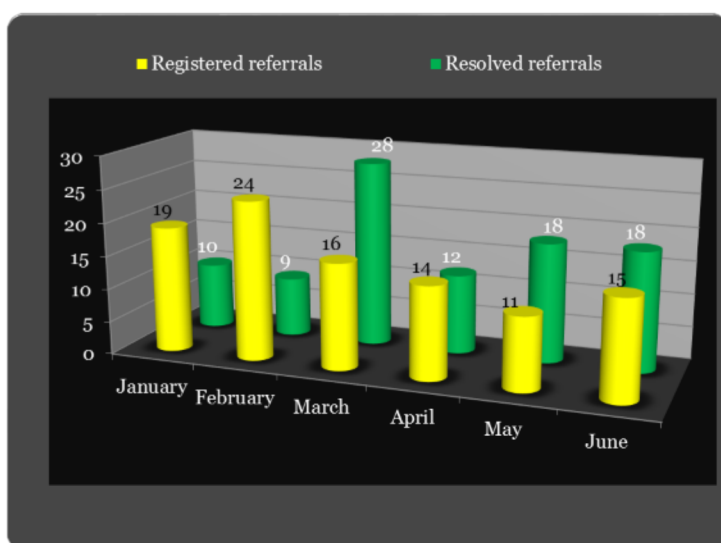
## Status of referrals

During the semiannual period (1 January - 30 June 2016), the Court has processed a total of 200 referrals/cases.

A total of 95 referrals or 47.5% of all the cases available have been adjudicated.

During this period, 73 decisions have been published in the Court webpage.

*The dynamics of received referrals by months  
(1 January - 30 June 2016)*



## Submission of referrals

The jurisdiction and the authorized parties for the submission of Referrals to the Constitutional Court is defined by the Constitution of Kosovo and the Law on the Constitutional Court of Kosovo.

The trust of the citizens in the Constitutional Court has increased significantly as a result of the efficient, effective and impartial work; 99 referrals have been received during this period, which means that on average 16,5 referrals per month were received.

The structure of filed Referrals is as follows:

86 individual Referrals (from natural persons) or 86,9%;

13 Referrals from other public authorities (legal persons), or 13,1%.

## Allocation of referrals

Pursuant to Article 22 of the Law on the Constitutional Court, the DCRSA has processed all the submitted referrals in compliance with Article 13 of the Constitution.

The referrals/cases for the judge rapporteurs has been allocated pursuant to Rules 8 and 34 of the Rules of Procedure of the Court. An exception to this rule is the allocation of the requests for the imposition of interim measure, which are processed under Rule 55 of the Rules of Procedure of the Constitutional Court, and ad hoc cases, which constitute a conflict of interest, in compliance with Article 18 of the Law on Courts and pursuant to Rule 7 of the Rules of Procedure

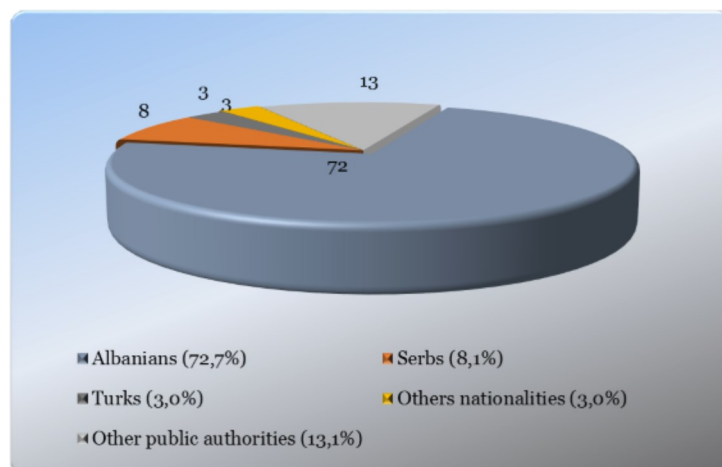
## Access to the Court and public trust in the work of the Court

All citizens of Kosovo, regardless of their ethnicity and religious affiliation, have equal access to the Constitutional Court.

The access of individuals is shown below:

72 referrals from Albanians, or 72,7%;  
8 referrals from Serbs, or 8,1%;  
3 referrals from Turks, or 3,0%;  
3 referrals from other nationalities, or 3,0%;  
13 Referrals have been submitted by other public authorities (legal persons), or 13,1%.

*Ethnicity structure of applicants presented with numbers and percentage is as follows:*

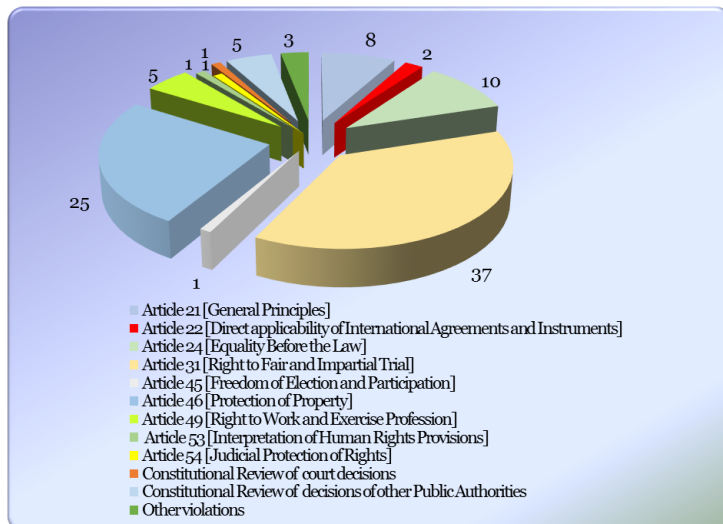


## Type of alleged violations

The typology of alleged violations from 99 received referrals during the six-month period (1 January - 30 June 2016) is as follows:

- Article 21 [General Principles], 8 cases or 8,1%;
- Article 22 [Direct applicability of International Agreements and Instruments], 2 cases or 2,0%;
- Article 24 [Equality Before the Law], 10 cases or 10,1 %;
- Article 31 [Right to Fair and Impartial Trial], 37 cases or 37,4%,
- Article 45 [Freedom of Election and Participation], 1 case or 1,0%;
- Article 46 [Protection of Property], 25 cases or 25,3%;
- Article 49 [Right to Work and Exercise Profession], 5 cases or 5,1%;
- Article 53 [Interpretation of Human Rights Provisions], 1 case or 1,0%;
- Article 54 [Judicial Protection of Rights], 1 case or 1,0%;
- Constitutional Review of court decisions, 1 case or 1,0%.
- Constitutional review of decisions of the public authorities, 5 cases or 5,1%
- Other violations, 3 cases or 3,0%.

*Alleged violations by types of violation  
(1 January - 30 June 2016)*

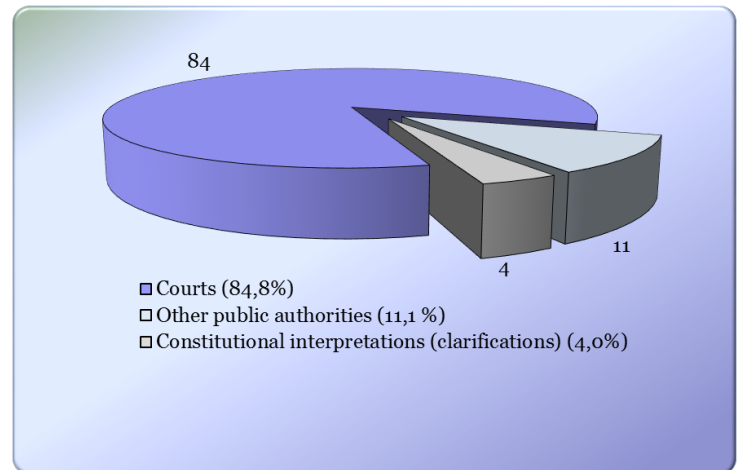


## Alleged violators of rights

- 84 or 84,8 % of Referrals arose from Court Decisions;
- 11 or 11,1 % of Referrals arose from actions of other public authorities; and

- 4 or 4,0 % of Referrals arose from constitutional interpretations or clarifications:

*Alleged violators of rights  
(1 January - 30 June 2016)*



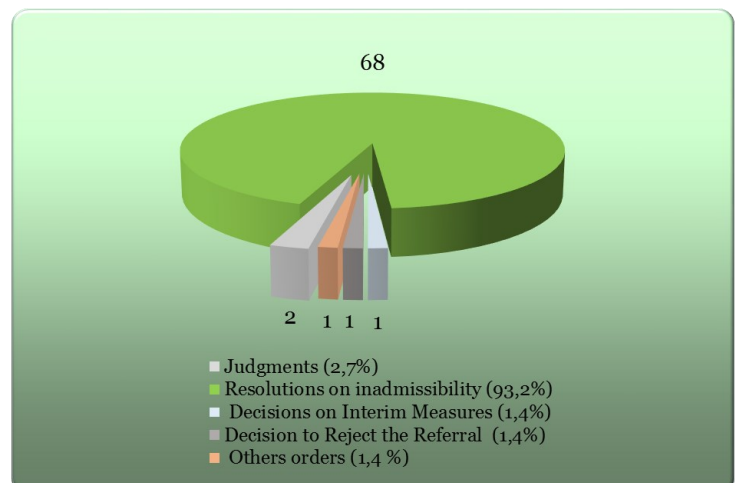
## Sessions and Review Panels

During the six-month period, the Constitutional Court has conducted 22 plenary session with 83 Review Panels. It is worth mentioning that six decisions include several joint cases, therefore the total number of approved referrals for this period is 95.

From 1 January until 30 June 2016, the Constitutional Court has published 73 decisions. The structure of decisions is as follows:

- 2 Judgments (2, 7%),
- 68 Resolutions on inadmissibility (93, 2%)
- 1 Decision on Interim Measure (1, 4%)
- 1 Decision to Reject the Referral (1, 4%), and
- 1 Decision (other orders) (1, 4 %)

*Structure of decisions in number and percentage  
(1 January - 30 June 2016)*







## 19 January 2016

Judges of the Constitutional Court of the Republic of Kosovo, led by the President, Arta Rama-Hajrizi, participated in the International Conference organized by the Council of Europe Office in Kosovo on the topic: *"Interpretation and implementation of the European Convention on Human Rights by Constitutional Courts of the Western Balkans"*, which was held at the "Swiss Diamond" Hotel in Prishtina.

After the welcoming speech, President Rama-Hajrizi continued her discussion on the challenges and perspectives of the implementation of the European Convention for Human Rights (ECHR) by the Constitutional Court of Kosovo.

She presented a detailed elaboration on the implementation of practices of the ECHR during the process of decision-making at the Constitutional Court of Kosovo highlighting some of the specific cases that have been treated so far, and also on the efforts made by judges and legal advisors of the Court in order to overcome the challenges posed in this regard.

The conference continued with the presentations of the Vice-President of the Constitutional Court of Turkey, Mr. Engin Yıldırım, and Ms. Tatiana Termacic, Head of Human Rights National Implementation Division of the Council of Europe.

## 23 January 2016

A group of postgraduate students from the University of Vienna and from the European Inter-University Centre for Human Rights and Democratisation seated in Venice visited the Constitutional Court of the Republic of Kosovo.

Students expressed their interest especially for the Constitutional Court's decisions on cases of violations of individual rights and for implementation of the case law of the European Court of Human Rights in reviewing the Referrals.



## 10 February 2016

The President of the Constitutional Court of the Republic of Kosovo, Arta Rama-Hajrizi, welcomed in a meeting the new Ambassador of the Republic of Croatia to our country, Ms. Marija Kapitanović, on Wednesday, 10 February 2016.

President Rama-Hajrizi initially wished success to Ambassador Kapitanović in her new duty, and informed her of the Court composition, up-to-date work, and decisions of higher importance for the political reality in the country.

Ambassador Kapitanović committed to further strengthen the support that Croatia has provided to the Kosovo institutions in becoming member of various international organizations, whereupon she considered the role of the Constitutional Court in the European integration process of our country as highly important, whilst emphasizing the importance of its institutional and decision-making independence.



## 24 February 2016

A delegation of the Constitutional Court of the Republic of Kosovo, led by the President of the Court, Arta Rama-Hajrizi, travelled to Tirana on a official visit.





During its stay in the capital of Albania, the delegation of the Constitutional Court of Kosovo met with the President of the Constitutional Court of the Republic of Albania, Mr. Bashkim Dedja, with the President of the Supreme Court of the Republic of Albania, Mr. Xhezair Zaganjori, and Minister of Justice of the Republic of Albania, Mr. Ylli Manjani.

The delegation of the Constitutional Court of Kosovo and President Rama-Hajrizi were received in a special meeting by the President of the Republic of Albania, Mr. Bujar Nishani.

## **2 March 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 Cakanimani, received in a meeting the Assistant Administrator for Europe and Eurasia of US Agency for International Development (USAID), Mr. Thomas Melia, and the USAID Director for Kosovo, Mr. James Hope.



President Rama-Hajrizi thanked Mr. Melia for USAID's continued support given to the Constitutional Court of Kosovo since its establishment, evaluating the contribution given by this mission as very important for the rule of law in Kosovo. USAID Assistant Administrator for Europe and Eurasia, Mr. Thomas Melia, pledged continuation of the USAID support for the Constitutional Court.



## **10 March 2016**

The President of the Constitutional Court of the Republic of Kosovo, Mrs. Arta Rama-Hajrizi, received in a meeting the General Counsel of the US Agency for International Development (USAID), Mr. John Simpkins, on Thursday, 10 March 2016. President Rama-Hajrizi initially informed Mr. Simpkins of the organization, composition, and work process in the Constitutional Court, whereupon she expressed her gratitude for the aid provided by the USAID mission in Kosovo for the Court's professional and infrastructure capacity building since its establishment.

The General Counsel of the USAID, Mr. John Simpkins, having congratulated President Rama-Hajrizi on the work that the institution she leads has done so far, re-emphasized the continuation of the support that the USAID has been providing to the Constitutional Court thus far.

## **24 March 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 Cakanimani, received in a meeting a delegation from the Kosovo Bar Association, led by its President, Mr. Osman Havolli, on Thursday, 24 March 2016.

During the meeting, both parties discussed about various matters related to the deepening of mutual cooperation through exchanging experiences and organizing joint trainings, in order to train the attorneys-at-law for representing parties before the Constitutional Court as professionally and efficiently as possible.

## **8 April 2016**

The President of the Constitutional Court of the Republic of Kosovo, Ms. Arta Rama-Hajrizi, received in a meeting the President of the Supreme Court of the Republic of Albania, Mr. Xhezair Zaganjori, accompanied by the Judge of this Court, Mr. Tom Ndrecaj, on Friday, 8 April 2016.







During the meeting, both parties exchanged their ideas and viewpoints on the further advancement of the work in both courts, emphasizing the standardization of the adjudication and the consistency of case law.

## 25 April 2016

At the invitation of the Constitutional Court of the Republic of Turkey, a delegation of the Constitutional Court of the Republic of Kosovo, led by the President, Mrs. Arta Rama-Hajrizi, traveled to Ankara.

President Rama-Hajrizi and the delegation of the Constitutional Court have been invited to participate at the international symposium on the topic: *"The execution of judgments concerning constitutional complaints and their effects"*, which was held in the Turkish capital on the occasion of the celebration of the 54th anniversary of the establishment of the Constitutional Court of Turkey.

During her stay in Ankara, president Rama-Hajrizi met with the President of the Constitutional Court of Turkey, Mr. Zühtü Arslan, with whom she signed a memorandum of cooperation.

The memorandum of cooperation includes a range of activities in the field of mutual legal research, professional training and mutual exchange of experiences between the two constitutional courts.

## 11 May 2016

The President of the Constitutional Court of the Republic of Kosovo, Mrs. Arta Rama-Hajrizi, received in a meeting the President of the Constitutional Court of the Republic of Albania, Mr. Bashkim Dedja, who is accompanied by the judges of that Court, Mrs. Altina Xhoxhaj and Mr. Fatmir Hoxha.

President Rama-Hajrizi and President Dedja discussed issues of general interest for the functioning of the judiciary and the reform in the judicial systems of both countries, whereupon both sides exchanged views regarding further deepening of the cooperation between the two Constitutional Courts.



## 30 May 2016

Supported by the Embassy of the United States of America in Kosovo, the President of the Constitutional Court of the Republic of Kosovo, Mrs. Arta Rama-Hajrizi, travelled for a official visit in the US capital, Washington DC.

She was invited to attend the 13th International Conference of the International Association of Women Judges on *"Women Judges and Rule of Law: Assessing the Past, Anticipating the Future"*, which this year was held in Washington DC.

During her stay in the US capital, in addition to meetings with women judges of constitutional and supreme courts coming from many countries of the world, President Rama-Hajrizi also held a visit at the US Supreme Court and the District of Columbia Court of Appeals.



## 21 June 2016

At the invitation of the Constitutional Court of the Republic of Slovenia, a delegation of the Constitutional Court of the Republic of Kosovo, led by the President, Mrs. Arta Rama-Hajrizi, travelled to the Slovenian city of Bled.

The delegation of the Constitutional Court of the Republic of Kosovo was invited to attend the ceremony of the 25th anniversary of the establishment of the Constitutional Court of Slovenia and the international conference that was held on this occasion.

During the visit in Slovenia, President Rama-Hajrizi also met with the President of the Constitutional Court of Slovenia, Mr. Miroslav Mogetič.



**Sevdail Kastrati**

Traineeship programme at  
the European Court of Human Rights  
Strasbourg

Being as one of the participants of the Project funded by Swiss Government with the support of the Council of Europe Office in Prishtina, I spend five months of training at the European Court of Human Rights in Strasbourg, between 1 August and 23 December 2014.

The Project was designed to enable Legal Officers of the Constitutional Court of Kosovo introduction with the working methodology of the ECtHR, its principles used during the work on cases before the Court as well as to upgrade existing knowledge in relation to the European Convention on Human Rights and its Protocols to the Convention.

In practical terms, it meant increase of our knowledge to a higher level, employment of methodology and work qualities by observing all standards that can be applied in cases dealt with by the Constitutional Court of Kosovo, and therefore increase quality of our decisions.

After going to Strasbourg and working at the ECtHR, one of my main goals was to obtain the professional knowledge at this valuable institution and apply it in my daily work at the Constitutional Court of Kosovo.

After having the chance to know at first hand the organizational differences between the ECtHR and our Court, being absolutely aware about the fact that ECtHR is a specialized court for human rights and knowing that human rights are only one of the components of the work of the Constitutional Court of Kosovo, even though the Convention for Human Rights is part of our legislation, I was fully aware that to achieve my desired goal after internship is finished would not be an easy task.

After my return at the Constitutional Court of Kosovo and after I started to deal with the cases here, I realized that my knowledge gained at the ECtHR can be parted into three main topics:

- Preliminary assessment of the new case – main subject of dispute
- Article 2 of the Convention –right to life
- Article 6 of the Convention –fair trial.

#### *Lessons learned*

- a) Following the practice at the ECtHR and dealing with the cases during the internship period, I realized how important is the fact to immediately identify the main elements of the case or gist of the dispute. I understood how important is to avoid the review of unnecessary details which can lose your time and more ever can lead you to a wrong direction. I have already used this approach in the cases here at the Court, by preparing shorter reports and concentrating more in the gist of the dispute.
- b) Even though the Convention in its entirety is designed to protect human rights of the private persons from the illegitimate interference of the state in those rights, again there are situations when the Convention protects rights of the individual persons from potential violation of the third persons. Working in such cases at the ECtHR, I learned all the procedures in potential situations here. I am fully aware of the fact how the Court can approach this type of cases, what kind of proves should be examined, how to apply test of proportionality if the violation has already happen, what standing the Court should have if the possible amnesty by law can be granted for the potential perpetrator and many other things.



c.) Third topic is related to Article 6 of the Convention or Article 31 of the Constitution of Kosovo which consists to the right for fair trial. The main experience which I have learned at the ECtHR concerning this article, which I have already used it here, is the application of the article in the civil and criminal cases, while always having in mind autonomous meaning of this article of the Convention in comparison with the domestic legislation.

The period that I spent at the ECtHR was very useful from professional point of view and offered me an excellent opportunity to increase my knowledge about protection of human rights in general and especially for the methodology of the work applied at the ECtHR when dealing with human rights cases.

I have gained new knowledge, skills and met new people, and I've learned a lot about the:

- Structure of the ECHR
- Deciding bodies in the ECHR
- Court approach to the every article of the Convention
- Procedural and substantive aspects of every article
- Broaden my knowledge about effective legal remedies
- Treatment of so cold “sensitive cases”



I would like to thank Prof. Dr. Enver Hasani, the president of the Constitutional Court of Republic of Kosovo for efforts done to achieve a highly professional project for legal advisers of the Court, and for giving me the opportunity to be the one of the attendants of the internship. Furthermore, I want to express my gratitude to the Council of Europe Office in Pristina, and especially to Mr. Andrew Forde, for the excellent preparation of the project and very good cooperation. My deepest appreciation goes also to the Swiss Embassy in Kosovo who made this project possible by contributing with financial means and I'm thankful to all my colleagues, legal advisers of the Constitutional Court, for constant support during my stay in Strasbourg.

Finally, I would like to thank my administrative supervisor Mrs. Silvia Di Martino and her staff, and my professional supervisor Mr. Ylli Peco along with his staff, for all the help provided to me during my practice and training in Strasbourg.



**Boban Petkovic**

Traineeship programme at  
the European Court of Human Rights  
Strasbourg

As part of the Project funded by Swiss Government with support of the Council of Europe Office in Pristina, I attended specialization in the European Court of Human Rights in Strasbourg from 1 August 2014 to 22 December 2014.

From the very first day at the Court of Human Rights I got an insight into the system of functioning, organizational structure, Bylaw of the Court, as well as training schedule organized regularly for officers and experts working in court.

At the very beginning of training, the Council of Europe has organized Induction Courses where different lecturers explained system of functioning of the Council of Europe, its competences, as well as organizations working as independent bodies, but under auspices and within the system of the Council of Europe.

I attended the following trainings:

- Legal Workshops for Lawyers
- Admissibility criteria (SJ and CTE cases)
- Landmark cases
- Induction Curses (from 26 May to 6 June 2014)

The Court also organized regular lectures on the Human Rights Convention by eminent professors, dealing with subjects related to protection of human rights and freedoms, as well as by Judges of the ECtHR.

On 28 August 2014, I attended lecture of Judges Boštjan Zupančič and Elizabret Steiner related to the general practice followed by the panel of the grand chamber when deciding on request for referral in accordance with article 43 of the convention.

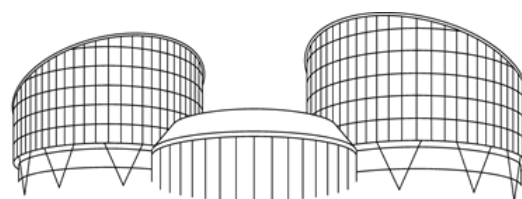
On 02 December 2014, I attended Judge Mark Villiger lecture on Article 10. Freedom of expression.

During the training, I also attended at some of the Grand Chamber Hearings which are usually held for more complex cases, and since I worked for Montenegro legal divisions, I had the opportunity to do a number of tasks which the Registry lawyers normally do (as a Registry lawyer I drafted 160 cases in total submitted to the ECHR against Montenegro).

Cases were different in nature and registered during 2010 and 2011. These were cases the Court found inadmissible on different grounds and are dealt with by a single judge.

### *Lessons learned*

During my very pleasant and fruitful training in ECtHR, among others I felt most progress in my professional work and in performing my regular duties, which at the end is the purpose of this project. Improved performance in my daily work is directly a consequence of my training in ECtHR and can be seen in several aspects of the performing of everyday tasks.



EUROPEAN COURT OF HUMAN RIGHTS  
COUR EUROPÉENNE DES DROITS DE L'HOMME





First of all, I will emphasize improved quality of drafted reports that I do, which is reflected in the minimal number of negative comments on drafts that I working on. Another field in which I personally noticed a remarkable improvement is the knowledge and application of the English legal terminology. As a third field of improvement in my work I consider constant use of HUDOC website which in the previous period was not the case, were I have speed up the process in finding the relevant decisions of the ECtHR as well as searching for innovations in the context of the functioning of the ECtHR and decision making process.

Professional knowledge I have gained during trainings and lectures combined with professional knowledge and experience I have gained working on specific cases, will definitely enable me to enhance quality of work while dealing with cases considered by the Constitutional Court, as well as draft better and concise reports on applicants allegations on allege violations of the rights guaranteed by the Constitution and the European Convention on Human Rights and Fundamental Freedoms in cases before the Constitutional Court.

For providing me with the opportunity of the Traineeship programme at the European Court of Human Rights in Strasbourg, I am 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.



## ECtHR – Important decisions (1 January – 30 June 2016)

### Lustration proceedings against Constitutional Court president were unfair

In Chamber's judgment in the case **Ivanovski v. "The former Yugoslav Republic of Macedonia"** (application no. 29908/11), published on 21.01.2016, the European Court of Human Rights held, unanimously, that there had been:

**no violation of Article 6 (right to a fair trial)** of the European Convention on Human Rights as regards the alleged lack of access to court;

**a violation of Article 6** on account of the overall unfairness of the lustration proceedings; and

**a violation of Article 8 (right to respect for private and family life).**

The case concerned lustration proceedings against the then president of the Constitutional Court of 'The former Yugoslav Republic of Macedonia', as a result of which he was dismissed from office. The Court found in particular that an open letter by the Prime Minister stating that a member of the Constitutional Court had been a collaborator with the security services, published in the media while the lustration proceedings against Mr Ivanovski were pending, had been incompatible with the notion of an "independent and impartial tribunal" within the meaning of Article 6. The national courts' analysis in Mr Ivanovski's case had not been sufficiently thorough to conclude that the interference with his rights under Article 8 had been necessary. Moreover, the interference with his rights, in particular a ban on taking any employment in the public service or academia for a period of five years, had been disproportionate to the legitimate aim sought to be achieved.

#### Just satisfaction (Article 41)

The Court held that "The former Yugoslav Republic of Macedonia" was to pay Mr Ivanovski 4,500 euros (EUR) in respect of non-pecuniary damage and EUR 850 in respect of costs and expenses.

### Exclusion of Bosniac politician residing in the Republika Srpska from election to the Presidency of Bosnia and Herzegovina was discriminatory

In Chamber's judgment in the case of **Pilav v. Bosnia and Herzegovina** (application no. 41939/07), published on 09.06.2016, the European Court of Human Rights held, unanimously, that there had been:

**a violation of Article 1 of Protocol No. 12 (general prohibition of discrimination)** to the European Convention on Human Rights.

The case concerned the complaint by a politician residing in the Republika Srpska (one of the two constituent entities of Bosnia and Herzegovina), who declares himself as Bosniac, of the fact that it was legally impossible for him to stand for election to the Presidency of the country. The Court observed that while Mr Pilav, as being affiliated with one of the "constituent people", had a constitutional right to participate in elections to the Presidency, he would be required to leave his home and move to the Federation of Bosnia and Herzegovina (the other constituent entity of Bosnia and Herzegovina) in order to effectively exercise this right. The Court considered that Mr Pilav's exclusion from election to the Presidency was based on a combination of ethnic origin and place of residence, amounting to a discriminatory treatment.

#### Just satisfaction (Article 41)

The Court also held that the finding of a violation constituted in itself sufficient just satisfaction for any non-pecuniary damage sustained by Mr Pilav. It further held that Bosnia and Herzegovina was to pay him 6,607 euros (EUR) in respect of costs and expenses.

### Law governing the inspection of political parties' expenditure was unclear

In Chamber's judgment in the case of **Cumhuriyet Halk Partisi v. Turkey** (application no. 19920/13), published on 26.04.2016, the European Court of Human Rights held, unanimously, that there had been:

**a violation of Article 11 (freedom of assembly and association)** of the European Convention on Human Rights.

The case concerned the confiscation of a substantial part of the assets of Turkey's main opposition party, Cumhuriyet Halk Partisi, by the Constitutional Court following an inspection of its accounts for the years 2007 to 2009. The Court found that requiring political parties to subject their finances to official inspection did not in itself raise an issue under Article 11, as it served the goals of transparency and accountability, thus ensuring public confidence in the political process. The Court stressed however that, having regard to the important role played by political parties in democratic societies, any legal regulations which might have the effect of interfering with their freedom of association, such as the inspection of their expenditure, had to be couched in terms that provided a reasonable indication as to how those provisions would be interpreted and applied.



In *Cumhuriyet Halk Partisi*'s case, the scope of the notion of unlawful expenditure under the relevant legal provisions in force at the time as well as the applicable sanctions for unlawful expenditure had, however, been ambiguous.

#### **Just satisfaction (Article 41)**

The Court held that Turkey was to pay the applicant party 1,085,800 euros (EUR) in respect of pecuniary damage and EUR 5,000 for costs and expenses.

#### **Compulsory work for a prisoner of retirement age is not in breach of the Convention**

In Chamber's judgment in the case of **Meier v. Switzerland** (application no. 10109/14), published on 09.02.2016, the European Court of Human Rights held, unanimously, that there had been:

**no violation of Article 4 § 2** (prohibition of forced labour) of the European Convention on Human Rights.

The case concerned the requirement for a prisoner to work beyond the retirement age. The Court noted that there was insufficient consensus among Council of Europe member States regarding compulsory work for prisoners after retirement age. Accordingly, it emphasized, on the one hand, that the Swiss authorities enjoyed a considerable margin of appreciation and, on the other, that no absolute prohibition could be inferred from Article 4 of the Convention. The compulsory work performed by Mr Meier during his detention could therefore be regarded as "work required to be done in the ordinary course of detention", for the purpose of Article 4 of the Convention. Consequently, it did not constitute "forced or compulsory labour" within the meaning of that Article.

#### **Media coverage of former secretary general of the Ministry of Finance's arrest resulted in multiple violations of the European Convention on Human Rights**

In Chamber's judgment in the case **Popov v. Bulgaria** (application no. 39651/11), published on 09.06.2016, the European Court of Human Rights held, unanimously, that there had been:

**a violation of Article 3 (prohibition of inhuman or degrading treatment and lack of effective investigation)** of the European Convention on Human Rights;

**a violation of Article 6 § 2 (presumption of innocence)** of the Convention regarding the statements by the Minister of the Interior on the day of Mr Popov's arrest;

**no violation of Article 6 § 2 of the Convention** regarding the statements by the Prime Minister and the prosecutor R.V. on the day of Mr Popov's arrest;

**a violation of Article 8 (right to respect for private and family life)** due to the media coverage of Mr Popov's arrest and the search and seizure carried out in Mrs Popova's offices; and

**a violation of Article 13 (right to an effective remedy) taken in conjunction with Articles 3, 6 § 2 and 8.**

The case concerned the arrest of Mr Popov, former Secretary General of the Ministry of Finance, during a police operation that received extensive media coverage. The Court found that Mr Popov had been subjected to degrading treatment by the police during his arrest and that the ensuing investigation had neither been sufficiently prompt nor carried out with the necessary diligence. It had neither enabled the facts to be established nor determined, where applicable, the responsibility of the police officers involved. As Mr Popov had subsequently been acquitted by the courts, the Court found that the statements by the Minister of the Interior on the actual day of the arrest had resulted in a violation of his right to be presumed innocent, but not the statements by the public prosecutor R.V. or the Prime Minister. The media coverage of the arrest and also the search and seizure carried out in the notary offices had infringed the applicants' right to respect for their private life. Lastly, the Court concluded that the applicants had not had any remedy under domestic law that would have allowed them to assert their respective rights.

#### **Just satisfaction (Article 41)**

The Court held that Bulgaria was to pay Mr Popov 10,000 euros (EUR) and Ms Popova EUR 4,000 in respect of non-pecuniary damage, and EUR 5,000 jointly in respect of costs and expenses.

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



## 1. Germany - Parliamentary Conference

Date: 04.07.2016 – 04.07.2016

Berlin - The Parliamentary Assembly of the Council of Europe will organise a parliamentary conference on "Media Freedom as a Cornerstone for Democratic Elections", in co-operation with the Venice Commission. The Venice Commission delegation will intervene on standards for media in the context of elections, media ethics and transparency regarding party political interests and on the role of parliaments in ensuring media freedom in the context of elections.

## 2. Asia - Constitutional Justice

Date: 08.08.2016 – 13.08.2016

Nusa Dua - The Association of Asian Constitutional Courts and Equivalent Institutions (AACC) will hold its 3rd Congress.

## 3. Bulgaria - Constitutional justice

Date: 21.09.2016 – 22.09.2016

Sofia - The President of the Venice Commission will participate in the International Conference on "*The Protection of Fundamental Citizens' Rights and National Security in the Modern World. The Role of Con-*

## 4. Francophone countries – Constitutional Justice

Date: 27.09.2016 – 30.09.2016

Chisinau – Conference of Head of Institutions of the Association of Constitutional Courts using the French Language (ACCPUF).

## 5. Ukraine - Constitutional Justice

Date: 07.10.2016 – 08.10.2016

Kiev - Conference on the occasion of the 20th anniversary of the Constitutional Court of Ukraine. This event is co-organised by the Constitutional Court and the Venice Commission under the Council of Europe/European Union Eastern Partnership Programmatic Co-operation Framework, the OSCE Project Co-ordinator in Ukraine and IRZ-Stiftung.

## 6. 108th Plenary Session of the Venice Commission of the Council of Europe

Date: 14.10.2016 – 15.10.2016

Meeting place: Scuola Grande di San Giovanni Evangelista

## 7. Armenia - Constitutional Justice

Date: 20.10.2016 – 23.10.2016

Yerevan - Conference on "*The role and importance of constitutional courts decisions in addressing legislative gaps and legal uncertainty*" co-organised by the Constitutional Court of Armenia, the Venice Commission and the Conference of the Constitutional Control Organs of the Countries of New Democracy.

This Conference is financed by the CoE/EU programme: "*Programmatic Cooperation Framework in the Eastern Partnership Countries*".

## 8. 109th Plenary Session of the Venice Commission of the Council of Europe

Date: 09.12.2016 – 10.12.2016

Scuola Grande di San Giovanni Evangelista





### Judgment

KI 132/15

### Applicant

Visoki Deçani Monastery

*Request for constitutional review of two decisions of 12 June 2015, No. AC-I-13-0008 and No. AC-I-13-0009, of the Appellate Panel of the Special Chamber of the Supreme Court of the Republic of Kosovo on Privatization Agency of Kosovo related matters*

The Appellate Panel of the Special Chamber of the Supreme Court of the Republic of Kosovo decided in a property dispute between the Applicant (Visoki Deçani Monastery) and third parties (the representatives of socially owned enterprises “Illyria” and “Apiko” in the municipality of Decani) in favor the Applicant and that decision had become final *res judicata*.

After a period of time, the third parties addressed again the Appellate Panel by an appeal, which was approved as grounded, by annulling the previous decisions on the matter and concluded that the Special Chamber was not competent to adjudicate the matter. The Applicant filed appeal with the Constitutional Court mainly for violation of the principle *res judicata* by the Appellate Panel, claiming that none of the third parties had the right to complain since in the last instance they were declared as persons who were not authorized in the procedure and that the Appellate Panel was not entitled to consider their submissions. The Constitutional Court first considered the preliminary procedural issues of this case including its background. The Constitutional Court, then, assessed the merits of the case, where, among other things, found that the Appellate Panel violated the principle of legal certainty and denied the Applicant’s right to fair and impartial trial because he used the appeal procedure to annul earlier decisions and referred the original property dispute back to the regular courts. The Court ascertained that challenged decisions became *res judicata*.

The Constitutional Court also noted that the subject matter of the constitutional review concerned the challenged Decisions of the Appellate Panel of the year 2015, and that this does not in any way, either favorably or unfavorably, reflect upon the legality of the many and varied proceedings which took place prior to the challenged Decisions, because that is out of the scope of jurisdiction of the Constitutional Court.

The Constitutional Court held that there has been a violation of the right to fair and impartial trial, as guaranteed by Article 31, paragraph 2, of the Constitution, in conjunction with Article 6, paragraph 1, of the European Convention on Human Rights.



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.



## INFORMATION ON THE COURT

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### **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 m<sup>2</sup> and is used by 65 employees of the Court.



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