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The purpose of the summary of the decisions is to provide a general factual and legal overview of the cases and a brief summary of the decisions of the Constitutional Court. The summary of decisions and judgments has been compiled by the "Project Legal Reform" implemented by Deutsche Gesellschaft fur Internationale Zusammenarbeit (GIZ), and as such, they do not replace the decisions of the Constitutional Court nor do they represent the actual form of the decisions /judgments of the Constitutional Court.

BULLETIN OF CASE LAW 2012

OF THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

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Contents

Foreword

The Bulletin of Case Law 2012 of the Constitutional Court is the third publication of its kind since the Court's establishment in September 2009. I am pleased that the Secretariat of the Constitutional Court has been able to prepare this Bulletin using the same methodology as developed by the Constitutional Justice Initiative for the publication of the earlier Bulletins of Case Law for the years 2009-2010 and 2011. The publication of the present Bulletin has been made possible through a donation by the German International Cooperation (GIZ), for which the Court is extremely grateful.

As in the previous Bulletins, the decisions contained in the Bulletin of Case Law for the year 2012 deal with a number of important human rights issues submitted by natural and legal persons, as well as with equally important issues raised under the Constitution by the Kosovo institutions. In this connection, I cannot emphasize enough how important it is for those who intend to file a Referral with the Constitutional Court to first look into similar cases already adjudicated by the Court in order to have some idea whether or not their case would have any prospect of success before the Constitutional Court.

In order to facilitate their research, it is therefore recommended that prospective applicants or their representatives make use of the Bulletins of Case Law in which the most representative decisions, which the Court has taken between 2009 and 2012, have been compiled.

These and other publications by the Court are also meant to show to the people of Kosovo that the work of the Constitutional Court is fully transparent and that, in its pursuit to uphold the Rule of Law, the Court, as the final authority for the interpretation of the Constitution and the compliance of laws with the Constitution, meets the highest standards of professionalism and objectivity.

Prof. Dr. Enver Hasani
President of the Constitutional Court

KI 35/10 dated 17 January 2012- Constitutional Review of the Decision of the Municipal Court in Prizren KP No. 3/2010 dated 29 January 2010

Case KI 35/10, decision dated 21 November 2011
Keywords; individual referral, constitutional review of the decision of Municipal Court in Prizren

The Applicant submitted the Referral based on Articles 113.7 and 21.4 of the Constitution, Articles 20, 22.7 and 22.8 of the Law no. 03/L-121 on the Constitutional Court of the Republic of Kosovo dated 15 January 2009

On 11 February 2010, the Court received the Referral of the Applicant, alleging the violation of his personal human rights.

On 30 August 2010 the President of the Court appointed Judge Altay Suroy as Judge Rapporteur and a Review Panel composed of Judges Snezhana Botusharova (Presiding), Ivan Cukalovic and Iliriana Islami.
On 30 March 2010 the Court asked the Applicant to clarify his referral and to submit the challenged decision KP No. 3/2010 dated 29 January 2010 which was served upon him on 03 February 2010 as well as a copy of an appeal of that decision that the Applicant allegedly submitted on 5 February 2010.
On 18 July 2008, the Applicant filed a criminal private charge against a judge M.A. to the Municipal Court in Prizren for, *inter alia*, alleged criminal offence against honour and reputation provided by Article 190 of Provisional Criminal Code of Kosovo and the criminal offence of issuing unlawful judicial decisions provided by Article 346 of the PCCK.
On 11 January 2010, the Municipal Court in Prizren issued Decision PKA No. 163/09 and rejected the Applicant's private criminal charge as well as terminated criminal procedure against respondent.

The Applicant filed appeal.
On 29 January 2010, the Municipal Court in Prizren issued Decision No.3/2010 and rejected as ungrounded the Applicant's appeal against Decision of 11 January 2010. In that Decision it was stated, *inter alia* that the Applicant has not acted in accordance with Article

361(1) of the PCCK and has not clarified his private criminal charge. It was further stated that the Applicant's private criminal charge was time-bared.
The Court notes the Applicant, although it was asked by the Constitutional Court to clarify his referral and to submit inter alia a copy of an appeal against decision of 11 January 2011, he never did that. Notwithstanding, as it was stated above, it seems that the procedure against Decision of the Municipal Court in Prizren is still pending.

The Constitutional Court recalls its task is not to act as a court of appeal, when considering decisions rendered by lower courts. The Applicant did not submit any *prima facie* evidence indicating a violation of his rights under the Constitution.

In this respect, the Court considers that the public authorities of the Republic of Kosovo can only be required to answer to facts and acts which occurred subsequent to the entry into force of the Constitution on 15 June 2008. Accordingly, the Court cannot deal with a Referral relating to events that occurred before the entry into force of the Constitution.
Finally, the admissibility requirements were not met in this Referral.
Taking into account all circumstances of the submitted Referral, the Constitutional Court pursuant to Article 113.1 and 113.7 of the Constitution, Articles 46, 47 and 48 of the Law and Rules 36 (1a) and 36 (3c) of the Rules of the Procedure, in the session held on 21 November 2011 unanimously decided to reject the Referral as inadmissible.

Pristine, 10 January 2012
Ref. No.: RK172/11

RESOLUTION ON INADMISSIBILITY
in

Case No. KI 35/10

Applicant

Skender Zenuni

Constitutional Review of the Decision of the Municipal Court in Prizren KP No. 3/2010 dated 29 January 2010

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Enver Hasani, President
Kadri Kryeziu, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Ivan Čukalović, Judge
Gjyljeta Mushkolaj, Judge and
Iliriana Islami, Judge

Applicant

1. The Applicant is Skender Zenuni from Gjilan.

2. The Applicant alleges, without specifying any particular provision of the Constitution, that his right to fair trial has been violated due to alleged corruption by a judge of the Municipal Court in Gjilan.

3. The Referral is based on Art. 113.7 of the Constitution; Articles 46, 47, 48 and 49 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter referred to as the Law), and Rule 56 (2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter referred to as the Rules of Procedure).

Challenged decision

4. The Applicant challenges the Decision of the Municipal Court in Prizren KP No. 3/2010 dated 29 January 2010 which was served upon him on 03 February 2010.

Proceedings before the Court

5. On 25 January 2010 the Applicant wrote a letter to the Constitutional Court (hereinafter referred to as the Court) alleging the corruption by a judge of the Municipal Court in Gjilan.

6. On 28 January 2010 the Secretariat of the Court wrote a letter to the Applicant recommending him to approach the Office of the Disciplinary Prosecutor in Pristina.

7. On 11 February 2010 the Court received the referral from the Applicant alleging violation of his individual human rights.

8. On 30 March 2010 the Court asked the Applicant to clarify his referral and to submit challenged decision KP No. 3/2010 dated 29 January 2010 which was served upon him on 03 February 2010 as well as a copy of an appeal of to that decision that the Applicant allegedly submitted on 5 February 2010.

9. On 12 April 2010 the Applicant replied to Court's letter of 30 March 2010 and submitted only the Decision of the Municipal Court in Prizren KP No. 3/2010 dated 29 January 2010.

10. On 24 August 2010 the Court notified the Municipal Court in Prizren with the Referral.

11. On 30 August 2010 the President of the Court appointed Judge Altay Suroy as Judge Rapporteur and a Review Panel composed of Judges Snezhana Botusharova (Presiding), Ivan Čukalović and Iliriana Islami. On 28 November 2011, after having considered the Report of the Judge Rapporteur, the Review Panel, made a recommendation to the full Court on the inadmissibility of the Referral.

Summary of the Facts

12. According to the Applicant's allegations and documents in the case file the facts of the case may be summarised as follows.

13. On 18 July 2008, the Applicant filed a criminal private charge against a judge M.A. to the Municipal Court in Prizren for*, inter alia*, alleged criminal offence against honour and reputation provided by Article 190 of Provisional Criminal Code of Kosovo (PCCK, UNMIK/REG/2003/25) and the criminal offence of issuing unlawful judicial decisions provided by Article 346 of the PCCK.

14. On 11 January 2010, the Municipal Court in Prizren issued Decision PKA No 163/09 and rejected the Applicant's private criminal charge as well as terminated criminal procedure against respondent. In the reasoning of the Municipal Court in Prizren Decision PKA No 163/09, the Municipal Court stated that the Applicant's private criminal charge is irregular and time-barred.

15. Pursuant to the legal advice given in above mentioned Decision of the Municipal Court in Prizren, the Applicant had possibility to submit an appeal against that decision within 3 days time limit.

16. According to the Applicant's allegations he submitted an appeal against Decision of the Municipal Court of Prizren issued on 11 January 2010.

17. On 29 January 2010, the Municipal Court in Prizren issued Decision No.3/2010 and rejected as ungrounded the Applicant's appeal against Decision of 11 January 2010. In that Decision it was stated, *inter alia* that the Applicant has not acted in accordance with Article 361(1) of the PCCK and has not clarified his private criminal charge. It was further stated that the Applicant's private criminal charge was time-bared.

18. According to the referral it appears that the Applicant received Decision of the Municipal Court in Prizren No.3/2010 on 3 February 2010 and that he appealed against it on 5 February 2010. It seems that procedure against Decision of the Municipal

Court is still pending. Furthermore, according to the documents in the case file it appears that on 2 February 2010 the Office of Disciplinary Prosecutor (ODP) informed the Applicant that it had reviewed the Applicant's submissions of 10 July 2008 and of 13 March 2009 in which the Applicant claimed various irregularities in the proceedings in case No 51/200 by judge M.A. and requested his dismissal for the Applicant's case.

19. In the submission of the ODP it was stated, inter alia, that "the OPD obtained court files and interviews relevant witness, and has found that the Court proceeded the case as per claim of plaintiff R.H. against M.Z. on validation of property.... The Supreme Court with its decision Rev No 71/02 of 26 June 2003, returned both judgements and the case was reopened for proceedings. The case gained a new number, C.No. 361/03 on which the proceeding was terminated on 6 February 2004, due to death of plaintiff. None of the parties have requested continuation of proceedings terminated on 6 February 2004". The ODP has further stated that "Skender Zenuni (i.e. the Applicant) on 14 May 2008, has initiated a court proceeding C No 212/08 on obstruction of possession... the proceedings is in progress." Based on the above mentioned, OPD has stated that they will not engage in disciplinary investigation for the moment. In case of additional statement the applicant is advised to contact ODP.

20. Background to the Applicant's private criminal charge and submission to the ODP dated back to 1980 when the Municipal Court in Gjilan issued Judgment C. No 30/80, relating to the dispute between two brothers (one of which was the Applicant's farther), in relation to immoveable properties left to them by their late father. On 10 June 1986, the Municipal Court in Gjilan adopted Decision on division of the immovable property at issue. In 1988, the District Court rejected claim of another person X.H. who alleged that the property was his. By Decision of the Municipal Court in Gjilan, C. No. 256/90 of date 16 May 1991 the proceedings initiated by X.H. is in recess. However, on 21 January 2001 the Municipal Court in Gjilan Decision C. No 51/2000 granted R.H. (son of X.H.) sole ownership of the property. This was confirmed by the District Court in Gjilan Ac. No. 9/2002 issued on 20 March 2002. However, the Supreme Court by Decision Rev. No. 71/2002 on 26 June 2003 annulled

the above mentioned judgment of the District and Municipal Courts. The case was sent back to the court of first instance.

21. After the death of M.S., the Applicant inherited the property following a Decision of the District Court in Gjilan T. 63/2003. On 14 May 2008 the Applicant initiated a court proceeding C. No. 212/08 on obstruction of possession against R.H. The first session was held on 19 June 2008, when the plaintiff requested dismissal of Judge M.A. from the case. The Appeal Court by its decision CN. No 5/08 on 27 June 2008 rejected the request for dismissal. Later the request for reopening of procedure as confirmed by the appeal court was rejected as well.

Assessment of the admissibility of the referral

22. In order to be able to adjudicate the Applicants' Referral, the Court needs first to examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution, further specified in the Law on the Constitutional Court and in Article 36 of the Rules of Procedure.

23. Article 113.7 of the Constitution and 47(2) of the Law, state that individuals who submit a referral to the Court, must show that they have exhausted all legal remedies available under the applicable law.

24. The Court emphasizes that the rationale for the exhaustion rule is to afford the authorities concerned, including the courts, the opportunity to prevent or put right the alleged violation of the Constitution. This rule is based on the assumption that Kosovo legal order will provide an effective remedy for the violation of constitutional rights (*mutatis mutandis*, ECHR, Selmouni v France, no. 25803/94, decision of 28 July 1999). This Court applied the same reasoning, when it issued Resolution on Inadmissibility in the case of AAB-RIINVEST University L.L.C, Pristina vs. Government of Republic of Kosovo, Case KI 41/09 of 27 January 2010.

25. As presented to this Court it appears that the Applicant submitted an appeal against Decision of the Municipal Court of Prizren issued on 29 January 2010.

26. The Court notes the Applicant, although it was asked by the Constitutional Court to clarify his referral and to submit *inter alia* a copy of an appeal against decision of 29 January 2010, he never did that. Notwithstanding that, as it was stated above, it seems that the procedure against Decision of the Municipal Court in Prizren is still pending.

27. The Constitutional Court recalls its task is not to act as a court of appeal, when considering decisions rendered by lower courts. It is the role of the lower courts to interpret and apply the pertinent rules of both procedural and substantive law (see *mutatis mutandis,* Garcia Ruiz v Spain [GC], no. 30544/96, para. 28, European Court on Human Rights [ECtHR] 1999-I).

28. The Applicant did not submit any *prima facie* evidence indicating a violation of his rights under the Constitution (see Vanek v Slovak Republic, ECtHR Decision as to the Admissibility of Application no. 53363/99 of 31 May 2005).

29. The Court recalls that the Municipal Court in Prizren found that Applicant's private criminal charge was irregular and time barred. Having taken this into consideration the Constitutional Court does not find that the relevant proceedings were in any way unfair or tainted by arbitrariness (see *mutatis mutandis,* Shub v Lithuania, ECtHR Decision as to the Admissibility of Application no.17964/06 of 30 June 2009).

30. With regard to the Applicant's allegation related to the property disputes, the Court must, first establish, whether the matters raised by the Applicant "fall under its jurisdiction". In this respect, the Court considers that the public authorities of the Republic of Kosovo can only be required to answer to facts and acts which occurred subsequent to the entry into force of the Constitution on 15 June 2008. Accordingly, the Court cannot deal with a Referral relating to events that occurred before the entry into force of the Constitution (see, the Court's Resolution on Inadmissibility in Case No 18/10, Denic *et al* of 17 August 2011*)*.

FOR THESE REASONS

The Constitutional Court pursuant to Article 113.7 of the Constitution, Article 47 of the Law and Rule 36 of the Rules of the Procedure unanimously:

DECIDES

I. TO REJECT the Referral as inadmissible.

II. This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20 (4) of the Law.

III. This Decision is effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Altay Suroy	Prof. Dr. Enver Hasani

KI 08/10, KI 16/10, KI 22/10, KI 24/10, KI 27/10, KI 36/10, KI 41/10, KI 42/10, KI 45/10, KI 53/10, KI 54/10, KI 56/10, KI 57/10, KI 58/10, KI 59/10, KI 60/10, KI 61/10, KI 63/10, KI 64/10, KI 65/10, KI 66/10, KI 67/10, KI 68/10 KI 71/10, KI 74/10, KI 76/10 dated 27 January 2012- Constitutional Review of 26 Individual Judgments of the Supreme Court of the Republic of Kosovo

Cases KI 08/10, KI 16/10, KI 22/10, KI 24/10, KI 27/10, KI 36/10, KI 41/10, KI 42/10, KI 45/10, KI 53/10, KI 54/10, KI 56/10, KI 57/10, KI 58/10, KI 59/10, KI 60/10, KI 61/10, KI 63/10, KI 64/10, KI 65/10, KI 66/10, KI 67/10, KI 68/10, KI 71/10, KI 74/10, KI 76/10, dated 10 March 2011
Keywords: continuing violation, contract dispute, disability pension, individual/group referral, invalidity pension, legitimate expectation, pensions, right to fair and impartial trial

The Applicants, 26 former employees of the Kosovo Energy Corporation (KEK), filed Referrals pursuant to Article 113.7 of the Constitution, asserting that their rights to property and a fair trial, which the Court construed as references to Article 1 Protocol 1 to the European Convention on Human Rights (ECHR) and Article 6 of the ECHR, were infringed by 26 judgments issued by the Supreme Court. The Applicants argued that they were unjustly deprived of pecuniary interests and were unable to obtain a remedy from ordinary courts. The Supreme Court reversed lower court decisions and approved KEK's unilateral annulment of compensation agreements ("Agreements") following early termination of the Applicants' employment contracts that had otherwise provided them with rights to compensation until the Kosovo Fund on Pension-Invalidity Insurance was established and functioning. On the one hand, the Supreme Court concluded that KEK had fulfilled its obligations under the compensation agreement because the Invalidity and Pension Insurance Fund (IPIF) had been established, triggering termination of the agreement. On the other hand, the Ministry of Labour and Social Welfare (MLSW) disputed the Supreme Court's findings, acknowledging that pensions for permanently disabled persons and individuals older than 65 years, but adding that the Law on Pensions establishing an IPIF had not yet been adopted.

As to admissibility, the Court held that 15 Applicants were authorized parties pursuant to Article 113.7 of the Constitution, that they had fulfilled the exhaustion requirements of Article 113.7 and Article 47.2 of the Law on the Constitutional Court ("Law"), and that the 4-month deadline provided by Article 49 of the Law was inapplicable because the alleged Constitutional violation was continuing in nature. The Court held that the corresponding 21 Referrals were admissible, and that the 5 remaining Referrals were only partly admissible, excluding claims for compensation beyond the Applicants' 65th birthdays while including claims for compensation relating to the period prior to their 65th birthdays.

As to the merits, the Court highlighted the rights to property encompassed by Article 46 and Article 1 of Protocol No. 1 of the European Convention on Human Rights and Fundamental Freedoms (ECHR). The Court reasoned that the Applicants had a legitimate expectation to temporary compensation under the Agreements until the IPIF became functional, an entitlement that was protected by Article 1 of Protocol No. 1, citing *Ibrahimi*, *Prokshi* and as well as *Gratzinger and Gratzingerova v. the Czech Republic*. The Court concluded that KEK's unilateral cancellation of the Agreements prior to the IPIF's implementation infringed on their pecuniary property interests, and violated Article 46 and Article 1 of Protocol 1 of the ECHR.

Noting the rights to a fair and impartial trial guaranteed by Article 31.1 of the Constitution and Article 6 of the ECHR, the Court cautioned that ordinary courts must resolve factual, as well as procedural and substantive legal disputes, citing *Garcia Ruiz v. Spain*, whereas its focus is on whether an Applicant received a fair trial, citing *Edwards v. United Kingdom*. The Court emphasized that courts are obliged to give reasons for their judgments, although the level of necessary detail may vary, citing Article 6.1 of the ECHR, *Ibrahimi* and *Prokshi*. Importantly, the Court noted, the Applicants argued that a Law on Pension establishing the IPIF had not yet been adopted, an assertion that was confirmed by the MLSW. The Court concluded that the Supreme Court made no attempt to resolve the Applicants' argument, suggesting that Article 74.3 of the Law on Contract and Torts in conjunction with Article 18 of the 1983 Law on Pension and Invalidity Insurance may have supported the argument. Accordingly, the Court concluded that the Supreme Court had violated Article 31 and Article 6.1 (ECHR) when failing to address the

specific, pertinent and important arguments made by the Applicants, citing *Ibrahimi*, *Prokshi* and European Court of Human Rights and Judgment of 18 July 2006 in the case Pronina u. Ukraine, Application no. 63566/00.

For the reasons stated, the Court issued a Judgment regarding its holdings on admissibility, the violations of Article 46 in conjunction with Article 1 Protocol 1 to the ECHR, and Article 31 in conjunction with Article 6 of the ECHR. The Judgment also invalidated the Supreme Court judgments, remanded the cases for reconsideration in conformity with the holdings, and retained jurisdiction pending compliance with the Judgment.

Pristine, 10 March 2011
Ref. No.: AGJ 90/11

JUDGEMENT

in

Case No.

KI 08/10, KI 16/10, KI 22/10, KI 24/10, KI 27/10, KI 36/10, KI 41/10, KI 42/10, KI 45/10, KI 53/10, KI 54/10, KI 56/10, KI 57/10, KI 58/10, KI 59/10, KI 60/10, KI 61/10, KI 63/10, KI 64/10, KI 65/10, KI 66/10, KI 67/10, KI 68/10 KI 71/10, KI 74/10, KI 76/10

Applicants

Isuf Mërlaku and 25 other former employees of Kosovo Energy Corporation

Constitutional Review of 26 Individual Judgments of the Supreme Court of the Republic of Kosovo

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

Composed of:

Enver Hasani, President
Kadri Kryeziu, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Ivan Čukalović, Judge
Gjyljeta Mushkolaj, Judge and
Iliriana Islami, Judge

INTRODUCTION

1. This Judgment concerns Referrals made by the Applicants listed below which were lodged with the Constitutional Court by twenty-six (26) former employees of the Kosovo Energy Corporation (KEK) between January and August 2010.

2. The present cases are similar– to Case KI No. 40/09, "Imer Ibrahimi and 48 other former employees of Kosovo Energy Corporation against 49 Individual Judgments of the Supreme Court of the Republic of Kosovo" and "Gani Prokshi and 15 other former employees of the Kosovo Energy Corporation against 16 Individual Judgments of the Supreme Court of the Republic of Kosovo" The Constitutional Court in both Judgments founds that there has been a violation of Article 46 of the Constitution of the Republic of Kosovo (Protection of Property) in conjunction with Article 1 Protocol 1 to the European Convention on Human Rights as well as that there has been violation of Article 31 of the Constitution (Right to Fair and Impartial Trial) in conjunction with Article 6 of the European Convention on Human Rights with

in relation to some of those Applicants. Consequently it was decided to declare invalid the Judgments delivered by the Supreme Court in some of those cases and Remand those cases to the Supreme Court for reconsideration in conformity with the judgment of this Court (see the Judgment of the Constitutional Court of 23 June 2010 and 18 October 2010).

The Applicants in the present case are as follows:

1. KI 08/10 Isuf Mërlaku,
2. KI 16/10 Ragip Berisha,
3. KI 22/10 Bedri Berisha,
4. KI 24/10 Ajvaz Krasniqi,
5. KI 27/10 Rasim Klinaku,
6. KI 36/10 Ali Tahiri,
7. KI 41/10 Smajl Grajqevci,
8. KI 42/10 Sherfi Pllana,
9. KI 45/10 Hasan Shala,
10. KI 53/10 Azem Fetahu,
11. KI 54/10 Zenel Bajgora,
12. KI 56/10 Vjollca Shala,
13. KI 57/10 Agim Visoka,
14. KI 58/10 Amit Krasniqi,
15. KI 59/10 Shaban Igrishta,
16. KI 60/10 Havë Islami,
17. KI 61/10 Ramush Shala,
18. KI 63/10Halil Vrella,
19. KI 64/10 Hamdi Haxha,
20. KI 65/10 Gani Sahiti,
21. KI 66/10 Zoja Sollova,
22. KI 67/10 Isa Hajdari,
23. KI 68/10 Hajrije Sadiku,
24. KI 71/10 Blerim Hatipi,
25. KI 74/10 Time Bekaj,
26. KI 76/10 Ilaz Halili,

3. In this Judgment for ease reference the Applicants may be referred to collectively as the twenty-six (26) former employees of Kosovo Energy Corporation (KEK)".

The Applicants challenge the following Judgments of the Supreme Court of Kosovo adopted in the cases of:

1. Isuf Mërlaku, Rev.nr. 338/2008 dated 11.02.2009
2. Ragip Berisha, Rev.nr. 63/2009 dated 11.02.2009
3. Bedri Berisha, Rev.nr. 145/2008 dated 13.04.2009
4. Ajvaz Krasniqi, Rev.nr. 549/2008 dated 10.03.2008
5. Rasim Klinaku, Rev.nr. 470/2008 dated 23.02.2009
6. Ali Tahiri, Rev.nr. 271/2009 dated 15.07.2009
7. Smajl Grajqevci, Rev.nr. 41/10 dated 23.02.2009
8. Sherfi Pllana, Rev.nr. 207/2009 dated 29.06.2009
9. Hasan Shala, Rev.nr. 45/2010 dated 23.02.2009
10. Azem Fetahu, Rev.nr. 38/2010 dated 09.06.2010
11. Zenel Bajgora, Rev.nr. 152/2009 dated 13.04.2010
12. Vjollca Shala, Rev.nr. 452/2008 dated 23.02.2009
13. Agim Visoka, Rev.nr. 57/2010 dated 23.06.2009
14. Amit Krasniqi, Rev.nr. 67/2008 dated 10.02.2009
15. Shaban Igrishta, Rev.nr. 442/2008 dated 11.02.2009
16. Havë Islami, Rev.nr. 154/2009 dated27.04.2009
17. Ramush Shala, Rev.nr. 223/2008 dated27.01.2009
18. Halil Vrella, Rev nr. 252/2008 dated 10.02.2009
19. Hamdi Haxha, Rev.nr. 66/2009 dated 11.02.2009
20. Gani Sahiti, Rev. nr 65/2009 dated 16.03.2010
21. Zoja Sollova, Rev.nr. 103/2009 dated 17.03.2009
22. Isa Hajdari, Rev.nr. 469/09 dated 10/03/2010
23. Hajrije Sadiku, Rev.nr 137/2008 dated 27.01.2009
24. Blerim Hatipi, Rev.nr. 542/2008 dated 23.02.2009
25. Time Bekaj, Rev.nr. 42/2009 dated 11.02.2009
26. Ilaz Halili, Rev.nr. 432/2008 dated 10.02.2009

Subject matter

4. The subject matter of this Referral is the assessment of the constitutionality of the individual Judgments delivered by the Supreme Court of the Republic of Kosovo in the twenty-six (26) individual cases of the Applicants against KEK as specified above.

Legal basis

5. The Referral is based on Article 113 of the Constitution of the Republic of Kosovo (hereinafter referred to as the Constitution),

Article 20 of the Law No. 03/L-121 on the Constitutional Court of the Republic Kosovo (hereinafter referred to as: the Law) and Section 56 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter referred to as: the Rules of Procedure).

Summary of the facts as alleged by the Parties

6. The facts of these Referrals are similar to those in "the Case of Imer Ibrahimi and 48 other former employees of the Kosovo Energy Corporation v. 49 individual Judgments of the Supreme Court of the Republic of Kosovo" and "the Case of Gani Prokshi and 15 other former employees of the Kosovo Energy Corporation v. 16 Individual Judgments of the Supreme Court of the Republic of Kosovo", See the Judgments of Constitutional Court of Kosovo, (hereinafter referred to as "the case of Ibrahimi and others" dated 23 June 2010 and "the case of Prokshi and others" dated 18 October 2010.

7. In the course of 2001 and 2002, each of the Applicants in this Referral, as with the Applicants in the said Judgment of 23 June 2010, signed an Agreement for Temporary Compensation of Salary for Termination of Employment Contract with their employer KEK. These Agreements were, *in substance, the same.*

8. Article 1 of the Agreements established that, pursuant to Article 18 of the Law on Pension and Invalidity Insurance in Kosovo (Official Gazette of the Social Autonomous Province of Kosovo No 26/83, 26/86 and 11/88) and at the conclusion of KEK Invalidity Commission, the beneficiary (i.e. each of the Applicant) is entitled a temporary compensation due to early termination of the employment contract until the establishment and functioning of the Kosovo Fund on Pension-Invalidity Insurance.

9. Article 2 of the Agreements specified that the amount to be paid monthly to each Applicant was to be 206 German Marks.

10. Article 3 specified that "payment shall end on the day that the Kosovo Pension-Invalidity Insurance Fund enters into operation. On that day onwards, the beneficiary may realize his/her rights in the Kosovo Pension and Invalidity Insurance Fund (the Kosovo

Pension Invalidity Fund), and KEK shall be relieved from liabilities to the User as per this Agreement."

11. On 1 November 2002, the Executive Board of KEK adopted a Decision on the Establishment of the Pension Fund, in line with the requirements of UNMIK Regulation No 2001/30 on Pensions in Kosovo. Article 3 of this Decision reads as follows: "The Pension Fund shall continue to exist in an undefined duration, pursuant to terms and liabilities as defined with Pension Laws, as adopted by Pension Fund Board and KEK, in line with this Decision, or until the legal conditions on the existence and functioning of the Fund are in line with Pension Regulations or Pension Rules adopted by BPK."

12. On 25 July 2006, the KEK Executive Board annulled the above mentioned Decision on the Establishment of the Supplementary Pension Fund and terminated the funding and functioning of the Supplementary Pension Fund, with effect from 31 July 2006. According to the Decision of 25 July 2006, all beneficiaries were guaranteed full payment in line with the Fund Statute. Furthermore the total obligations towards beneficiaries were 2, 395,487 Euro, banking deposits were 3,677,383 Euro and asset surplus from liability were 1,281,896 Euro. The Decision stated that KEK employees that are acknowledged as labour disabled persons by the Ministry of Labour and Social Welfare shall enjoy rights provided by the Ministry. On 14 November 2006, KEK informed the Central Banking Authority that "decision on revocation of the KEK Pension Fund is based on decision of the KEK Executive Board and the Decision of the Pension Managing Board… due to the financial risk that the scheme poses to KEK in the future."
13. According to the Applicants, KEK terminated the payment stipulated by the Agreements in the summer of 2006 without any notification. The Applicants claim that such an action is in contradiction to the Agreements signed.

14. The Applicants also claim that it is well known that the Kosovo Pension Invalidity Fund has not been established yet.

15. On the other hand, in the original case, KEK contested the Applicants' allegations arguing that it was widely known that the Invalidity Pension Fund had been functioning since 1 January 2004.

16. According to KEK, the Applicants were automatically covered by the national invalidity scheme pursuant to UNMIK Regulation No 2003/40 on Promulgation of the Law on Invalidity Pensions in Kosovo (Law No 2003/23).

17. KEK further argued that on 31 August 2006 it issued a Notification according to which all beneficiaries of the KEK Supplementary Fund had been notified that the Fund was terminated. The same notification confirmed that all beneficiaries were guaranteed complete payment in compliance with the SPF Statute, namely 60 months of payments or until the beneficiaries reached 65 years of age, pursuant to the Decision of the Managing Board of the Pension Fund of 29 August 2006.

18. KEK further argued that the Applicants did not contest the Instructions to invalidity pension and signature for early termination of employment pursuant to the conclusion of the Invalidity Commission.

19. The Applicants sued KEK before the Municipal Court in Prishtina, requesting the Court to order KEK to pay unpaid payments and to continue to pay 105 Euro (equivalent to 206 German Marks) until conditions are met for the termination of the payment.

20. The Municipal Court in Prishtina approved the Applicants' claims and ordered monetary compensation. The Municipal Court of Prishtina found (e.g. the Judgment C. Nr. 445/2006 of 19 June 2007 in the case of the first Applicant Isuf Mërlaku) that the conditions provided by Article 3 of the Agreements have not been met. Article 3 of the Agreements provides for salary compensation until exercise of the Applicants' right, "which means an entitlement to a retirement scheme, which is not possible for the plaintiff, because he has not reached the age of 65."
21. The Municipal Court further stated in the above quoted judgment that payment of compensation cannot be connected to provisions of the Supplementary Pension Statute, since the Agreements were signed earlier and the Statue has not provided that the Agreements that entered into earlier cases shall cease to be valid. This Court also clarified that according to Article 262 of the Law

on Obligations and Contracts the creditor (i.e. an Applicant) was entitled to seek performance of the obligation, while the debtor (i.e. KEK) is bound to perform such obligation.

22. KEK appealed against the judgments of the Municipal Court to the District Court, arguing, *inter alia,* that the Municipal Court judgment was not fair because the Agreements were signed with the Applicants because of the invalidity of the Applicants and that they can not claim continuation of their working relations because of their invalidity.

23. KEK reiterated that the Court was obliged to decide upon the UNMIK Regulation 2003/40 on the promulgation of the Law on Invalidity Pensions according to which the Applicants were entitled to an invalidity pension.

24. The District Court in Prishtina rejected the appeals of KEK and found their submissions ungrounded.

25. KEK submitted a revision to the Supreme Court because of an alleged essential violation of the Law on Contested Procedure and erroneous application of material law (Revision by KEK of 27 January 2009 in the case of the first named Applicant, Isuf Mërlaku). It repeated that the Applicants were entitled to the pension provided by the 2003/40 Law and that because of humanitarian reasons it continued to pay monthly compensation after the Law entered into force. It argued that the age of the applicant was not relevant but that his invalidity was.

26. The Supreme Court accepted the revisions of KEK, and quashed the judgments of the District Court and the Municipal Court in Prishtina and rejected as unfounded the Applicants' lawsuits.

27. The Supreme Court argued that the manner of termination of employment was considered lawful pursuant to Article 11.1 of UNMIK Regulation 2001/27 on the Basic Labour Law in Kosovo.

28. In its Judgment in the case of the first applicant Isuf Mërlaku, Rev. No. 338/2008 of 11 February 2009, the Supreme Court

stated: "Taking into account the undisputed fact that the respondent party fulfilled the obligation towards the plaintiff, which is paying salary compensation according to the specified period which is until the establishment and functioning of the Invalidity and Pension Insurance Fund in Kosovo effective from 1 January 2004, the Court found that the respondent party fulfilled the obligation as per the agreement. Thus the allegations of the plaintiff that the respondent party has the obligation to pay him the temporary salary compensation after the establishment of the Invalidity and Pension Insurance Fund in Kosovo are considered by this Court as unfounded because the contractual parties until the appearance of solving condition- establishment of the mentioned fund have fulfilled their contractual obligations…"

29. On 15 May 2009, Kosovo Ministry of Labour and Social Welfare issued the following note: "The finding of the Supreme Court of Kosovo, in its reasoning of e.g. Judgment Rev. No. 338/2008, that in the Republic of Kosovo there is a Pension and Invalidity and Pension Insurance Fund which is functional since 1 January 2004 is not accurate and is ungrounded. In giving this statement, we consider the fact that UNMIK regulation 2003/40 promulgates the Law No 2003/213 on the pensions of disabled persons in Kosovo, which regulates over permanently disabled persons, who may enjoy this scheme in accordance with conditions and criteria as provided by this law. Hence let me underline that the provisions of this Law do not provide for the establishment of a Pension and Invalidity Insurance in the country. Establishment of the Pension and Invalidity Insurance Fund in the Republic of Kosovo is provided by provisions of the Law on pension and Invalidity Insurance funds, which is in the process of drafting and approval at the Government of Kosovo." The same note clarified that at the time of writing that note, the pension *inter alia* existed "Invalidity pension in amount of 45 Euro regulated by the Law on Pensions of Invalidity Persons (beneficiaries of these are all persons with full and permanent Invalidity)" as well as "contribution defined pensions of 82 Euro that are regulated by Decision of the Government (the beneficiaries of these are all the pensioners that have reached the pensions age of 65 and who at least have 15 years of working experience)".

Complaints

30. The Applicants complain that their rights have been violated because KEK unilaterally annulled their Agreements although the condition prescribed in Article 3, the establishment of the Kosovo Pension-Invalidity Insurance Fund) had not been fulfilled. The Applicants further argued that they have not been able to remedy such violation before the ordinary courts. While all the Applicants do not explicitly complain of a violation of the European Convention on Human Rights (ECHR), it appears from the Applicants' submissions that the subject of the complaints are their property rights (as guaranteed by Article 1 Protocol 1 to the ECHR) as well as their right to fair trail (as guaranteed by Article 6 of the ECHR).

Summary of the proceedings before the Court

31. Between January and August 2010, the Applicants individually, filed the Referrals to the Constitutional Court. The President of the Court appointed Judge Kadri Kryeziu as Judge Rapporteur and appointed a Review Panel of the Court composed of Judges Altay Suroy (Presiding), Enver Hasani and Iliriana Islami.

32. On 17 August 2010, the Constitutional Court notified the Supreme Court, in accordance with Article 26 of the Law, that these applicants challenged individual judgments that the Supreme Court adopted.

33. On 18 August 2010 the Constitutional Court notified KEK as an interested party regarding the submission of the above referrals.

34. KEK responded in writing on 1 October 2010, stating that all of the above cases are identical to those of Case KI 40/09 and thus they has previously given its comments in the public hearing for case KI 40/09 held on 30 April 2010. In addition, KEK challenged the substance of the Constitutional Court Judgment delivered in the case of "Ibrahimi and others" and "Prokshi and others" arguing that there was no violation of Constitution.

35. The Constitutional Court has not received a reply from the Supreme Court.

36. On 13 December 2010, after having considered the Report of the Judge Rapporteur Kadri Kryeziu, the Review Panel, composed of Altay Suroy, Enver Hasani and Iliriana Islami made a recommendation to the full Court on the admissibility of the Referral.

Admissibility

37. As was done in the case *of "Ibrahimi and others"* and *"Prokshi and others"*, already referred to, in order to be able to adjudicate the Applicants' Referral the Constitutional Court needs first to examine whether the Applicants have fulfilled the admissibility requirements laid down in the Constitution.

38. In this connection, the Court refers to Article 113.7 of the Constitution, which provides:

"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";

and to Article 47.2 of the Law, stipulating that:

"The individual may submit the referral in question only after he/she has exhausted all legal remedies provided by the law."

39. The Court further has to consider whether Applicants submitted their Referral within the four months time limit prescribed by Article 49 of the Law. In this connection, the Constitutional Court refers to Article 49 of the Law, which stipulates that:

"*The referral should be submitted within a period of four (4) months. The deadline shall be counted from the day upon which the claimant has been served with a court decision. In all other cases, the deadline shall be counted from the day when the decision or act is publicly announced…"*

40. The Court recalls that in the present case, as in the cases of *"Ibrahimi and others*" and *"Prokshi and others"*, the Applicants still suffer from the unilateral annulment of their Agreements signed by KEK. They raised the same argument as the Applicants in the earlier that it is well known that the Pension and Invalidity Insurance Fund has not been established to date. Therefore, there is a continuing situation. As the circumstance of which the Applicants complain continued, the four months period as prescribed in Article 49 of the Law is inapplicable to these cases.

41. The Constitutional Court is cognizant that some of the Applicants were older than 65 years at the time of submitting his Referral to this Court.
42. These Applicants are: Ajvaz Krasniqi (1945), Rasim Klinaku (1944), Sherif Pllana (1945), Halil Vrella (1945) and Ilaz Haliti (1945).

43. The Constitutional Court recalls that according to the Note issued by the Ministry of Labour and Social Welfare on 15 May 2009 persons who have reached the pensions age of 65 and who have at least 15 years of working experience are entitled to pension in a monthly amount of 82 Euro. The substance of this Note was confirmed by the representative of the Ministry at the public hearing that the Constitutional Court held on 30 April 2010 in the case of Ibrahimi and others.

44. It appears consequently that the above listed Applicants are entitled for pension from the moment when they reached the age of 65.

45. However, their complaint to the extent of unpaid compensation for the period prior to that moment, on account of a continuing situation, remains at issue.

46. Therefore, the Referrals of the Applicants: Ajvaz Krasniqi, Rasim Klinaku, Sherif Pllana, Halil Vrella and Ilaz Haliri are partly admissible.

47. With regard to the remaining Applicants, the Constitutional Court does not find any reason for inadmissibility of the Referral.

48. The Court further considers that it is appropriate to join the Referrals pursuant to Rule 37 of the Rules of Procedure.

Merits

49. The Court recalls its Judgments of 23 June 2010 and 18 October adopted in the earlier KEK cases in which the it found that there has been a violation of Article 46 of the Constitution of the Republic of Kosovo (Protection of Property) in conjunction with Article 1 Protocol 1 to the European Convention on Human Rights as well as that there has been violation of Article 31 of the Constitution (Right to Fair and Impartial Trial) in conjunction with Article 6 of the European Convention on Human Rights with regard to the same Applicants. Consequently it was decided to declare invalid the judgments delivered by the Supreme Court in the Applicants' cases and remit those judgments to the Supreme Court for reconsideration in conformity with the judgment of this Court.

i. as regards the Protection of Property

50. The Applicants complain that their rights have been violated because KEK unilaterally annulled their Agreements although the condition prescribed in Article 3 (i.e. Establishment of the Kosovo Pension-Invalidity Insurance Fund) had not been fulfilled. In substance, the Applicants complain that there has been a violation of their property rights.

51. At the outset, the following legal provisions should be recalled:

Article 53 of the Constitution,

"Human rights and fundamental freedoms guaranteed by this Constitution shall be interpreted consistent with the court decisions of the European Court of Human Rights."

Article 46 [Protection of Property] of the Constitution reads as follows

1. The right to own property is guaranteed.
2. Use of property is regulated by law in accordance with the public interest.
3. No one shall be arbitrarily deprived of property. The Republic of Kosovo or a public authority of the Republic of Kosovo may expropriate property if such expropriation is authorized by law, is necessary or appropriate to the achievement of a public purpose or the promotion of the public interest, and is followed by the provision of immediate and adequate compensation to the person or persons whose property has been expropriated.

Article 1 of Protocol No. 1 of the European Convention on Human Rights provides

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

52. According to the case law of European Court of Human Rights, an Applicant can allege a violation of Article 1 of Protocol No. 1 only in so far as the impugned decisions related to his "possessions" within the meaning of this provision.

53. Furthermore, "possessions" can be either "existing possessions" or assets, including claims, in respect of which the applicant can argue that he or she has at least a "legitimate expectation" of obtaining effective enjoyment of a property right. By way of contrast, the hope of recognition of a property right which it has been impossible to exercise effectively cannot be considered a "possession" within the meaning of Article 1 of Protocol No. 1, nor can a conditional claim which lapses as a result of the non-

fulfilment of the condition" (see the case of Ibrahimi and others and Prokshi and others, see also Prince Hans-Adam II of Liechtenstein v. Germany, no. 42527/98, para s 82-83, ECHR 2001-VIII; and Gratzinger and Gratzingerova v. the Czech Republic (dec.) [GC], no. 39794/98, para. 69, ECHR 2002-VII).

54. The issue that needs to be examined in each case is whether the circumstances of the case, considered as a whole, confer on the Applicant a title to a substantive interest protected by Article 1of Protocol No. 1 to the ECHR. (see the case of *"Ibrahimi and others"* and *"Prokshi and others")*.

55. The Constitutional Court notes that, at the time of concluding the Agreements between the Applicants and KEK, these type of agreements have been regulated by the Law on Contract and Torts (Law on Obligations) published in Official Gazette SFRJ 29/1978 and amended in 39/1985, 45/1989, 57/1989.

    Article 74(3) of the Law on Contract and Torts reads as follows:

    "After being concluded under rescinding condition (raskidnim uslovom) the contract shall cease to be valid after such condition is valid."

56. The crux of the mater is therefore whether the rescinding condition under which the Agreements were signed has been met. Answering that question will allow the Constitutional Court to assess whether the circumstances of this Referral, considered as a whole, confer on the Applicants title to a substantive interest protected by Article 1of Protocol No. 1 to the ECHR.

57. The Constitutional Court notes that it is clear from the documents and it is undisputable between the parties that the "rescinding condition" under which the Agreements have been signed is the establishment and functioning of the Kosovo Fund on Pension-Invalidity Insurance.

58. In this respect, the Constitutional Court also notes that, according to the Ministry of Labour and Social Welfare, the establishment of the Pension and Invalidity Insurance Fund, was to be provided by the Law on Pension and Invalidity Insurance Funds. This was

in the process of drafting and approval with the Government of Kosovo.

59. The Constitutional Court considers that the Applicants, when signing the Agreements with KEK, had a legitimate expectation that they would be entitled to the monthly indemnity in the amount of 105 Euro until the Pension and Invalidity Insurance Fund was established.

60. Such legitimate expectation is guaranteed by Article 1 of Protocol No. 1 to the Convention, its nature is concrete and not a mere hope, and is based on a legal provision or a legal act, i.e. Agreement with KEK (*the case of Ibrahimi and others and Prokshi and others)*; also *mutatis mutandis* Gratzinger and Gratzingerova v. the Czech Republic (dec.), no. 39794/98, para 73, ECHR 2002-VII).

61. Therefore, the Constitutional Court considers that the Applicants have a "legitimate expectation" that their claim would be dealt in accordance with the applicable laws, in particular the above quoted provisions of the Law on Contract and Torts and the Law on Pension and Invalidity Insurance in Kosovo, and consequently upheld (see *the case of Ibrahimi and others* and *Prokshi and others*).
62. However, the unilateral cancellation of the Agreements, prior to the rescinding condition having been met, breached the Applicants' pecuniary interests which were recognized under the law and which were subject to the protection of Article 1 of Protocol No. 1. (see the case of *Ibrahimi and others* and *Prokshi and others*).

63. Consequently, the Constitutional Court concludes that there is a violation of Article 46 of the Constitution in conjunction Article 1 of Protocol 1 to the European Convention on Human Rights.

ii. as regards the right to fair trail

64. The Applicants further complain that they have not been able to the remedy violation of their property rights before the ordinary courts.

Article 31 [Right to Fair and Impartial Trial] of the Constitution, reads as follows:

1. Everyone shall be guaranteed equal protection of rights in the proceedings before courts other state authorities and holders of public powers.

Article 6 of the European Convention on Human Rights

"In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

65. The Constitutional Court reiterates that it is not its task under the Constitution to act as a court of appeal, or a court of fourth instance, in respect of the decisions taken by ordinary courts, including the Supreme Court. In general, "Courts shall adjudicate based on the Constitution and the law" (Article 102 of the Constitution). More precisely, the role of the ordinary courts is to interpret and apply the pertinent rules of both procedural and substantive law (see, mutatis mutandis, *García Ruiz v. Spain* [GC], no. 30544/96, paragraph 28, European Court on Human Rights [ECHR] 1999-I).

66. On the other hand, "The Constitutional Court is the final authority for the interpretation of the Constitution and the compliance of laws with the Constitution" (Article 112. 1 of the Constitution. Thus, the Constitutional Court can only consider whether the evidence has been presented in such a manner and the proceedings in general, viewed in their entirety, have been conducted in such a way that the Applicant had a fair trial (see among others authorities, Report of the Eur. Commission on Human Rights in the case Edwards v. United Kingdom, App. No 13071/87 adopted on 10 July 1991).

67. According to the jurisprudence of the European Court of Human Rights, Article 6 paragraph 1 of the ECHR obliges courts to give reasons for their judgments, but cannot be understood as requiring a detailed answer to every argument. The extent to which this duty to give reasons applies may vary according to the nature of the decision. It is, moreover, necessary to take into account, *inter alia*, the diversity of the submissions that a litigant

may bring before the courts and the differences existing in the Contracting States with regard to statutory provisions, customary rules, legal opinion and the presentation and drafting of judgments. Thus the question whether a court has failed to fulfil the obligation to state reasons, deriving from Article 6 of the Convention, can only be determined in the light of the circumstances of the case (see the case of *Ibrahimi and other, Prokshi and others* and *Ruiz Torija v. Spain*, judgment of 9 December 1994, Series A no. 303-A, § 29).

68. In the present case, the Applicants requested the ordinary courts to determine their property dispute with the KEK. The Applicants referred, in particular, to the provision of Article 3 of the Agreements, stating that the Law on Pension that establishes Pension and Invalidity Insurance Fund has not been adopted yet. This fact has been confirmed by the representative of the responsible Ministry of Labour and Social Welfare.

69. However, the Supreme Court made no attempt to analyze the Applicants' claim from this standpoint, despite the explicit reference before every other judicial instance. Instead the Supreme Court view was that it was an undisputed fact that the respondent party (KEK) fulfilled the obligation towards the plaintiff, which was paying salary compensation according to specified period which was until the establishment and functioning of the Invalidity and Pension Insurance Fund in Kosovo effective from 1 January 2004.

70. It is not the task of the Constitutional Court to decide what would have been the most appropriate way for the ordinary courts to deal with the Applicants' argument, i.e. fulfilling the rescinding condition of Article 3 of the Agreements, which fulfilment is also regulated by Article 74(3) of the Law on Contract and Torts taken in conjunction with Article 18 of the 1983 Law on Pension and Invalidity Insurance.

71. However, in this Court's opinion, the Supreme Court, by neglecting the assessment of this point altogether, even though it was specific, pertinent and important, fell short of its obligations under Article 6 para 1 of the ECHR.(see the case of *Ibrahimi and others*, *Prokshi and other* and European Court of Human Rights and Judgment of 18 July 2006 in the case *Pronina v. Ukraine*,

Application no. 63566/00.)

72. In view of the above, the Constitutional Court concludes that there has been a violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR.

FOR THESE REASONS, THE COURT UNANIMOUSLY DECIDES AS FOLLOWS:

I. TO JOIN THE REFERRALS;

II. TO DECLARE AS

a) *Admissible* the Referral with regard to the following Applicants:

KI 08/10 Isuf Mërlaku,
KI 16/10 Ragip Berisha,
KI 22/10 Bedri Berisha,
KI 36/10 Ali Tahiri,
KI 41/10 Smajl Grajqevci,
KI 45/10 Hasan Shala,
KI 53/10 Azem Fetahu,
KI 54/10 Zenel Bajgora,
KI 56/10 Vjollca Shala,
KI 57/10 Agim Visoka,
KI 58/10 Amit Krasniqi,
KI 59/10 Shaban Igrishta,
KI 60/10 Havë Islami,
KI 61/10 Ramush Shala,
KI 64/10 Hamdi Haxha,
KI 65/10 Gani Sahiti,
KI 66/10 Zoja Sollova,
KI 67/10 Isa Hajdari,
KI 68/10 Hajrije Sadiku,
KI 71/10 Blerim Hatipi and

KI 74/10 Time Bekaj

b) ***Partly admissible*** **the Referral with regard to the following Applicants:**

KI 24/10 Ajvaz Krasniqi,
KI 27/10 Rasim Klinaku,
KI 42/10 Sherif Pllana,
KI 63/10 Halil Vrell and
KI 76/10 Ilaz Haliti.

III. TO FIND THAT

a) There has been a violation of Article 46 of the Constitution of the Republic of Kosovo in conjunction with Article 1 Protocol 1 to the European Convention on Human Rights, in the cases of all Applicants namely, Isuf Mërlaku, Ragip, Berisha, Bedri Berisha, Ajvaz Krasniqi, Rasim Klinaku, Ali Tahiri, Smajl Grajqevci, Sherfi Pllana, Hasan Shala, Azem Fetahu, Zenel Bajgora, Vjollca Shala, Agim Visoka, Amit Krasniqi, Shaban Igrishta, Havë Islami, Ramush Shala, Halil Vrella, Hamdi Haxha, Gani Sahiti, Zoja Sollova, Isa Hajdari, Hajrije Sadiku, Blerim Hatipi, Time Bekaj and Ilaz Halili.

b) ***There has been violation of Article 31 of the Constitution*** **in** conjunction with Article 6 of the European Convention on Human Rights with regard to the same Applicants who suffered violation of Article 46 of the Constitution.

IV. ***Declares invalid the judgments delivered by the Supreme Court*** in the following cases:

KI 08/10 Isuf Mërlaku, Rev.nr. 338/2008 dated 11.02.2009

KI 16/10 Ragip Berisha, Rev.nr. 63/2009 dated 11.02.2009
KI 22/10 Bedri Berisha, Rev.nr. 145/2008 dated 13.04.2009
KI 24/10 Ajvaz Krasniqi, Rev.nr. 549/2008 dated 10.03.2008
KI 27/10 Rasim Klinaku, Rev.nr. 470/2008 dated 23.02.2009
KI 36/10 Ali Tahiri, Rev.nr. 271/2009 dated 15.07.2009
KI 41/10 Smajl Grajqevci, Rev.nr. 41/10 dated 23.02.2009
KI 42/10 Sherfi Pllana, Rev.nr. 207/2009 dated 29.06.2009
KI 45/10 Hasan Shala, Rev.nr. 45/2010 dated 23.02.2009
KI 53/10 Azem Fetahu, Rev.nr. 38/2010 dated 09.06.2010
KI 54/10 Zenel Bajgora, Rev.nr. 152/2009 dated 13.04.2010
KI 56/10 Vjollca Shala, Rev.nr. 452/2008 dated 23.02.2009
KI 57/10 Agim Visoka, Rev.nr. 57/2010 dated 23.06.2009
KI 58/10 Amit Krasniqi, Rev.nr. 67/2008 dated 10.02.2009
KI 59/10 Shaban Igrishta, Rev.nr. 442/2008 dated 11.02.2009
KI 60/10 Havë Islami, Rev.nr. 154/2009 dated 27.04.2009
KI 61/10 Ramush Shala, Rev.nr. 223/2008 dated 27.01.2009
KI 63/10Halil Vrella, Rev nr. 252/2008 dated 10.02.2009
KI 64/10 Hamdi Haxha, Rev.nr. 66/2009 dated 11.02.2009
KI 65/10 Gani Sahiti, Rev. nr 65/2009 dated 16.03.2010
KI 66/10 Zoja Sollova, Rev.nr. 103/2009 dated 17.03.2009
KI 67/10 Isa Hajdari, Rev.nr. 469/09 dated 10/03/2010
KI 68/10 Hajrije Sadiku, Rev.nr 137/2008 dated 27.01.2009
KI 71/10 Blerim Hatipi, Rev.nr. 542/2008 dated 23.02.2009
KI 74/10 Time Bekaj, Rev.nr. 42/2009 dated 11.02.2009
KI 76/10 Ilaz Halili, Rev.nr. 432/2008 dated 10.02.2009

V. REMAND these Judgments to the Supreme Court for reconsideration in conformity with the judgment of this Court

VI. REMAINS seized of the matter pending compliance with that Order.

This Judgment shall have effect immediately on delivery to the parties.

Judge Rapporteur	**President of the Constitutional Court**
Kadri Kryeziu,	Prof. Dr. Enver Hasani

KI 09/11 dated 06 March 2012 - Constitutional Review of non-execution of the District Court Judgment, Ac. No. 1326/2008, dated 27 February 2009, and of the Municipal Court Judgment, CI. No. 1176/07, dated 12 June 2008

Case KI 09/11, decision of the municipal court in Prishtina CI. No 1176/07, dated 12.06.2008; and decision of the District Court in Prishtina dated 27.02.2009
Keywords; individual referral, manifestly ill-founded, Decision on inadmissibility

The applicant filed a referral for a constitutional review of the non execution of the District Court Judgment Ac. no. 1326/2008, of 27.02.2009 and the Municipal Court Judgment of the 12.06.2008.
The Applicant alleges that his rights have been violated even though in his referral to the Court he stated Articles 21.22,23 and Article 113 of the Constitution are violated (the human-rights general principles, direct applicability of international agreements and instruments, human dignity and jurisdiction, and the authorized parties for initiating).
The Court finds that the referral is inadmissible and ill-founded.

Pristine, 11 November 2011
Ref. No.:RK157/11

RESOLUTION ON INADMISSIBILITY

in

Case No. KI 09/11

Applicant

Mustafë Aliu

Constitutional Review of non-execution of the District Court Judgment, Ac. No. 1326/2008, of 27 February 2009, and of the Municipal Court Judgment, CI. No. 1176/07, of 12 June 2008

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

Composed of:

Kadri Kryeziu, Deputy-President
Robert Carolan, judge
Altay Suroy, judge
Almiro Rodrigues, judge
Snezhana Botusharova, judge
Ivan Čukalović, judge
Gjyljeta Mushkolaj, judge and
Iliriana Islami, judge

Unanimously approves this Resolution on Inadmissibility pertaining the referral.

> Pursuant to Article 18, paragraph 1, item 1.3 of the Law on the Constitutional Court of the Republic of Kosovo (Law No. 03/L-121), the President of the Court, Prof. Dr. Enver Hasani, declared the conflict of interest since this case relates to the institution he had worked previously, and asked to be disqualified during the entire procedure of the revision of this case. Since his request was approved by judges, the President did not take part in any phase of the revision of this case or in the decision making process on this case.

Applicant

1. The applicant is Mr. Mustafë Aliu, a professor at the Faculty of Physical Culture and Sport of the University of Prishtina.

Challenged decisions

2. The decisions challenged with the Constitutional Court are:

   Judgment of the Municipal Court in Prishtina CI. No. 1176/07, of 12 June 2008; and
   Judgment of the District Court in Prishtina, Ac. No. 1326/2008, of 27 February 2009.

Subject matter

3. The subject matter of the case submitted with the Constitutional Court of the Republic of Kosovo on 24 January 2011 is the constitutional review of the non-execution of the Judgment of the District Court in Prishtina, Ac. No. 1326/2008, of 27 February 2009, rejecting the appeal of the University of Prishtina, and the Judgment of the Municipal Court in Prishtina, Ci. No. 1176/07, of 12 June 2008, approving Mr. Mustafë Aliu's statement of claim and obliging the University of Prishtina to enable Mr. Mustafë Aliu to perform the duties of the Dean of the Faculty of Physical Culture and Sport pursuant to Decision Ref. No. 1/38, of 12 June 2006.

Alleged violations of constitutionally guaranteed rights

4. Even though pursuant to Article 48 of the Law on the Constitutional Court, the applicant should accurately clarify in his referral what rights and freedoms he claims to have been violated, Mr. Mustafë Aliu did not clarify in his referral what rights he claims to have been violated, even though in his referral addressed to the Court, he stressed he claims that Articles 21, 22, 23 and 113 of the Constitution (Human Rights - General Principles, Direct Applicability of International Agreements and Instruments, Human Dignity, and Jurisdiction

and Authorized Parties to refer matters to the Constitutional Court) have been violated.

Legal basis

5. Article 113.7 in conjunction with Article 21.4 of the Constitution of the Republic of Kosovo (hereinafter referred to as the "Constitution"), Article 47 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo, of 16 December 2009 (hereinafter referred to as the "Law"), and Rule 56.2 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter referred to as the "Rules of Procedure").

Proceedings before the Court

6. On 24 January 2011, the Applicants submitted his Referral to the Constitutional Court.

7. On 26 January 2011, the Constitutional Court, through the official document Ref. Nr.: DRLSA-168/11/sk, notified the Municipal Court in Prishtina concerning the referral under review, and officially requested from it its resolutions concerning Mr. Aliu's statement of claim, which are missing in the case file the Constitutional Court was reviewing.

8. On the same date, in response to the official document of the Constitutional Court, the Municipal Court furnished the requested resolutions.

9. On 1 February 2011, through the official document Ref. No.: DRLSA-168/11/sk, the Court notified the University of Prishtina on the referral submitted by Mr. Aliu and asked for UP's possible comments concerning this referral.

10. On 14 February 2011, the University of Prishtina sent a written reply concerning this referral, stressing that the UP could make no compensation for Mr. Mustafë Aliu since in fact he has not been performing the duties of the Dean of the Faculty of Physical Culture and Sport.

11. On 12 April 2011, after having considered the Report of the Judge Rapporteur, Altay Suroy, the Review Panel, composed of Judges Snezhana Botusharova (Presiding), Ivan Čukalović and Iliriana Islami, Panel members, on the same date presented its recommendations to the full Court to reject the case as inadmissible.

Applicant's complaint

12. The applicant complains that the University of Prishtina, without any legal justification, has not executed the Judgment of the District Court in Prishtina, Ac. No. 1326/2008, rejecting the appeal of the University of Prishtina as ungrounded, and confirming the Judgment of the Municipal Court in Prishtina, Ci. No. 1176/07, of 12 June 2008, which approved Mr. Mustafë Aliu's statement of claim and obliged the University of Prishtina to reinstate the plaintiff to the duties of the Dean of the Faculty of Physical Culture and Sport; he was discharged from this position through the decision of the Rectorate.

Facts

13. On 12 June 2008, the Municipal Court in Prishtina, through Judgment Ci. No. 1176/07, approved the statement of claim of Mr. Mustafë Aliu's, former Dean of the Faculty of Physical Culture and Sport, and annulled the Decision of the respondent – UP, discharging him from the post of the Dean (Decision – Ref. No. 1/38, of 12 June 2006) and obliged the respondent to reinstate the plaintiff, Mr. Mustafë Aliu, to the post of the Dean of the Faculty of Physical Culture and Sport within UP.

14. On 27 February 2009, the District Court in Prishtina, through Judgment Ac. No. 1326/2008, rejected the appeal of the University of Prishtina and confirmed the Judgment of the Municipal Court, Ci. No. 1176/07.

15. On 30 June 2009, the Municipal Court in Prishtina, through Resolution E 530/09, approved Mr. Mustafë Aliu's proposal for the execution and set the proposed execution.

16. On 25 August 2009, the Municipal Court in Prishtina, through Resolution E. No. 530/09, rejected debtor's – University of Prishtina – objection against the resolution allowing the execution of judgments of the Municipal Court and District Court in Prishtina, which were favorable for the creditor, Mr. Mustafë Aliu.

17. On 2 September 2009, referring to regular courts final and executable judgments, Mr. Mustafë Aliu sent a letter to the University of Prishtina requesting his reinstatement to the post of the Dean of the Faculty of Physical Culture and Sport.

18. On 29 March 2010, the District Court in Prishtina, through Judgment Ac. No. 1079/2009, finally APPROVED debtor's – University of Prishtina – appeal as grounded, and annulled the Resolution on Execution of the Municipal Court in Prishtina, E 530/09, declaring this execution issue as completed.

19. In his referral submitted with the Constitutional Court, Mr. Mustafë Aliu also claimed other constitutional and legal violations addressed against his colleagues, and, on behalf of these alleged irregularities, he also presented employment contracts of Mr. Rexhep Murati, Mr. Azem Hajdari, Decisions of the Independent Oversight Board of Kosovo, minutes of the UP Senate, and a copy of the UP statute.

Assessment of the admissibility

20. In order to be able to adjudicate on Applicant's Referral, the Court preliminarily refers to Article 113.1 of the Constitution, which stipulates that:

> **"The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties".**
>
> Articles 47 and 49, of the Law on the Constitutional Court, which stipulate:

1. Every individual is entitled to request from the Constitutional Court legal protection when he considers that his/her individual rights and freedoms guaranteed by the Constitution are violated by a public authority.

Article 49 (Deadlines):

"The referral should be submitted within a period of four (4) months. The deadline shall be counted from the day upon which the claimant has been served with a court decision. In all other cases, the deadline shall be counted from the day when the decision or act is publicly announced. If the claim is made against a law, then the deadline shall be counted from the day when the law entered into force."

21. While examining Applicant's documents submitted with the referral and the document provided ex officio by the Municipal Court in Prishtina concerning the execution procedure directly related to the matter under review, the Constitutional Court of Kosovo indisputably confirmed that Mr. Mustafë Aliu received the last decision on 20 April 2010 (Judgment Ac. No. 1079/2009), and this fact was confirmed through the copy of the delivery note personally signed by Mr. Aliu himself. He submitted the referral with the Constitutional Court on 24 January 2011, about 8 months beyond the 4-month deadline set forth by Article 49 of the Law on the Constitutional Court of the Republic of Kosovo to submit an individual referral before it.

22. Under these circumstances, the referral should be rejected as out of time (see, mutatis mutandis, Blečić v. Croatia, Application No. 59532/00, ECtHR Judgment of 29 July 2004). The Constitutional Court used such a justification in the Case No. KI 33/09, Fillim Musa Gunga v. Decisions of the Special Chamber of the Supreme Court of Kosovo, SCEL-08-0001, of 17 June 2008, and SCEL-08-0001, of 10 September 2008.

23. The Court further observes that even if the referral were submitted within the 4-month deadline, set forth by Article 49 of the Law on the Constitutional Court, it would have been

rejected as manifestly ungrounded because the applicant has not submitted any prima facie evidence indicating his rights guaranteed by the Constitution have been violated.

24. In fact, even though the Municipal Court and the District Court in Prishtina, while examining the labor dispute, had approved Mr. Aliu's statement of claim and ordered his reinstatement to the post of the Dean of the Faculty of Physical Culture and Sports of UP, in the execution procedure, the District Court in Prishtina "rejected" its execution through Judgment Ac. No. 1079/2009, qualifying it as non-executable, and considering the Law on the Executive Procedure (Law No. 03/L-008), which stipulates in Article 14.1 that – "Against the final decision issued in executive and security procedure is not permitted the revision and repetition of the procedure", it gave a legal end to this judicial issue.

25. The Constitutional Court would like to underline that the correct and complete determination of the factual situation falls under the full jurisdiction of regular courts, and that its role is solely to ensure compliance with the rights guaranteed by the Constitution and other legal instruments and cannot, therefore, act as a "fourth instance court" (see, mutatis mutandis, i.a., Akdivar v. Turkey, 16 September 1996, R.J.D, 1996-IV, para. 65).

26. From facts submitted with the referral, it appears that the applicant has not met the legal obligation regarding the accuracy of the referral, because he did not accurately specify what rights guaranteed by the Constitution have been violated by acts of public authorities. Moreover, the Court considers that there is nothing in the Referral which indicates that courts hearing the case lacked impartiality or proceedings were otherwise unfair. The mere fact that applicants are dissatisfied with the outcome of the case cannot of itself raise an arguable claim of a breach of Article 31 of the Constitution (see mutatis mutandis Judgment ECHR Appl. No. 5503/02, Mezotur-Tiszazugi Tarsulat vs. Hungary, Judgment of 26 July 2005).

27. As for the other constitutional violations that the Applicant mentions in his Referral and which he claims to have been violated, the Court reiterates that Article 47 of the Law on the

Constitutional Court stipulates that in order to be entitled to submit an individual Referral with the Constitutional Court, the party should prove that "his individual rights guaranteed by the Constitution are violated by a public authority". He should in fact prove the violation of his rights guaranteed by the Constitution, and not other individuals' rights. The Constitution of the Republic of Kosovo does not recognize an "actio popularis" or the right of every individual or legal person to refer constitutional issues without preliminarily having direct interest in that issue.

28. In these circumstances, the referral is out of time, manifestly ungrounded, so the applicant has not met the requirements for the admissibility of the referral, and

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 47 of the Law, and Rule 36.3 (h) of the Rules of Procedure, in its session of 12 April 2011 unanimously:

DECIDES

I. TO REJECT the Referral as inadmissible;

II. This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20.4 of the Law on the Constitutional Court;

III. This Decision is effective immediately.

Judge Rapporteu	**Deputy-President of the Constitutional Court**
Altay Suroy	Mr. Sc. Kadri Kryeziu

KI 02/11 dated 19 January 2012- Constitutional Review of the Decision C.no. 409/06 of the Municipal Court of Ferizaj dated 7 February 2008

Case KI 02/11, Resolution on Inadmissibility dated 23 November 2011
Keywords: non-exhaustion, *ratione temporis,* right to work and exercise profession, violations of individual rights and freedoms

The applicant filed a Referral pursuant to Article 113.7 of the Constitution of Kosovo challenging the decision of the Decision C. no. 409/06 of the Municipal Court of Ferizaj of 7 February 2008, because the Applicant's right to work as guaranteed by the Constitution has been violated.
On the issue of the admissibility of the Referral, the Court held that the Referral was inadmissible because the Applicant effectively appealed against the Municipal Court's decision to the District Court of Pristina, which, by Decision Ac. No. 215/08 of 27 March 2009, upheld that decision, but the Applicant has not shown that he submitted an appeal in last instance to the Supreme Court, where he should have raised the same constitutional complaints against the decisions of the Municipal Court and District Court. Only, if that remedy would not have been successful, could he have filed a Referral with this Court. As to the challenged Decision C. no. 409/06 of the Municipal Court of Ferizaj of 7 February 2008, the Court held that it was ratione temporis incompatible with the Constitution.

Pristine, 16 December 2011
Ref. No.: RK179/11

RESOLUTION ON INADMISSIBILITY

in

Case no. KI 02/11

Applicant

Esat Kurtaliqi

Constitutional Review of the Decision C.no. 409/06 of the Municipal Court of Ferizaj of 7 February 2008

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Enver Hasani, President
Kadri Kryeziu, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Ivan Čukalović, Judge
Gjyljeta Mushkolaj, Judge and
Iliriana Islami, Judge

Applicant

1. The Applicant is Mr. Esat Kurtaliqi, residing in Pleshina Village, Ferizaj.

Challenged decision

2. The Applicant challenges explicitly Decision C.no. 409/06 of the Municipal Court of Ferizaj of 7 February 2008, which was served upon the Applicant on the same date.

3. Furthermore, the Applicant in his Referral makes also reference to Decision Ac. No. 215/08 of the District Court of Pristina of 27 March 2009, which was served on him on 28 May 2009.

Subject matter

4. The Applicant alleges that his right guaranteed by the Constitution of the Republic of Kosovo (hereinafter: the "Constitution"), Article 49 [Right to Work and Exercise Profession] has been violated.

Legal basis

5. Article 113.7 of the Constitution, Article 22 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo of 15 January 2009 (hereinafter: the "Law") and Rule 56 (2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the "Rules of Procedure").

Proceedings before the Court

6. On 10 January 2011, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the "Court").

7. On 12 January 2011, the Applicant submitted additional documents to the Court.

8. On 14 February 2011, the President, by Order No. GJR. 02/11, appointed Judge Snezhana Botusharova as Judge Rapporteur. On the same date, the President, by Order No. KSH. 02/11, appointed the Review Panel composed of Judges Robert Carolan (Presiding), Altay Suroy and Almiro Rodrigues.

9. On 4 May 2011, the Court communicated the Referral to the Special Chamber of the Supreme Court, the IMK Steel Pipe Factory in Ferizaj (hereinafter: “IMK") and the Kosovo Privatization Agency (hereinafter: “PAK”).

10. On 12 May 2011, the Court communicated the Referral to the Municipal Court of Ferizaj.

11. On 23 November 2011, the Review Panel considered the Report of the Judge Rapporteur and made a recommendation to this Court on the inadmissibility of the Referral.

Summary of facts

12. On 27 November 1989, the “IMK” Interim Supervising Body, by Decision No. 5616. suspended temporarily the Applicant from work in “IMK” due to serious violations of his labour contract

13. On 12 October 1990, the “IMK” Interim Supervising Body terminated the Applicant’s contract of employment on the ground that he had seriously breached his labour contract.

14. On 26 November 1990, the Applicant complained to the “IMK” Interim Supervising Body about its decision of 12 October 1990.

15. In 1999, the Applicant and other employees of factory returned to work.

16. On 4 January 2006, the Applicant filed a complaint with the Special Chamber of the Supreme Court (hereinafter: the “Special Chamber”), requesting it to confirm his labour relations with IMK, to grant compensation for lost personal income and to allocate to him the shares he was entitled to. On the same date and, thereafter, on 14 March 2006, the Applicant notified the

Kosovo Trust Agency (hereinafter: the "KTA") about the complaint.

17. On 18 May 2006, the Special Chamber decided to refer the case to the Municipal Court of Ferizaj as the competent court, pursuant to Section 17 of Administrative Direction 2003/13 implementing UNMIK Regulation No. 2002/13 on the Establishment of a Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency Related Matters.

18. On 21 November 2007, the KTA sent a letter to the Applicant notifying him that his contract of employment with "IMK" was terminated with immediate effect following the privatization of "IMK".

19. By Decision C.no. 186/05 of 7 February 2008, the Municipal Court of Ferizaj terminated the procedure due to the liquidation (or privatization??) of "IMK".

20. On 27 March 2009, the District Court of Pristina rejected the Applicant's complaint as unfounded and upheld the decision of the Municipal Court of Ferizaj of 7 February 2008. The District Court held that, pursuant to UNMIK Regulation 2002/12 on the Establishment of the Kosovo Trust Agency (hereinafter: "UNMIK Regulation 2002/12"), Section 9.3 "any legal action against a Socially-owned Enterprise subject to liquidation pursuant to this section shall be suspended upon application by the Agency to the court of the place where the action is filed."

Applicant's allegations

21. The Applicant alleges that the Municipal Court and District Court have violated his constitutional rights by not approving his claim to confirm his labour relations with "IMK", not compensating him

for lost personal income and not allocating to him the shares he was entitled to..

Assessment of the admissibility of the Referral

22. As to the Applicant's allegation that his right guaranteed by Article 49 [Right to Work and Exercise Profession] of the Constitution has been violated, the Court observes that, in order to be able to adjudicate the Applicants' complaint, it is necessary to first examine whether he has fulfilled the admissibility requirements laid down in the Constitution as further specified in the Law and the Rules of Procedure.

23. In respect of challenged Decision C. no. 409/06 of the Municipal Court of Ferizaj of 7 February 2008, which was served on the Applicant on the same date, the Court refers to Rule 36 (3) (h) which reads as follows:

"A Referral may also be deemed inadmissible in any of the following cases:

(h) the Referral is incompatible ratione temporis with the Constitution."

24. In order to establish the Court's temporal jurisdiction it is essential to identify, in each specific case, the exact time of the alleged interference. In doing so, the Court must take into account both the facts of which the applicant complains and the scope of the Constitution right alleged to have been violated (see, *mutatis mutandis*, European Court of Human Rights, Grand Chamber Judgment in the case of Blečić v. Croatia, Application no.59532/0, dated 8 March 2006, para. 82.).

25. The Court notes that the Applicant complains that his right to work guaranteed by the Constitution has been violated. In that

respect the Applicant challenges expressly the decision of the Municipal Court in Ferizaj of 7 February 2008, which was served on the Applicant on the same date.

26. However, the Court notes that the Applicant effectively appealed against the Municipal Court's decision to the District Court of Pristina, which, by Decision Ac. No. 215/08 of 27 March 2009, upheld that decision, but the Applicant has not shown that he submitted an appeal in last instance to the Supreme Court, where he should have raised the same constitutional complaints against the decisions of the Municipal Court and District Court. Only, if that remedy would not have been successful, could he have filed a Referral with this Court.

27. The Court must, therefore, conclude that the Applicant has not exhausted all legal remedies available to him under applicable law, as required by Article 113.7 of the Constitution, Article 47(2) of the Law and Rule 36(1)(a) of the Rules of Procedure. The rationale of this requirement is to afford the authorities concerned, including the courts, the opportunity to prevent or remedy the alleged violation of the Constitution. The rule is based on the assumption that the Kosovo legal order will provide an effective remedy for the violation of constitutional rights (see: Resolution on Inadmissibility: AAB-RIINVEST University L.L.C., Pristina vs. Government of the Republic of Kosovo, of 27 January 2010 and, mutatis mutandis, ECHR, Selmouni v. France, no. 25803/94, decision of 28 July 1999). In the present case, such an effective remedy existed in the form of an appeal to the Supreme Court.

28. For the foregoing reason the Referral is inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 47(2) of the Law, and Rules 36 (1) (a) and 56 (2) of the Rules of Procedure, on 23 November 2011, unanimously

DECIDES

I. TO REJECT the Referral as inadmissible;

II. This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20 (4) of the Law;

III. This Decision is effective immediately.

Judge Rapporteur **President of the Constitutional Court**

Snezhana Botusharova Prof. Dr. Enver Hasani

KO 117/10 dated 12 January 2012- The Referral of the Mayor of the Municipality of Hani i Elezit, Rufki Suma, concerning the name of the Municipality of Hani i Elezit, in the Serbian language known as -Dženeral Janković

Case KO 117/10, dated 01 December 2011
Keywords: Mayor of Municipality, equality before law

The Applicant has submitted a referral in accordance with Articles 113.7 and 21.4 of the Constitution, Articles 20, 22.7 and 22.8 of the Law no. 03/L-121 on the Constitutional Court of the Republic of Kosovo, of 15 January 2009.
On 26 November 2011, the Applicant filed a referral with the Constitutional Court.
The President of the Court appointed, on 29 November 2010, Judge Altaya Suroy as Reporting Judge, and the Review Panel composed of: Judge Snezhana Botusharova (Presiding), Enver Hasani and Iliriana Islami.
The Applicant claims that there has been a number of complaints from the citizens, various associations, enterprises, against the name of the Municipality in Serbian language, known as Djeneral Jankovic.
The Applicant ultimately maintains that the citizens have warned that if the property tax receipts are submitted to them containing the name Deneral Jankovic, they will boycott and will refuse to pay such bills.
The applicant demanded from the Constitutional Court to assess whether there has been a violation of the Constitution in terms of the name of the Municipality in Serbian language.

The Court noted that the referral was filed on 26 November 2010, which means more than two years from the entry into force of the challenged provision of the Law on Municipal Administrative Boundaries, which entered into force on 16 June 2008.
Based on the above, the Court found that the referral was not filed with the Court within the deadline provided by Article 41 of the Law.
Subsequently, the Referral was rejected as inadmissible, because the case is time-barred.

Based on such reasons, the Constitutional Court, in accordance with Article 113, paragraph 4 of the Constitution, Article 41 of the Law, voted in a majority to reject the referral as inadmissible.

Pristine, 27 December 2011

Ref. No. RK182/11

RESOLUTION ON INADMISSIBILITY
in

Case No. KO 117/10

The Referral of the Mayor of the Municipality of Hani i Elezit, Rufki Suma,

concerning the name of the Municipality of Hani i Elezit, in the Serbian language known as -Dženeral Janković

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Enver Hasani, President
Kadri Kryeziu, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Ivan Čukalović, Judge
Gjyljeta Mushkolaj, Judge and
Iliriana Islami, Judge

Applicant

1. The Applicant is the Mayor of the Municipality of Hani i Elezit, Rufki Suma, represented by Bajrus Laçi, the lawyer for the Municipality.

Subject Matter

2. The Applicant claims a violation of Article 3 [Equality before the Law] of the Constitution of the Republic of Kosovo (hereinafter the "Constitution"). The Applicant also alleges a violation of the free will of citizens of the Municipality of Hani i Elezit.

Legal Basis

3. The Referral is based on Art. 113.4 of the Constitution, Article 41 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter referred to as the Law), and Rule 56 (2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter referred to as the Rules of Procedure).

Challenged law

4. In his referral the Applicant challenges the name of Hani i Elezit Municipality, in the Serbian language known as Dženeral Janković which is provided in the Law on Administrative Municipal Borders in the Serbian version of that Law (2008/03-L041). The said Law was adopted by Republic of Kosovo Assembly on 20 February 2008 and entered into force on 16 June 2008.

Procedure before the Court

5. On 26 November 2010 the Applicant submitted the referral to the Constitutional Court of Kosovo (hereinafter the "Court").

6. On 29 November 2010 the President appointed Judge Altay Suroy as Judge Rapporteur and a Review Panel composed of Judges Snezhana Botusharova (Presiding), Enver Hasani and Iliriana Islami.

7. On 18 May 2011, after having considered the Report of the Judge Rapporteur, the Review Panel, made a recommendation to the full Court on the inadmissibility of the Referral.

Summary of the facts

8. The Applicant states there were a number of complaints from citizens, various associations, businesses against the name of the Municipality in the Serbian language known as Dženeral Janković.
9. Therefore, the Applicant, taking into account UNMIK Regulation 2000/43 on the Number, Names and Boundaries of Municipalities addressed many letters on behalf of the Municipality to central institutions. The Applicant claims that none of the addressed institutions replied to their request for the name to be changed.

10. The Applicant finally states that the citizens warned that if property tax receipts continue to be sent with the name of Dženeral Janković, they will boycott them and they will stop paying taxes.

Applicant's allegations

11. As was stated above, the Applicant claims a violation of Article 3 [Equality before the Law] of the Constitution because the name of the Municipality in the Serbian Language is Dženeral Janković, which is, according the Applicant, a forced name, imposed by the communist regime.

12. The Applicant complains that besides numerous requests for amending the UMNIK Regulation 2000/45 regarding the name of the Municipality in Serbian language, the Law on Administrative Municipal Borders retained that name.

13. Therefore the Applicant requests that the Constitutional Court find a violation of the Constitution with regard to the name of the Municipality in the Serbian language.

Assessment of admissibility

14. In order to be able to adjudicate the Applicant's Referral, the Constitutional Court first needs to examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution, further specified in the Law on the Constitutional Court and the Rules of Procedure.

15. In this respect the Court recalls that Article 113.4 of the Constitution reads as follows:

"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."

16. The Court further notes that Article 41 of the Law provides deadlines for pprocedure in the case defined under Article 113. 4 of the Constitution as follows:

"Article 41
Deadlines
The referral should be submitted within one (1) year following the entry into force of the provision of the law or act of the government being contested by the municipality."

17. In Republic of Kosovo the Law on Administrative Municipal Borders "regulates the territorial organization of the local self-government, establish new municipalities, delineate the territory of a municipality as the unit of the local self-government, define the administrative municipal boundaries, names and residencies of the new municipalities, set forth the provisional arrangements between the existing and new

municipalities established under this law, as well as define the procedures for alteration of administrative municipal boundaries" (see Article 1 of the Law 2008/03-L041).

18. Article 5.5 of the Law on Administrative Municipal Borders in pertinent part reads as follows:

"The following new municipalities shall be established with the cadastral zones as enumerated in this law and residencies as delineated below:

33. Municipality of Hani i Elezit with the residency in Hani i Elezit"

19. In the Serbian language the above quoted sentence reads "*Opština Dženeral Janković sa sedištem u Dženeral Jankoviću*."

20. The Court notes that the Referral was submitted on 26 November 2010, which is more than two years following the entry into force of the contested provision of the Law on Administrative Municipal Borders that entered into force on 16 June 2008.

21. As a result, the Referral was not submitted with the Court within the time limit prescribed by Article 41 of the Law.

22. It follows that the Applicant's Referral should be rejected as inadmissible as time barred.

FOR THESE REASONS

The Constitutional Court pursuant to Article 113.4 of the Constitution, Article 41 of the Law by majority:

DECIDES

I. TO REJECT the Referral as inadmissible.

II This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20 (4) of the Law.

III. This Decision is effective immediately.

Judge Rapporteur **President of the Constitutional Court**

Altay Suroy Prof. Dr. Enver Hasani

KI 101/11 dated 17 January 2012 - Constitutional review of the Judgment of Supreme Court of Kosovo PPA No. 4/2009, dated 27 April 2011

Case KI 101/11, Judgment of the Supreme Court of Kosovo dated 27.4.2011.
Keywords: individual referral, manifestly ill-founded, Decision on inadmissibility.

The Applicant has not specified which constitutionally guaranteed right has been violated but she emphasized that the challenged decisions have violated her rights that are guaranteed "by the laws in force, the Constitution and the international conventions".

The Court considers that there is nothing in the Referral which indicates that the court, and in this case also the committees of MLSW during the proceedings in the case, lacked impartiality or that the proceedings were otherwise unfair. The mere fact that applicants are dissatisfied with the outcome of the case does not grant them the right to file a substantiated Referral on the violation of Article 31 of the Constitution.

The court finds that the referral is inadmissible and manifestly ill-founded.

Pristine, 12 January 2012
Ref. no.: RK 180/11

RESOLUTION ON INADMISSIBILITY

in

Case No. KI 101/11

Applicant

Isma Bunjaku

Constitutional review of the Judgment of Supreme Court of Kosovo PPA No. 4/2009, dated 27 April 2011

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Enver Hasani, President
Kadri Kryeziu, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Ivan Čukalović, Judge
Gjyljeta Mushkolaj, Judge and
Iliriana Islami, Judge

The Applicant

1. The Applicant is Mrs. Isma Bunjaku from village Vinarc, Municipality of Mitrovica, with permanent residence in village Samadrexhë, Municipality of Vushtrria.

Challenged decision

2. Challenged decision of the public authority which has allegedly violated the rights guaranteed by the Constitution of Kosovo is the Judgment of the Supreme Court of Kosovo, PPA. No. 4/2009 of 27 April 2011.

Subject matter

3. Subject matter of the Referral filed on 28 July 2011 with the Constitutional Court of Republic of Kosovo is the constitutional review of the Judgment of Supreme Court of Kosovo PPA. No.

4/2009 dated 27 April 2011. The Applicant has not specified the date of its receipt.

Alleged violations of the constitutionally guaranteed rights

4. The Applicant has not specified which constitutionally guaranteed right has been violated but she emphasized that the challenged decisions have violated her rights that are guaranteed "by the laws in force, the Constitution and the international conventions".

Legal basis

5. Article 113.7 of the Constitution of Republic of Kosovo (hereinafter referred to as: the Constitution), Article 47 of the Law No. 03/L-121 on Constitutional Court of 16 December 2009 which entered into force on 15 January 2010 (hereinafter referred to as: the Law) and Rule 29 of Rules of Procedure of the Constitutional Court of Republic of Kosovo (hereinafter referred to as: the Rules of Procedure).

Applicant's complaint

6. The Applicant has claimed that the Medical Committees of the Ministry of Labor and Social Welfare (hereinafter referred to as MLSW) have in an unlawful manner rejected to her "the right to disability pension", even though she fulfilled the requirements for such a pension, whereas the Supreme Court of Kosovo by rejecting her lawsuit in this matter and by rejecting the request for repeating the proceeding has committed the same violation because according to the Applicant she suffers from permanent working disability and she has proved it with medical documentation.

Proceedings before the Court

7. On 28 July 2011, the Constitutional Court received the Referral of Mrs. Isma Bunjaku and registered it under no. KI 101/11.

8. On 17 August 2011, by Decision GJR. 101/11 the President appointed Judge Dr. Iliriana Islami as a Judge Rapporteur.

9. On the same date, the President of the Court appointed the Review Panel composed of Judges: Robert Carolan (Presiding), Ivan Čukalović and Mr. sc. Kadri Kryeziu, members of the Panel.

10. On 17 October 2011, the Constitutional Court notified the Supreme Court of Kosovo and the representative of the Applicant of the registration of the Referral but it did not receive comments from any of them. On this date, the Court has also notified the Department of Pension Administration of MLSW of the Referral requesting relevant documentation from this Department.

11. On 1 November 2011, the Constitutional Court of Kosovo received the requested documentation from the Department of the Pension Administration.

12. On 30 November 2011, the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

13. On 27 December 2004, Mrs. Isma Bunjaku from village Samadrexhë filed a request with the Ministry of Labour and Social Welfare – Department of Pension Administration of Kosovo requesting from this Institution to recognize to her the right to disability pension.

14. On 16 August 2005, the Department of Pension Administration of Kosovo rendered Decision with case file no. 5057358 rejecting the request of Mrs. Bunjaku with the reasoning that the medical committee had found that she did not suffer from "**complete and permanent disability".**

15. On 30 November 2005, the Appeals Council for disability pensions with the Ministry of Labour and Social Welfare (MLSW) rejected as ungrounded the appeal of Mrs. Isma Bunjaku and by Resolution with case file no. 5057358 it concluded that the decision of the first instance was correct and based on Law.

16. On 5 April 2006, the Supreme Court of Kosovo acting upon the lawsuit of Mrs. Isma Bunjaku in the proceedings of administrative conflict rendered Resolution A. no. 223/2006, approving the lawsuit and annulling the Resolution of the Appeals Council of MLSW with case file no. 5057358, dated 30 November 2005, due to the missing of the reasoning in the Resolution.

17. From the documents in the case file that have been officially submitted by MLSW – Department of Pension Administration, it is ascertained that the Appeals Council had decided for the second time on the appeal of Mrs. Isma Bunjaku on 31 May 2006, rendering again a resolution by which it rejected the Applicant's appeal and it left in force the decision of the first instance medical committee of 16 August 2005.

18. On 26 September 2007, the Supreme Court of Kosovo again deciding upon the new lawsuit for administrative conflict against Resolution of the Appeals Council of MLSW of 31 May 2006 rendered Judgment A. no. 1558/2006, by which it approved for the second time the lawsuit of Mrs. Isma Bunjaku and annulled the Resolution of the Appeals Council of MLSW of 31 May 2006 which held the same case file no. 5057358.

19. On 7 November 2007, MLSW Appeals Council acting upon the Judgment of the Supreme Court A. no. 1558/2006, dated 26 September 2007 for the third time decided on the appeal of Mrs. Isma Bunjaku, whereby it rendered the Resolution with same case file no. 5057358, again REJECTING the appeal filed by Mrs. Bunjaku, but this time giving the proper reasoning for rendering this Resolution.

20. Mrs. Bunjaku again filed a lawsuit for administrative conflict against this Resolution and the Supreme Court by Judgment no. A.956/2008 of 17 November 2008 rejected the filed lawsuit.

21. On 3 March 2009, against this Judgment Mrs. Bunjaku, through lawyer Mrs. Fatmire Braha, filed with the Supreme Court of Kosovo a "Request for repeating the administrative proceeding".

22. On 27 April 2011, the Supreme Court rendered Resolution PPA. No. 4/2009 REJECTING the Request for repeating the proceeding with the reasoning that the applicant did not provide new evidence which would justify the repeating of the proceeding.

23. Finally, on 28 July 2011, unsatisfied with the abovementioned decisions Mrs. Isma Bunjaku filed a Referral with the Constitutional Court of Kosovo.

Assessment of the admissibility of Referral

24. In order to be able to adjudicate the Applicant's Referral, it is necessary to first examine whether the Applicant has fulfilled all admissibility requirements, laid down in the Constitution.

25. In reference to this, the Court refers to Article 113.7 of the Constitution, which stipulates:

"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".*

26. The Court also takes into consideration:

Rule 36 of the Rules of Procedure of the Constitutional Court which provides:

"(1) *The Court may only deal with Referrals if:*
c) the Referral is not manifestly ill-founded."

27. In fact with regard to the alleged violation of the right to pension, the Court ascertains that the Constitution of Kosovo refers to the right to pension only in Article 105 and 109, namely in its reference to the mandate and reappointment process of Judges and Prosecutors for whom it is used the constitutional wording **"until the retirement age as determined by law".**

28. Article 51 of the Constitution **[Health and Social Protection]** paragraph 2 clearly provides: "Basic social

insurance related to unemployment, disease, disability and old age shall be regulated by law."

29. From the legal definition of Article 51 of the Constitution it is clear that the social insurance related to "disability, unemployment and old age" shall be regulated by LAW, and in the present case the issue of the disability pension is regulated by LAW NO. 2003/23 ON DISABILITY PENSIONS IN KOSOVO approved by Kosovo Assembly on 6 November 2003.

30. The procedure of application, fulfilling of the requirements for enjoying this right is set out in this Law as well as the right to appeal on the decisions when the parties are not satisfied with the decisions regarding their requests.

31. Administrative Committees of the MLSW have acted precisely in accordance with the provisions of this Law and the Supreme Court in its final Judgment A. 956/2008 dated 17 November 2008 has found that these decisions were lawful.

32. The Constitutional Court is not a Court of fact and on this occasion it wishes to emphasize that the establishment of the factual situation in a complete and correct manner falls under the full jurisdiction of the regular courts and in this case under the jurisdiction of the administrative bodies and that the Court's role is only to ensure compliance with the rights guaranteed by the Constitution and other legal instruments and it therefore cannot act as "a court of fourth instance" (see *mutatis mutandis,* i.a., Akdivar vs. Turkey, 16 September 1996, R.J.D, 1996-IV, para. 65).

33. From the facts submitted with the Referral it appears that the Applicant has not met the legal obligation regarding the accuracy of the Referral, because he has failed to accurately clarify what rights guaranteed by the Constitution have been violated by acts of public authority. Moreover, the Court considers that there is nothing in the Referral which indicates that the court, and in this case also the committees of MLSW during the proceedings in the case, lacked impartiality or that the proceedings were otherwise unfair. The mere fact that applicants are dissatisfied with the outcome of the case does not grant them the right to file a substantiated Referral on the

violation of Article 31 of the Constitution (see *mutatis mutandis* Judgment of ECHR Appl. No. 5503/02, Mezotur-Tisazugi Tarsulat vs. Hungary, Judgment of 26 July 2005).

34. In such circumstances, the Applicant "has not sufficiently substantiated his claim", therefore I propose the Review Panel to reject the Referral as manifestly unfounded, in accordance with Rule 36 paragraph 2 items c and d of Rules of Procedure, and

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 20 of the Law and Rule 56 (2) of the Rules of Procedure, in its session, held on 30 November 2011, unanimously

DECIDES

I. TO REJECT the Referral as inadmissible;

II. This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20 (4) of the Law;

III. This Decision is effective immediately.

Judge Rapporteur **President of the Constitutional Court**

Dr. Iliriana Islami Prof. Dr. Enver Hasani

KI 10/11 dated 27 January 2012- Constitutional Review of the Judgment of the District Court of Gjilan P.No.142/04 dated 19 May 2005 and Judgments of the Supreme Court, Ap.Kz.No179/2007 of 23 June 2009 and No PKL-KZZ 131/09 dated 05 June 2010

Case Kl 10/11 dated 29 November 2011.
Keywords; individual referral, constitutional review of judgment of the District Court, right to fair and impartial trial

The Applicant submitted Referral pursuant to Article 113.7 and 21.4 of the Constitution, Articles 20, 22.7 and 22.8 of the Law no. 03/L-121 on Constitutional Court of the Republic of Kosovo, dated 15 January 2009.

On 5 December 2010 the Applicant submitted a letter to the Constitutional Court (hereinafter referred to as the Court) alleging violation of individual human rights.

On 14 February 2011 the President appointed Judge Snezhana Botusharova as Judge Rapporteur and a Review Panel composed of Judges Robert Carolan (Presiding), Almiro Rodrigues and Gjyljeta Mushkolaj.

On 19 May 2005, the District Court in Gjilan, in its Judgment of 19 May 2005, sentenced the Applicant to 16 years of imprisonment for the criminal offence of aggravated murder under Articles 146 and 147 item 5 in relation to Article 25 of the Provisional Criminal Code of Kosovo (UNMIK/REG/2003/25, hereinafter: "the PCCK") as well as for participating in a group committing criminal offence as envisaged by Article 200, paragraph 1 of the PCCK.
The Applicant appealed the judgment of the District Court in Gjilan in the Supreme Court, alleging substantial violations of the criminal offence.

On 23 June 2009 the Supreme Court of Kosovo by its Judgment Ap.Kz No 179/2007 approved partially the Applicant's appeal in relation to the offence of assisted aggravated murder. The Supreme Court found that the old law (Article 30 Par.2 item 5 of KCL) was the applicable law because the new law (Articles 146 and 147 item 5 in

relation to Article 25 of the PCCK) was not more favorable for defendants.

On 25 November 2009 both the Applicant and his defence counsel each submitted requests for protection of legality against the District Court Judgment.

On 15 June 2010 the Supreme Court of Kosovo issued Judgment No. PKL-KZZ 131/09 and rejected both the Applicant's and his defence counsel's request for protection of legality as unfounded.

The Applicant claims a violation of Article 23 [Right to Human Dignity], Article 24 [Right to Equality Before the Law] and Article 31 [Right to a Fair Trial] of the Constitution of the Republic of Kosovo (hereinafter: "the Constitution").

The Applicant did not submit any *prima facie* evidence indicating a violation of his rights under the Constitution (see Vanek v Slovak Republic, ECtHR Decision as to the Admissibility of Application no. 53363/99 of 31 May 2005).

Taking into account all circumstances of the submitted Referral, the Constitutional Court of the Republic of Kosovo pursuant to Article 113.1 and 113.7 of the Constitution, Article 46, Articles 47 and 48 of the Law and Rules 36 (1a) i 36 (3c) of the Rules of Procedure, in the session held on 29 November 2011, decided that unanimously reject the Referral as inadmissible.

Pristine, 17 January 2012
Ref. No. RK 183/11

RESOLUTION ON INADMISSIBILITY

in

Case No. KI 10/11

Applicant

Nexhat Ramadani

Constitutional Review of the Judgment of the District Court of Gjilan P.No.142/04 of 19 May 2005 and Judgments of the Supreme Court, Ap.Kz.No179/2007 of 23 June 2009 and No PKL-KZZ 131/09 of 05 June 2010

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Enver Hasani, President
Kadri Kryeziu, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Ivan Čukalović, Judge
Gjyljeta Mushkolaj, Judge and
Iliriana Islami, Judge

Applicant

1. The Applicant is Nexhat Ramadani from Gjilan currently serving a sentence of imprisonment in Dubrava prison.

Legal Basis

2. The Referral is based on Art. 113.7 of the Constitution; Articles , 47 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter referred to as the Law), and Rule 56 (2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter referred to as the Rules of Procedure)

Challenged court decisions

3. In his referral the Applicant challenges the Judgment of the District Court of Gjilan P.No.142/04 of 19 May 2005. He also mentions and submits copies of the Judgment of Supreme Court Ap.Kz.No179/2007 dated 23 June 2009 and the Judgment of the Supreme Court of Kosovo No PKL-KZZ 131/09 dated 05 June 2010 that was served on his defence counsel on 5 August 2010.

Procedure before the Court

4. On 5 December 2010 the Applicant submitted a letter to the Constitutional Court (hereinafter referred to as the Court) alleging violation of individual human rights.

5. On the 27 January 2011 the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: "the Court") together with the necessary documentation.

6. On 14 February 2011 the President appointed Judge Snezhana Botusharova as Judge Rapporteur and a Review Panel composed of Judges Robert Carolan (Presiding), Almiro Rodrigues and Gjyljeta Mushkolaj.

7. On 15 February 2011 the Court notified the Supreme Court of Kosovo of the Referral.

8. On 31 August 2011 the District Court of Gjilan provided the Court with copy of its Judgement P.No.142/04 of 19 May 2005 as well as the Supreme Court judgements Ap.Kz.No179/2007 dated 23 June 2009 and the Judgment No PKL-KZZ 131/09 dated 5 June 2010.

9. On 29 November 2011, after having considered the Report of the Judge Rapporteur, the Review Panel, made a recommendation to the full Court on the inadmissibility of the Referral

Summary of the Facts

10. On 19 May 2005, the District Court in Gjilan, in its Judgment of 19 May 2005, sentenced the Applicant to 16 years of imprisonment for the criminal offence of aggravated murder under Articles 146 and 147 item 5 in relation to Article 25 of the Provisional Criminal Code of Kosovo (UNMIK/REG/2003/25, hereinafter: "the PCCK") as well as for participating in a group committing criminal offence as envisaged by Article 200, paragraph 1 of the PCCK.

11. According to this judgment the Applicant was pronounced guilty because he, *inter alia*, on 17 March 2004 "deprived S.P. from life in cooperation with others by chasing S.P. together with other accomplices as his property was attacked by a large angry crowd, he jumped over the body of S.P. by hitting him twice with a stick, once to his arms and once to his head whereby other crowd members attacked S.P. with sticks and stones."

12. The Applicant appealed against the Judgment of the District Court in Gjilan to the Supreme Court of Kosovo, claiming, a violation of essential criminal procedure, in particular, (Article 403 paragraph 1 item 12 of the Provision Criminal Procedure Code of Procedure of Kosovo (UNMIK/REG/2003/26, hereinafter "the PCPCK"), violations of criminal law (Article 404 of PCPCK), erroneous and incomplete evaluation of the factual situation (Article 405 PCPCK) and that the court failed to determine his punishment correctly (Article 406 of PCPCK).

13. On 23 June 2009 the Supreme Court of Kosovo by its Judgment Ap.Kz No 179/2007 approved partially the Applicant's appeal in relation to the offence of assisted aggravated murder. The Supreme Court found that the old law (Article 30 Par.2 item 5 of KCL) was the applicable law because the new law (Articles 146 and 147 item 5 in relation to Article 25 of the PCCK) was not more favorable for defendants. This requalification of the offence had no effect in the punishment which remained 16 (sixteen) years imprisonment. The rest of the appeal was rejected.

14. On 25 November 2009 both the Applicant and his defence counsel each submitted requests for protection of legality against the District Court Judgment, P. No 142/04, dated the 19 May 2005 and the Judgment of Supreme Court, Ap.Kz.No179/2007, dated 23 June 2009. The Applicant's defence submitted the request arising from alleged violations of essential provisions of the criminal procedure (Article 403 par. 1 item 12 of PCPCK) as well as violation of the Criminal Law (Article 404 of PCPCK) in the District Court Judgment. The Applicant's defence also submitted a request for protection of legality against the Supreme Court Judgment for alleged violation of the Criminal law in Kosovo. It was argued, inter alia that "The reasons are entirely unclear and to a considerable extent inconsistent with the critical facts and testimony form heard witnesses as well other evidence elaborated in the main review and with the contents of documents and minutes from the main view." The Applicant also submitted a request based on a breach of criminal law and violation of the Criminal Procedure in the two previously mentioned Judgements.

15. On 15 June 2010 the Supreme Court of Kosovo issued Judgment No. PKL-KZZ 131/09 and rejected both the Applicant's and his defence counsel's request for protection of legality as unfounded. It was emphasized, *inter alia*, that "the Supreme Court entirely agrees with what the second instance court has stated, which is in accordance with the international and European legal standards."

Applicants Allegations

16. The Applicant claims a violation of Article 23 [Right to Human Dignity], Article 24 [Right to Equality Before the Law] and Article 31 [Right to a Fair Trial] of the Constitution of the Republic of Kosovo (hereinafter: "the Constitution").

17. The Applicant alleges that there has been a violation of his right to human dignity as guaranteed by Article 23 of the Constitution from the moment the Public Prosecutor in Gjilan District filed an indictment against him on suspicion of murdering S.P. right through all the different court decisions

because they all resulted in him being labeled a "murderer, criminal, chauvinist and cruel murderer"

18. The Applicant claims that there was a violation of his right to equality before the law as guaranteed under Article 24 of the Constitution. The Applicant asserts that he was placed in an unequal position before the law because, he was only charged because he was Albanian, the diversity of charges against the Applicant were "unprecedented", the International Public Prosecutor (hereinafter "IPP") did at no time establish a difference between the Article 146 and Article 147, he was charged by the IPP alternately with the commission of offences in accordance with the old Applicable Law and the new law which resulted in the applicant not knowing what he was being charged with and how he would be convicted. He also asserted that the Supreme Court, seeing the errors and weakness of the prosecutor and the Court of first instance only changed the qualification of the crime because they were driven by the same political motive as the others, and finally, he argued that the aggravated murder charges were dropped against the others leaving him as the only accused perpetrator.

19. The Applicant alleges that his right to a fair and impartial trial as protected by Article 31 was violated because, he was harshly treated during the interrogation, he should have had mandatory defence counsel at the interrogation stage because he only has a fourth grade education, there was bias against him during the trial by presenting him as the sole perpetrator of the murder of S.P. and there was bias as the international community wanted to find someone liable for the riots of 17 March 2004.

Assessment of the admissibility of the referral

20. In order to be able to adjudicate the Applicant's Referral, the Court needs first to examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution, further specified in the Law on the Constitutional Court and the Rules of Procedure.

21. The Court recalls that in his referral the Applicant challenges the Judgment of the District Court of Gjilan P.No.142/04 of 19 May 2005. It follows that the alleged interference with the

Applicant's rights lies in the District Court of Gjilan judgment of 19 May 2005.

22. The Court recalls that the public authorities of the Republic of Kosovo can only be required to answer to facts and acts which occurred subsequently to the entry into force of the Constitution.

23. However,as it was said e*arlier, the Court notes that in his referral lthe Applicant also mentions and submits copie*s *of the Judgment of Supreme Court Ap.Kz.No179/*2007 dated 23 June 2009 and the Judgment of the Supreme Court of Kosovo No PKL-KZZ 131/09 dated 05 June 2010 that was served on his defence counsel on 5 August 2010.

24. In that respect, the Constitutional Court recalls its task is not to act as a court of appeal, when considering decisions rendered by ordinary courts. It is the role of the lower courts to interpret and apply the pertinent rules of both procedural and substantive law (see *mutatis mutandis,* Garcia Ruiz v Spain [GC], no. 30544/96, para. 28, European Court on Human Rights [ECtHR] 1999-I)

25. The Applicant did not submit any *prima facie* evidence indicating a violation of his rights under the Constitution (see Vanek v Slovak Republic, ECtHR Decision as to the Admissibility of Application no. 53363/99 of 31 May 2005).

26. The Court notes that the Supreme Court addressed the Applicant's allegations in the Judgment of Supreme Court Ap.Kz.No179/2007 dated 23 June 2009 and the Judgment of the Supreme Court of Kosovo No PKL-KZZ 131/09 dated 05 June 2010. Having taken this into consideration the Constitutional Court does not find that the relevant proceedings were in any way unfair or tainted by arbitrariness (see *mutatis mutandis,* Shub v Lithuania, ECtHR Decision as to the Admissibility of Application no.17964/06 of 30 June 2009).

27. It follows that the Applicant's Referral should be rejected as inadmissible, pursuant to Article 113.7 of the Constitution and Rule 36 of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court pursuant to Article 113.7 of the Constitution, Rule 36 of the Rules of the Procedure unanimously:

DECIDES

I. TO REJECT the Referral as inadmissible.

II. This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20 (4) of the Law.

III. This Decision is effective immediately.

Judge Rapporteur **President of the Constitutional Court**

Snezhana Botusharova Prof. Dr. Enver Hasani

KI 23/11 dated 21 February 2012- Constitutional review of the Decision of the Municipal Court in Gllogoc, C. no. 150/04, dated 29 January 2009, and the Decision of the Supreme Court of Kosovo, Rev. No. 90/04, dated 14 October 2004.

Case KI 23/11, Resolution on Inadmissibility dated 23 November 2011
Keywords: protection of property, non-exhaustion, violations of individual rights and freedoms

The applicant filed a Referral pursuant to Article 113.7 of the Constitution of Kosovo challenging the Decision of the Municipal Court in Gllogoc, C. no. 150/04, dated 29 January 2009, and the Decision of the Supreme Court of Kosovo, Rev. No. 90/04, dated 14 October 2004, because the Applicant's right to use the apartment as guaranteed by Article 46 [Protection of Property] of the Constitution has been violated and the Supreme Court was partial.
On the issue of the admissibility of the Referral, the Court held that the Referral was inadmissible because the Applicant has not raised the alleged violation of his right to occupy the apartment with the Special Chamber of the Supreme Court, which according to the decision of the Municipal Court, is the competent court to deal with this matter.

Pristine, 17 January 2012
Ref. No.: RK 184/11

RESOLUTION ON INADMISSIBILITY

in

Case No. KI 23/11

Applicant

Pajazit Mulaj

Constitutional review of the Decision of the Municipal Court in Gllogoc, C. no. 150/04, dated 29 January 2009, and the Decision of the Supreme Court of Kosovo, Rev. No. 90/04, dated 14 October 2004.

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Enver Hasani, President
Kadri Kryeziu, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Ivan Čukalović, Judge
Gjyljeta Mushkolaj, Judge and
Iliriana Islami, Judge

Applicant

1. The Applicant is Mr. Pajazit Mulaj, residing in Gllogoc.

Challenged decisions

2. The Applicant challenges the Decision of the Municipal Court in Gllogoc, C. no. 150/04, dated 29 January 2009, and the

Decision of the Supreme Court of Kosovo, Rev. No. 90/04, dated 14 October 2004.

Subject matter

3. The Referral relates to the Applicant's alleged violation of Article 46 [Protection of Property] of the Constitution of the Republic of Kosovo (hereinafter: the "Constitution").

Legal basis

4. Article 113.7 of the Constitution, Article 22 of the Law on the Constitutional Court of the Republic of Kosovo of 15 January 2009, (No. 03/L-121), (hereinafter: the "Law") and Rule 56 (2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the "Rules of Procedure").

Proceedings before the Court

5. On 21 February 2011, the Applicant submitted the Referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the "Court").

6. On 2 March 2011, the President, by Decision No. GJR. 23/11, appointed Judge Gjyljeta Mushkolaj as Judge Rapporteur. On the same date, the President, by Decision No. KSH. 23/11, appointed the Review Panel composed of judges Snezhana Botusharova (Presiding), Kadri Kryeziu and Iliriana Islami.

7. On 9 March 2011, the Referral was communicated to the Municipal Court in Gllogoc and to the Supreme Court of Kosovo.

8. On 23 November 2011, the Review Panel considered the Preliminary Report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

9. On 6 May 1985, the construction company ”Ndërtimtari”, by decision No. 628, allocated a social apartment to the Applicant. The apartment was allocated, while it was still under construction, as a result of which the Applicant could not reside in it yet. After the completion of the construction, the apartment had been usurped by Mr. I.D.

10. On 12 June 2002, the Municipal Court in Gllogoc approved the claim of the Applicant to occupy the apartment and obliged Mr. I.D to vacate the Applicant's apartment (Judgment C. No. 22/2001). Against this Judgment, Mr. I.D complained to the District Court in Prishtina.

11. On 17 December 2003, the District Court rejected the complaint of Mr. I.D and upheld the Judgment of the Municipal Court (Judgment AC. No. 502/2002). Against this Judgment, Mr. I.D submitted a revision with the Supreme Court, requesting it to quash the decisions of the lower instance courts.

12. On 14 October 2004, the Supreme Court quashed the Decisions of the District Court (AC. No. 502/2002, dated 17 December 2003), and of the Municipal Court (C. No. 22/2001, dated 12 June 2002), and remanded the case to the first instance for retrial (Rev. No. 90/2004). The Supreme Court concluded that the lower instances had not confirmed, pursuant to Article 11 of the Law on Housing Relations, the conditions under which the right to occupy the apartment had been acquired. Furthermore, the Supreme Court concluded that the lower instance courts need to confirm whether the social apartment has been transferred into private ownership or whether the social apartment was still under the ownership of the Kosovo Trust Agency.

13. On 24 November 2004, the Municipal Court in Gllogoc rejected the complaint of Mr. I.D to confirm his right to use the apartment. The Municipal Court concluded that the issue had been adjudicated by decisions of the Municipal Court (Judgment C. no. 22/2001 dated 12 June 2002) and of the District Court (Judgment AC. No. 502/2002 dated 17 December 2003).

14. On 29 January 2009, the Municipal Court in Gllogoc, after the case had been remanded by the Supreme Court, declared itself incompetent because the matter was within the competence of the Special Chamber of the Supreme Court for the reason that the disputed apartment was owned by the Kosovo Privatization Agency.

Execution Procedure

15. On 15 September 2004, the Municipal Court allowed the execution of the Municipal Court and District Court decisions (E. no. 24/04). Against this Decision, Mr. I.D filed a complaint with Municipal Court.

16. On 11 November 2004, the Municipal Court rejected as ungrounded the complaint of Mr. I.D.

17. On 8 December 2004, the Municipal Court in Gllogoc, suspended the execution procedure, since the execution title was quashed by Decision of the Supreme Court, Rev. No. 90/04, dated 14 October 2004, whereby all actions taken regarding this judicial issue had been abrogated,.

Applicant's allegations

18. The Applicant claims that his right to use the apartment as guaranteed by Article 46 [Protection of Property] of the Constitution has been violated.

19. The Applicant also claims that the Judgment of the Supreme Court of Kosovo of 14 October 2004 has been partial. Furthermore, the Applicant claims that the decision of the Municipal Court in Gllogoc to declare itself incompetent is suspicious.

Assessment of the admissibility of the Referral

20. As to the Applicant's allegations that his right guaranteed by Article 46 [Protection of Property] of the Constitution has been violated, the Court must first examine whether he has fulfilled all admissibility requirements laid down in the Constitution, the Law on the Constitutional Court and the Rules of Procedure of the Constitutional Court.

21. In respect to the challenged Decision C. No. 150/04 of the Municipal Court of Gllogoc of 29 January 2009, the Court refers to Article 113.7 of the Constitution and 47(2) of the Law, according to which individuals, who submit a referral to the Court, must show that they have exhausted all legal remedies available under applicable law.

22. The Court emphasizes that the rationale for the exhaustion rule is to afford the authorities concerned, including the courts, the opportunity to prevent or put right the alleged violation of the Constitution. This rule is based on the assumption that the Kosovo legal order will provide an effective remedy for the violation of constitutional rights (see mutatis mutandis, ECHR, Selmouni v. France, no. 25803194, decision of 28 July 1999). However, it is not necessary for the constitutional rights to be explicitly raised in the proceedings concerned. As long as the issue was raised implicitly or in substance, the exhaustion of remedies is satisfied (see, mutatis mutandis, ECHR, Azinas v. Cyprus, no 56679/00, decision of 28 April 2004).

23. This Court applied the same reasoning, when it issued Resolution on Inadmissibility in the case of AAB-RIINVEST University L.L.C., Pristina vs. Government of the Republic of Kosovo, Case KI 41/09 of 27 January 2010, and in the Resolution on Inadmissibility in the case of Mimoza Kusari-Lila vs. The Central Election Commission, Case No. 73/09 of 23 March 2010.

24. As to the present case, it is clear from the Applicant's submissions, that, so far, he has not raised the alleged violation of his right to occupy the apartment with the Special Chamber of the Supreme Court, which according to the decision of the Municipal Court of 29 January 2009, is the competent court to deal with this matter. This information must already have been known to the Applicant, when, by decision of 14 October 2004,

the Supreme Court quashed the lower courts' decisions and annulled all actions taken by the lower courts regarding the issue.

25. It follows, that the Applicant has not exhausted all legal remedies available under applicable law, as required by Article 113.7 of the Constitution and Article 47 (2) of the Law.

26. For the foregoing reasons the Referral is Inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Rule 36 (3) (h) of the Rules of Procedure, Article 113.7 of the Constitution and Article 47(2) of the Law, and Rule 56 (2) of the Rules of Procedure, on 23 November 2011, unanimously

DECIDES

I. TO REJECT the Referral as inadmissible;

II. This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20 (4) of the Law;

III. This Decision is effective immediately.

Judge Rapporteur **President of the Constitutional Court**

Dr.Gjyljeta Mushkolaj Prof. Dr. Enver Hasani

KI 94/11 dated 24 January 2012 - Constitutional review of the Decision of Housing and Property Claims Commission HPCC/D/144/2004/C dated 27 August 2004

Case KI 94/11, decision dated 21 November 2011
Keywords: individual Referral, right to property, ratione temporis, out of time, protection of property.

The Applicant has filed the Referral pursuant to Article 113.7 of the Constitution of Kosovo, challengeing the Decision of Housing and Property Claims Commission (hereinafter: HPCC) HPCC/D/144/2004/C of 27 August 2004 by which it was rejected the Applicant's claim to allow to her possession over the immovable property located in "Sunny Hill II".
The Applicant challenges Decision HPCC/D/144/2004/C of 27 August 2004. The Court concluded that the Referral related to events before 15 June 2008, respectively the date when the Constitution of the Republic of Kosovo entered into force. On this basis, the Referral has been filed out of time and it is therefore "ratione temporis" incompatible with the provisions of the Constitution and the Law. For this reason, the Court decided that the Referral was inadmissible in accordance with Rule 36. (3h) of the Rules of Procedure.

Pristine, 18 January 2012
Ref. No.: RK185/11

RESOLUTION ON INADMISSIBILITY

in

Case no. KI94/11

Applicant

Lumnije Krasniqi

Constitutional review of the Decision of Housing and Property Claims Commission HPCC/D/144/2004/C of 27 August 2004

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Enver Hasani, President
Kadri Kryeziu, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Ivan Čukalović, Judge
Gjyljeta Mushkolaj, Judge and
Iliriana Islami, Judge

The Applicant

1. The Applicant is Lumnije Krasniqi residing in "Hasan Remniku" str. in Prishtina.

Challenged decision

2. Challenged decision is the decision of Housing and Property Claims Commission(hereinafter: "HPCC") HPCC/D/144/2004/C of 27 August 2004 by which it was rejected the request of the Applicant to grant her possession of the immovable property which is located in "Sunny Hill II".

Subject matter

3. The Applicant challenges the decision HPCC/D/144/2004/C of 27 August 2004, without stating any concrete Article of the Constitution of Republic of Kosovo but he claims the following:

„That he has a certificate from the municipality and the local community that he has been an occupant in the said apartment from 1999 until 30 March 2007, and that in every other country some one who is a citizen of that country is given priority and that after 3 years or more the apartment should be given to him with a deed in accordance with the law in a way that is easiest and economically fairest for its people...“

Legal basis

4. The Referral is based on Articles 113.7 and 21.4 of the Constitution, Articles 20, 22.7 and 22.8 of the Law No. 03/L-121 on Constitutional Court of Republic of Kosovo of 16 December 2008 (hereinafter: the "Law") and Rule 56 paragraph 2 of the Rules of Procedure of the Constitutional Court of Republic of Kosovo (hereinafter: "Rules of Procedure").

Proceedings before the Court

5. On 20 January 2011, the Applicant submitted by mail a part of the documentation as a Referral to the Constitutional Court of Republic of Kosovo (hereinafter: the "Court").

6. On 21 January 2011, the Constitutional Court through a notification informed the Applicant of what a Referral should contain in order to be considered a Referral with the Constitutional Court, whereas the case was registered as a temporary case.

7. On 11 July 2011, the Applicant supplemented his Referral with the required documentation and the Referral was registered in KI record of the Court.

8. On 21 July 2011, the Applicant in his third approach to the Court requested through a submission that her identity be protected during the proceeding before the Court justifying that:

„ Her family has threefold enemies.“

„From generation to generation by Serbian agents have been following her family because they are patriots and fighters. "
„She wishes that her rights be realized in the name of Kosovo."

9. On 26 July 2011, the Constitutional Court notified the Applicant and Kosovo Property Agency (hereinafter: KPA) which is the legal successor of HPCC that a proceeding of constitutional review of decisions in case no. KI 94/11 has been initiated.

10. On 5 August 2011, KPA in its reply informed the Court in detail about the proceedings regarding Decision HPCC/D/144/2004/C of 27 August 2004. At the same time it furnished the Court with a copy of the decision and a reply for the party that is requesting the reconsideration.

11. On 21 November 2011, after considering the report of Judge Kadri Kryeziu, the Review Panel composed of Judges: Altay Suroy (Presiding), Prof. Dr. Ivan Čukalović and Prof. Dr. Gjyljeta Mushkolaj, made a recommendation to the full Court to reject the Referral as inadmissible. At the same time, the Court assessed that the request for protection of identity is ungrounded.

Summary of the facts

12. The Applicant fled the country during the war. After the war she returned to Kosovo and since she did not have any shelter KFOR accommodated them in a building in quarter Sunny Hill II, *„because they were in the open "* .

13. On 29 August 2001, HPCC received request no. DS001936 which was filed by M.K. authorized by Z.P., by which it was requested that the apartment in Sunny Hill II, be returned to his possession. As the opposing party in this case was F. K., Applicant's husband (hereinafter: F.K.)

14. HPCC after examining the documentation submitted by the parties in request no. DS001936 by Decision HPCC/D/144/2004/C of 27 August 2004 decided to return to Z.P. the right to possession of the apartment concerned.

15. The Decision HPCC/D/144/2004/C of 27 August 2004 was served on the then occupant of the apartment concerned Mr. F. K. on 13 October 2005.

16. On 19 December 2005 HPCC received a request for reconsideration of Decision HPCC/D/144/2004/C of 27 August 2004, filed by the F. K.

17. The request for reconsideration was rejected by HPCC because it was submitted after the legal time limit of 30 days provided by Section 14.1 of UNMIK Regulation 2000/60.

18. At the same time, the party which requested reconsideration F. K. did not present any new evidence which was not considered before, namely any evidence which would prove the right of F. K. to the apartment concerned.

19. Official notification on rejection of the request for reconsideration of Decision HPCC/D/144/2004/C of 27 August 2004 has been served on F.K.

20. After the Decision HPCC/D/144/2004/C of 27 August 2004 became final and upon the request of P.Z as a successful party in this dispute for the said apartment to be returned to him, on 14 February 2006, KPA evicted Applicant's family from the apartment and on 15 February 2006 it handed over possession of the apartment to the successful party in the dispute, Mr. Z. P., whereby the case before KPA was completed.

Applicant's allegations

21. The Applicant challenges Decision HPCC/D/144/2004/C of 27 August 2004 without stating concrete Articles of the Constitution of Republic of Kosovo, but he requests from the Constitutional Court the following:

„That the state should allocate the apartment concerned with a deed to her and with a reasonable price for paying it over a longer period of time according to the Law which supports our economy. The price should be determined based on how old is the apartment and based on the economy of this tormented people because of the injustice experienced and who has

suffered before and during the war, and that to this day the enemy is given priority in free Kosovo…"

Assessment of the admissibility of Referral

22. In order to be able to adjudicate the Applicants' Referral, the Court needs first to examine whether the Applicant has fulfilled all admissibility requirements laid down in the Constitution, and further specified in the Law and the Rules of Procedure.

23. Regarding this submission, the Constitutional Court finds that the Applicant is complaining of the Decision HPCC/D/144/2004/C of 27 August 2004 which was served on him on 13 August 2005. This means that the Referral relates to events before 15 June 2008, which is the date when the Constitution of Republic of Kosovo entered into force. Based on the foregoing, the Referral has been filed out of time limit and it is therefore incompatible *ratione temporis* with the provisions of the Constitution and the Law (see *mutatis mutandis Jasiūnienė vs. Lithuania, Application no. 41510/98, ECHR Judgments of 6 March and 6 June 2003).*

24. It results that the Referral is inadmissible pursuant to Rule 36 (3h) of Rules of Procedure which provides: "A Referral may also be deemed inadmissible in any of the following cases: h) the Referral is incompatible *ratione temporis* with the Constitution."

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 20 of the Law, and Rule 36 (1h) of the Rules of Procedure, on 25 November 2011, unanimously,

DECIDES

I. TO REJECT the Referral as inadmissible;

II. This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20 (4) of the Law;

III. This Decision is effective immediately.

Judge Rapporteur **President of the Constitutional Court**

Dr.Kadri Kryeziu Prof. Dr. Enver Hasani

KI 62/11 dated 10 February 2012- Constitutional Review of the Decision of the Supreme Court, Pn. no. 181/2011, dated 31 March 2011.

Case KI 62/11, Resolution on Inadmissibility dated 25 November 2011

Keywords: human dignity, individual referral, interim measures, manifestly ill-founded, right to liberty and security, right to fair and impartial trial, violation of individual rights and freedoms

The applicant, Mr. Çlirim Grezda, filed a Referral pursuant to Article 113.7 of the Constitution of Kosovo challenging the Decision of the Supreme Court, Pn. no. 181/2011, of 31 March 2011, as being taken in violation of his rights guaranteed by Articles 21 [General Principles], 23 [Human Dignity], 29 [Right to Liberty and Security] and 31 [Right to Fair and Impartial Trial] of the Constitution and Article 6 [Right to a fair trial] of ECHR, because "there was no grounded suspicion for the commission of the criminal act and consequently there were no legal reasons for the District Court to order his detention on remand; the decision on the initiation of the investigation was not delivered to the Applicant immediately and without delay, so that he was not informed of the exact charges against him; and his honor, prestige, authority and dignity were violated by the press release issued by the Kosovo Police and publication of that information on the Kosovo Police webpage."

On the issue of the admissibility of the Referral, the Court held, that the Referral was inadmissible because the Applicant failed to submit evidence that the relevant proceedings were in any way unfair or tainted by arbitrariness. Hence, the Court held that the Referral was manifestly ill-founded pursuant to Rule 36 (1.c) of the Rules of Procedure. Furthermore, as to the request for interim measures, the Court held, that taking into account that the Referral was found inadmissible, the Applicant is not entitled under Rule 54 (1) of the Rules of Procedure to request interim measures.

Pristine, 19 January 2012
Ref. No.: RK187/12

RESOLUTION ON INADMISSIBILITY

in

Case No. KI 62/11

Applicant

Çlirim Grezda

**Constitutional Review of the Decision of the Supreme Court,
Pn. no. 181/2011, dated 31 March 2011.**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Enver Hasani, President
Kadri Kryeziu, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Ivan Čukalović, Judge
Gjyljeta Mushkolaj, Judge and
Iliriana Islami, Judge

Applicant

1. The Applicant is Mr. Çlirim Grezda residing in Gjakova.

Challenged decision

2. The Applicant challenges the Decision of the Supreme Court, Pn. no. 181/2011, of 31 March 2011, which was served on the Applicant on 4 April 2011.

Subject matter

3. The Applicant alleges that the decision of the Supreme Court is in violation of Articles 21 [General Principles], 23 [Human Dignity], 29 [Right to Liberty and Security] and 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo (hereinafter: the "Constitution") and Article 6 [Right to a fair trial] of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: the "ECHR").

4. He further alleges that Article 1 of Protocol 1 ECHR has been violated *"because due to the impossibility to work I have remained without any personal income."*

5. The Applicant also requests the Constitutional Court of Republic of Kosovo (hereinafter: the "Court") to impose an interim measure ordering the Police to remove the press release about him from its website.

Legal basis

6. Article 113.7 of the Constitution, Articles 22 and 27 of the Law on the Constitutional Court of the Republic of Kosovo of 15 January 2009, (No. 03/L-121) (hereinafter: the "Law") and Rules 54, 55 and 56 (2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the "Rules of Procedure").

Proceedings before the Court

7. On 5 May 2011, the Applicant submitted the Referral to the Court.

8. On 4 July 2011, the President, by Order No. GJR. 62/11, appointed Judge Kadri Kryeziu as Judge Rapporteur. On the same date, the President, by Order No. KSH. 62/11, appointed the Review Panel composed of Judges Altay Suroy (Presiding), Enver Hasani and Ivan Čukalovič.

9. On 9 August 2011, the Court communicated the Referral to the Supreme Court and the District Public Prosecutor in Peja.

10. On 25 November 2011, the Review Panel considered the Preliminary Report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

11. On 16 February 2011, the District Public Prosecutor of Peja (hereinafter: the "Prosecutor) decided to initiate investigation proceedings against the Applicant and his co-defendants, suspected of having committed aggravated theft and robbery under Article 256.1 in conjunction with Article 23 of the Criminal Code of Kosovo (hereinafter: the "CCK") (Decision PP-no. 60/11 and PPM – no. 12/11).

12. On 16 February 2011, the Public Prosecutor filed a request to take the Applicant into custody, since there was a justified suspicion that the Applicant had committed the criminal offence under Article 256 (1) in conjunction with Article 23 of CCK.

13. On 16 February 2011, the District Court of Peja ordered the Applicant to be detained on remand for one month, pursuant to Article 281 (1) of CCK (Decision PPQ. No. 29/11 and PPMQ. No. 10/11). The Applicant filed a complaint against this decision with the Trial Panel of the District Court of Peja.

14. On 9 March 2011, the Applicant requested to be released instantly from detention on remand.

15. On 11 March 2011, the Public Prosecutor filed a request with the Trial Panel of the District Court of Peja to extend the Applicant's detention on remand, since the preliminary investigations had not been concluded and there still existed legal reasons to keep the Applicant in custody.

16. On 14 March 2011, the District Court of Peja rejected as unfounded the Applicant's request of 9 March 2011 and granted the request of the Public Prosecutor, by extending the

Applicant's detention on remand for another 2 months, pursuant to Article 281 (1) of CCK (Decision KP. no. 36/11). The Applicant filed a complaint against this decision with the Supreme Court of Kosovo.

17. On 31 March 2011, the Supreme Court rejected as unfounded the complaint of the Applicant reasoning that *"There is a legal ground in the concrete case for extension of detention on remand, and the first instance court has also found and given clear concrete reasons concerning the legal grounds for the extension of the detention on remand"* (Decision Pn. No. 181/2011).

18. On 13 April 2011, the District Court in Peja, upon the request of the Public Prosecutor, terminated the Applicant's detention on remand and ordered his immediate release, since the preliminary investigations were discontinued.

Applicant's allegations

19. The Applicant alleges that:

    a. there was no grounded suspicion for the commission of the criminal act and consequently there were no legal reasons for the District Court to order his detention on remand;

    b. the decision on the initiation of the investigation was not delivered to the Applicant immediately and without delay, so that he was not informed of the exact charges against him; and

    c. his honor, prestige, authority and dignity were violated by the press release issued by the Kosovo Police and publication of that information on the Kosovo Police webpage..

Assessment of the admissibility of the Referral

20. The Applicant alleges that his right guaranteed by Articles 21 [General Principles], 23 [Human Dignity], 29 [Right to Liberty and Security] and 31 [Right to Fair and Impartial Trial] of the

Constitution and Article 6 [Right to a Fair Trial] and Article 1 of Protocol 1 of ECHR have been violated in that the Supreme Court, in its decision of 31 March 2011, rejected his appeal for the reason that the first instance court had given clear reasons concerning the legal grounds for the extension of the Applicant's detention on remand.

21. The Court observes that, in order to be able to adjudicate the Applicant's complaints, it is necessary to first examine whether he has fulfilled the admissibility requirements laid down in the Constitution as further specified in the Law and the Rules of Procedure.

22. In this respect, the Court notes that an Applicant cannot complain that the regular courts have committed errors of fact or law, unless and in so far as they may have infringed rights and freedoms protected by the Constitution.

23. In this connection, the Constitutional Court emphasizes that it is not a court of fourth instance, when considering the decisions taken by ordinary courts. It is the role of ordinary courts to interpret and apply the pertinent rules of both procedural and substantive law (see, mutatis mutandis, García Ruiz v. Spain [GC], no. 30544/96, para. 28, European Court on Human Rights [ECHR] 1999-I).

24. The Court can only consider whether the evidence has been presented in such a manner, and whether the proceedings in general, viewed in their entirety, have been conducted in such a way that the Applicant has had a fair trial (see, mutatis mutandis, Report of the Eur. Commission on Human Rights in the case Edwards v. United Kingdom, App. No. 13071/87 adopted on 10 July 1991).

25. As to the present case, the Court notes that the Decision of the Supreme Court, Pn. no. 181/2011, of 31 March 2011 concluded *"There is a legal ground in the concrete case for extension of detention on remand, and the first instance court has also found and given clear concrete reasons on the legal grounds providing for extension of detention on remand".*

26. In this respect, the Court considers that the Applicant has not shown in which manner the Decision of the Supreme Court was unfair or tainted by arbitrariness (see mutatis mutandis, Shub v. Lithuania, ECHR Decision as to the Admissibility of Application no_ 17064/06 of 30 June 2009 and Vanek v. Slovak Republic, ECHR Decision as to the Admissibility of Application no. 53363/99 of 31 May 2005) and amounted to an infringement of the constitutional rights invoked by the Applicant.

27. In these circumstances, the Referral is manifestly ill-founded pursuant to Rule 36 (1.c) of the Rules of Procedure which provides: *"The Court may only deal with Referrals if: c) the Referral is not manifestly ill-founded."*

28. Accordingly, the Applicants' Referral must be rejected as inadmissible.

Assessment of the request for Interim Measures

29. As to the Applicant's request for interim measures, the Court refers to Article 27 of the Law and, in particular, Rule 54 (1) of the Rules of Procedure, stipulating that, at any time when a Referral is pending before the Court and the merits of the Referral have not been adjudicated by the Court, a party may request interim measures. However, taking into account that the Referral was found inadmissible, the Applicant is not entitled under Rule 54 (1) of the Rules of Procedure to request interim measures.

FOR THESE REASONS

The Constitutional Court, pursuant to Rules 36 (1.c), 54 (1) and 56 (2) of the Rules of Procedure, on 25 November 2011, unanimously

DECIDES

I. TO REJECT the request for Interim Measures;

II. TO REJECT the Referral as inadmissible;

III. This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20 (4) of the Law;

IV. This Decision is effective immediately.

Judge Rapporteur **President of the Constitutional Court**

Dr.Kadri Kryeziu Prof. Dr. Enver Hasani

KI 126/10 dated 21 February 2012- Constitutional Review of the Decision of the Ministry of Transport and Telecommunication No. 140, dated 25 January 2010.

Case KI 126/10, Resolution on Inadmissibility dated 29 November 2011
Keywords: equality before the law, non-exhaustion, manifestly ill-founded, violations of individual rights and freedoms

The applicant filed a Referral pursuant to Article 113.7 of the Constitution of Kosovo challenging the Decision of the Ministry of Transport and Post-Telecommunication, No. 140 of 25 January 2010, and the Applicant complain as well about two more sets of proceedings, the proceedings against the Ministry of Transport and Telecommunication and the proceedings against the Post and Telecommunication in Peja, without being specific what his complaints are about. In this respect, the Applicant alleges that PTK, MTPT, the PTK branch in Peja, should have to pay him monetary compensation for the damages allegedly done by them and that the workers of PTK should be held accountable for misconduct in exercising their official duties.
On the issue of the admissibility of the Referral, the Court held that the Referral was inadmissible because the proceedings against the Ministry of Transport and Telecommunication as well as the proceedings against the Post and Telecommunication in Peja are still pending before the Supreme Court. Furthermore, the Applicant has failed to submit evidence that the relevant proceedings were in any way unfair or tainted by arbitrariness. Hence, the Court held that the Referral was manifestly ill-founded pursuant to Rule 36 (1.c) of the Rules of Procedure.

Pristine, 19 January 2012
Ref. No.: RK186/12

RESOLUTION ON INADMISSIBILITY

in

Case no. KI 126/10

Applicant

Lulzim Ramaj

Constitutional Review of the Decision of the Ministry of Transport and Telecommunication No. 140, dated 25 January 2010.

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Enver Hasani, President
Kadri Kryeziu, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Ivan Čukalović, Judge
Gjyljeta Mushkolaj, Judge and
Iliriana Islami, Judge

Applicant

1. The Applicant is Mr. Lulzim Ramaj, residing in Peja.

Challenged decision

2. The Applicant explicitly challenges the decision of the Ministry of Transport and Post-Telecommunication (hereinafter: "MTPT"), No. 140 of 25 January 2010.

3. However, in the Referral, the Applicant also complains of two more sets of proceedings, the proceedings against the Ministry of Transport and Telecommunication and the proceedings against the Post and Telecommunication in Peja, without being specific what his complaints are about.

Subject matter

4. The Applicant alleges that his right guaranteed by the Constitution of the Republic of Kosovo (hereinafter: the "Constitution"), Article 24 [Equality Before the Law] has been violated.

Legal basis

5. Article 113.7 of the Constitution, Article 22 of the Law on the Constitutional Court of the Republic of Kosovo of 15 January 2009, (No. 03/L-121), (hereinafter: the "Law") and Rule 56 (2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the "Rules of Procedure").

Proceedings before the Court

6. On 28 October 2010, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the "Court"). On the same date, the Secretariat of the Court notified the Applicant that he needs to fill out the Referral form.

7. On 9 November 2010, the Applicant submitted the Referral form to the Court.

8. On 27 January 2011, the Court communicated the Referral to MTPT, which so far has not submitted any comments.

9. On 4 February 2011, the Applicant submitted additional documents.

10. On 14 February 2011, the President, by Order No. GJR. 126/10, appointed Judge Snezhana Botusharova as Judge Rapporteur. On the same date, the President, by Order No. KSH. 126/10, appointed the Review Panel composed of Judges Altay Suroy (Presiding), Kadri Kryeziu and Enver Hasani.

11. On 28 April 2011, the Court asked the Applicant to specify in what manner the challenged decisions violated his rights as guaranteed by the Constitution.

12. On 12 May 2011, the Applicant replied but the reply was not related to the initial Referral.

13. On 29 November 2011, the Review Panel considered the Preliminary Report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

14. On 10 January 2008, the Applicant filed a complaint with the Kosovo Postal Service concerning the delay in receiving letters.

15. On 21 December 2009, the Applicant again wrote to the Kosovo Postal Service, complaining about the delays in its postal service and the alleged control of the letters by its staff.

16. On 5 January 2010, the Applicant complained to the MTPT against the decision of the Kosovo Postal Service of 24 December 2009, by which his allegations had been rejected.

17. On 25 February 2010, the Applicant complained to the Supreme Court against the decision of MTPT of 25 January

2010. The Applicant held that MTPT did not take into consideration his remarks and complaints.

18. On 27 July 2010, the Applicant submitted a complaint to the Kosovo Judicial Council against the Supreme Court for not having reviewed his complaint of 25 February 2010 and for prolonging the case.

19. On 13 August 2010, the Kosovo Judicial Council issued a decision concerning the Applicant's complaint of 27 July 2010.

20. On 25 August 2010, the Applicant complained against the decision of 13 August 2010 of the Kosovo Judicial Council for not taking any legal action against the Supreme Court.

21. As to the proceedings against the Ministry of Transport and Telecommunication and the proceedings against the Post and Telecommunication in Peja, the facts are as follows:

a) Facts regarding the proceedings against the Ministry of Transport and Telecommunication

22. On 31 March 2009, the Applicant filed a complaint with the MTPT concerning the postal service delays, theft and for not cleaning the stamp making it difficult to read the date on the stamp.

23. On 13 May 2010, the Applicant filed a further complaint with the MTPT concerning the delay in receiving mail.

24. On 20 May 2010, the MTPT issued a decision, which the Applicant has not submitted to the Constitutional Court.

25. The Applicant, then, filed a complaint to the Supreme Court against the decision of the MTPT of 20 May 2010.

26. On 8 June 2010, the Applicant filed a submission with the Supreme Court, changing the complaint against the decision of MTPT of 20 May 2010.

27. On 11 June 2010, the Supreme Court sent a communication to the Applicant concerning the payment of a judicial tax in respect to his complaint to the Supreme Court.

28. On 19 June 2010, the Applicant submitted a reply to the Supreme Court's communication of 11 June 2010.

29. On 17 July 2010, the Applicant filed a submission with the Supreme Court, changing his complaint.

b) Facts regarding the proceedings against the Post and Telecommunication in Peja

30. On 29 April 2010, the Applicant filed a complaint with the Post Office in Peja against the officials of the Kosovo Postal Service for not sending the telephone bill in time.

31. On 7 July 2010, the Applicant filed another complaint with PTK in Peja against the workers of PTK for unjust enrichment and misconduct when exercising official duties.

32. On 2 September 2010, the Applicant filed a further complaint with the PTK in Peja about the alleged misconduct of its workers of PTK, alleging that he had to pay more for the stamps he bought than would be normal and that other workers of PTK did not clean the seal before using it.

33. On 7 September 2010, the Applicant filed a complaint with the Supreme Court against the decision of 3 September 2010 of the PTK branch in Peja.

Applicant's allegations

34. The Applicant alleges that his right guaranteed by Article 24 [Equality Before the Law] of the Constitution has been violated.

35. The Applicant emphasizes that, with this Referral to the Constitutional Court, his rights have to be realized, in that the authorities: PTK, MTPT, the PTK branch in Peja, should have to pay him monetary compensation for the damages allegedly

done by them and that the workers of PTK should be held accountable for misconduct in exercising their official duties.

Assessment of the admissibility of the Referral

36. As to the Applicant's allegation that his right guaranteed by Article 24 [Equality Before the Law] of the Constitution have been violated, the Court observes that, in order to be able to adjudicate the Applicants' complaint, it is necessary to first examine whether he has fulfilled the admissibility requirements laid down in the Constitution as further specified in the Law and the Rules of Procedure.

37. In this connection, reference is made to Article 113.7 of the Constitution and 47(2) of the Law, according to which individuals, who submit a referral to the Court, must show that they have exhausted all legal remedies available under the applicable law.

38. The Court emphasizes that the rationale for the exhaustion rule is to afford the authorities concerned, including the courts, the opportunity to prevent or put right the alleged violation of the Constitution. This rule is based on the assumption that the Kosovo legal order will provide an effective remedy for the violation of constitutional rights (see mutatis mutandis, ECHR, Selmouni v. France, no. 25803194, decision of 28 July 1999). However, it is not necessary for the constitutional rights to be explicitly raised in the proceedings concerned. As long as the issue was raised implicitly or in substance, the exhaustion of remedies is satisfied (see, mutatis mutandis, ECHR, Azinas v. Cyprus, no 56679/00, decision of 28 April 2004).

39. This Court applied the same reasoning, when it issued Resolution on Inadmissibility in the case of AAB-RIINVEST University L.L.C., Pristina vs. Government of the Republic of Kosovo, Case KI 41/09 of 27 January 2010, and in the Resolution on Inadmissibility in the case of Mimoza Kusari-Lila vs. The Central Election Commission, Case No. 73/09 of 23 March 2010.

40. As to the present case, it is clear from the Applicants' submissions, that the proceedings against the Ministry of Transport and Telecommunication as well as the proceedings against the Post and Telecommunication in Peja are still pending before the Supreme Court.

41. It follows, that the Applicant has not exhausted all legal remedies available under applicable law, as required by Article 113.7 of the Constitution and Article 47 (2) of the Law.

42. Further, as to the proceedings against the Ministry of Transport and Telecommunication as well as the proceedings against the Post and Telecommunication in Peja, the Applicant has failed to substantiate which/ and how the relevant decisions of these public bodies allegedly violate his rights as guaranteed by the Constitution.

43. It follows that the Referral as a whole is manifestly ill-founded pursuant to Rule 36 (1.c) of the Rules of Procedure which provides: *"The Court may only deal with Referrals if: c) the Referral is not manifestly ill-founded."*

44. For the foregoing reasons the Referral is Inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution and Article 47(2) of the Law, and Rule 36 (1.c) and Rule 56 (2) of the Rules of Procedure, on 29 November 2011, unanimously

DECIDES

I. TO REJECT the Referral as Inadmissible;

II. This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20 (4) of the Law;

III. This Decision is effective immediately.

Judge Rapporteur **President of the Constitutional Court**

Snezhana Botusharova Prof. Dr. Enver Hasani

KI 14/11 dated 10 February 2012 - Constitutional Review of the Decision of the Supreme Court, Pzd. no. 135/2010, dated 21 January 2011.

Case KI 14/11, Resolution on Inadmissibility dated 23 November 2011
Keywords: equality before the law, individual referral, manifestly ill-founded, right to fair and impartial trial, violation of individual rights and freedoms

The applicant, Mr. Baki Musa, filed a Referral pursuant to Article 113.7 of the Constitution of Kosovo challenging the Decision of the Supreme Court, Pzd. no. 135/2010, of 21 January, as being taken in violation of his rights guaranteed by Articles 24 [Equality Before the Law] and 31 [Right to Fair and Impartial Trial] of the Constitution, because "[...] the Municipal Court and the District Court rendered a judgment with procedural errors, the complaint of the public prosecutor not having been communicated to him."
On the issue of the admissibility of the Referral, the Court held, that the Referral was inadmissible because the Applicant failed to submit evidence that the relevant proceedings were in any way unfair or tainted by arbitrariness. Hence, the Court held that the Referral was manifestly ill-founded pursuant to Rule 36 (1.c) of the Rules of Procedure.

Pristine, 23 January 2012
Ref. No.: RK188/12

RESOLUTION ON INADMISSIBILITY

in

Case No. KI 14/11

Applicant

Baki Musa

Constitutional Review of the Decision of the Supreme Court, Pzd. no. 135/2010, dated 21 January 2011.

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Enver Hasani, President
Kadri Kryeziu, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Ivan Čukalović, Judge
Gjyljeta Mushkolaj, Judge and
Iliriana Islami, Judge

Applicant

1. The Applicant is Mr. Baki Musa residing in Bernice e Eperme, Municipality of Pristina.

Challenged decision

2. The Applicant challenges the Decision of the Supreme Court, Pzd. no. 135/2010, of 21 January 2011, which was served on the Applicant on 1 February 2011.

Subject matter

3. The Applicant alleges that the decision of the Supreme Court is in violation of Articles 24 [Equality Before the Law] and 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo (hereinafter: the "Constitution").

Legal basis

4. Article 113.7 of the Constitution, Article 22 of the Law on the Constitutional Court of the Republic of Kosovo of 15 January 2009, (No. 03/L-121), (hereinafter: the "Law") and Rule 56 (2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the "Rules of Procedure").

Proceedings before the Court

5. On 8 February 2011, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the "Court").

6. On 2 March 2011, the President, by Order No. GJR. 14/11, appointed Judge Kadri Kryeziu as Judge Rapporteur. On the same date, the President, by Order No. KSH. 14/11, appointed the Review Panel composed of Judges Snezhana Botusharova (Presiding), Enver Hasani and Ivan Čukalovič.

7. On 4 May 2011, the Court communicated the Referral to the Supreme Court.

8. On 8 July 2011, the Court requested additional documents by the Applicant, which replied on 1 August 2011 submitting the requested documents.

9. On 23 November 2011, the Review Panel considered the Report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

10. On 24 July 2002, the Public Prosecutor filed an indictment with the Municipal Court in Pristina against the Applicant for the commission of the criminal act of having inflicted serious and light body injury upon a third party.

11. On 18 February 2003, the Municipal Court in Pristina rendered a judgment finding the Applicant guilty of having committed the criminal offence he was indicted with and sentenced him to eight months imprisonment (Judgment

P.no. 1643/2002). The Applicant complained of this Judgment to the District of Pristina.

12. On 20 May 2005, the District Court in Pristina changed the Judgment of the Municipal Court and sentenced the Applicant to six months imprisonment (Judgment Ap.no. 438/2003). The Applicant complained of this Judgment to the Supreme Court.

13. On 2 November 2005, the Supreme Court of Kosovo annulled the Judgment of the District Court and sent it back to the District Court for retrial (Judgment Pkl.no. 34/2005). The Supreme Court concluded that the judgment of the District Court was in violation of Article 403 (2) (1) of the Criminal Procedure Code, since the complaint of the public prosecutor had not been communicated to the Applicant.

14. On 20 March 2006, the District Court retried the case and rendered a Judgment, sentencing the Applicant to six months imprisonment (Judgment Ap.no. 83/2006). The Applicant again complained the Judgment of the District Court to the Supreme Court.

15. On 15 January 2009, the Supreme Court annulled the Judgment of the District Court and sent it back for retrial (Judgment Pkl.no. 1/2009). The Supreme Court again concluded that the judgment of the District Court was in violation of Article 403 (2) (1) of the Criminal Procedure Code, since the complaint of the public prosecutor had not been communicated to the Applicant.

16. As a result, the District Court forwarded the complaint to the Applicant for comments. On 2 December 2009, the District Court decided to change the Judgment of the Municipal Court and to sentence the Applicant to six months imprisonment (Judgment Ap.no. 68/2009). Again the Applicant complained against this Judgment to the Supreme Court requesting a reduction of sentence.

17. On 21 January 2011, the Supreme Court rejected as unfounded the request of the Applicant to reduce the sentence. The Supreme Court concluded that there were no

new circumstances justifying a reduction in sentence and that the pronounced judgment of the District Court was just and based on the law (Decision Pzd.no. 135/2010).

Applicant's allegations

18. The Applicant alleges a breach of Article 24 [Equality Before the Law] and Article 31 [Right to Fair and Impartial Trial] of the Constitution, for the reason that the Municipal Court and the District Court rendered a judgment with procedural errors, the complaint of the public prosecutor not having been communicated to him.

Assessment of the admissibility of the Referral

19. The Applicant alleges a breach of Article 24 [Equality Before the Law] and Article 31 [Right to Fair and Impartial Trial] of the Constitution, for the reason that the Municipal Court and the District Court rendered a judgment with procedural errors, the complaint of the public prosecutor not having been communicated to him.

20. However, in order to be able to adjudicate the Applicants' Referral, it is necessary to first examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution as further specified in the Law and the Rules of Procedure.

21. In this respect, the Court notes that an Applicant can not complain that the regular courts have committed errors of fact or law, unless and in so far as they may have infringed rights and freedoms protected by the Constitution.

22. In this connection, the Constitutional Court emphasizes that it is not a court of fourth instance, when considering the decisions taken by ordinary courts. It is the role of ordinary courts to interpret and apply the pertinent rules of both procedural and substantive law (see, mutatis mutandis, García Ruiz v. Spain [GC], no. 30544/96, para. 28, European Court on Human Rights [ECHR] 1999-I).

23. The Court can only consider whether the evidence has been presented in such a manner, and whether the proceedings in general, viewed in their entirety, have been conducted in such a way that the Applicant has had a fair trial (see, mutatis mutandis, Report of the Eur. Commission on Human Rights in the case Edwards v. United Kingdom, App. No. 13071/87 adopted on 10 July 1991).

24. As to the present case, the Court notes that the District Court, Judgment Ap.no. 68/2009 of 2 December 2009, implemented the Judgment of the Supreme Court by forwarding the complaint of the public prosecutor to the Applicant for comments. Furthermore, the Supreme Court, by Decision Pzd.no. 135/2010 of 21 January 2011, concluded that there were no new circumstances justifying a reduction in sentence and that the pronounced judgment of the District Court was just and based on the law.

25. In this respect, the Court considers that the Applicant has not shown in which manner the Decision of the Supreme Court was unfair or tainted by arbitrariness (see mutatis mutandis, Shub v. Lithuania, ECHR Decision as to the Admissibility of Application no_ 17064/06 of 30 June 2009 and Vanek v. Slovak Republic, ECHR Decision as to the Admissibility of Application no. 53363/99 of 31 May 2005) and amounted to an infringement of the constitutional rights invoked by the Applicant.

26. In these circumstances, the Referral is manifestly ill-founded pursuant to Rule 36 (1.c) of the Rules of Procedure which provides: *"The Court may only deal with Referrals if: c) the Referral is not manifestly ill-founded."*

27. Accordingly, the Applicants' Referral must be rejected as inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Rule 36 (1.c) and Rule 56 (2) of the Rules of Procedure, on 23 November 2011, unanimously

DECIDES

I. TO REJECT the Referral as Inadmissible;

II. This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20 (4) of the Law;

III. This Decision is effective immediately.

Judge Rapporteur **President of the Constitutional Court**

Kadri Kryeziu Prof. Dr. Enver Hasani

KI 54/11 dated 10 February 2012- Constitutional Review of the Judgment of the Supreme Court Rev.nr.11/2002 dated 6 February 2002

Case KI 54/11, decision dated 29 November 2011
Keywords; Individual Referral, constitutional review of judgment of Supreme Court

The Applicant submitted the Referral based on the Articles 113.7 and 21.4 of the Constitution, Articles 20, 22.7 and 22.8 of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo dated 15 January 2009.
The Applicant submitted the Referral to the Constitutional Court on 21 April 2011.
On 21 April 2011 the President appointed Kadri Kryeziu as Judge Rapporteur and a Review Panel composed of Judges: Snezhana Botusharova, Prof .Dr. Enver Hasani and Dr. Gjyljeta Mushkolaj.
On 25 July 2001, the Municipal Court in Vitia by Judgment, C.nr. 53/2001, confirmed the priority right of the Applicant to buy the cadastral parcel no. 3089/1.
The Municipal Court ordered the N.A. to comply with the transfer of ownership rights of the contested cadastral parcel.
On 23 October 2001 the District Court of Gjilan in its Decision AC.nr.128/01 rejected an appeal by J.S. and N.A. and confirmed the Judgment C.nr.53/2001.
On 6 February 2002 the Supreme Court by its Judgment, Rev.nr. 11/2002, approved the revision of J.S. and N.A. and quashed the Decision of the District Court of Gjilan, Ac.nr.128/2001
The Supreme Court after reviewing the appealed Judgment found the revision grounded because of erroneous application of the material right in the case.
The Applicant alleges that when the Supreme Court of Kosovo in its Judgment Rev.nr.11/2002 of 6 February 2002 unfairly applied the LTIP it violated several of his Constitutional rights; his right to equality before the law guaranteed by Article 24 of the Constitution, his right to a fair trial under Article 31 of the Constitution, his right to judicial protection as guaranteed by Article 54 of the Constitution, and his rights under Article 22 of the Constitution because his right to a fair trial under Article 6 Paragraph 1 of the European Convention of Human Rights was not respected.

After the Court reviewed the documents in the referral it appears that the Judgment of the Supreme Court of Kosovo AC.nr. 128/2001 was adopted on the 6 of February 2002 which was prior to the Constitution entering into force e (which took place on 15 June 2008).

The Court cannot deal with the a Referral relating to events that occurred before the entry into force of the Constitution (see, the Court's Resolution on Inadmissibility in Case no. 18/10, Denic et al of 17 August 2011).

Taking into account all circumstances of the submitted Referral, the Constitutional Court pursuant to Article 113.1 and 113.7 of the Constitution, Articles 46, 47 and 48 of the Law and Rule 36 (1a) and 36 (3c). of the Rules of the Procedure, in the session held 29 November 2011 unanimously decided to reject the Referral as inadmissible.

Pristine, 24 January 2012
Ref. No.: RK189/12

RESOLUTION ON INADMISSIBILITY

in

Case No. KI 54/11

Applicant

Adem Qamili

Constitutional Review of the Judgment of the Supreme Court Rev.nr.11/2002 dated 6 February 2002

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

Composed of:

Enver Hasani, President
Kadri Kryeziu, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Ivan Čukalović, Judge
Gjyljeta Mushkolaj, Judge and
Iliriana Islami, Judge

Applicant

1. The Applicant is Adem Qamili from the Municipality of Vitia

Challenged decision

2. The Applicant challenges the Judgment of the Supreme Court of Kosovo Rev.nr.11/2002 dated 6 February 2002.

Subject Matter

3. The Applicant Claims there has been a violation of Article 22 Paragraph 2 [which provides for the application of the European Convention on Human Rights, namely Paragraph 1 of Article 6] Article 24 [Right to Equality before the Law], Article 31 [the right to a fair trial] and Article 54 [Right of Judicial Protection] of the Constitution of the Republic of Kosovo (hereinafter the "Constitution").

Legal Basis

4. The Referral is based on Art. 113.7 of the Constitution; Articles 46, 47, 48 and 49 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter referred to as the "Law on the Constitutional Court"), and Rule 56 (2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter referred to as the "Rules of Procedure").

Procedure before the Court

5. On 21 April 2011 the Applicant submitted a referral to the Constitutional Court of Kosovo (hereinafter the "Court")

6. On 21 April 2011 the President appointed Kadri Kryeziu as Judge Rapporteur and a Review Panel composed of Judges Snezhana Botusharova, Prof .Dr. Enver Hasani and Dr Gjyljeta Mushkolaj.

7. On 29 November 2011, after having considered the Report of the Judge Rapporteur, the Review Panel, made a recommendation to the full Court on the inadmissibility of the Referral.

Summary of the facts

8. On 25 July 2001 the Municipal Court in Vitia by Judgment, C.nr. 53/2001, confirmed the priority right of the Applicant to buy the cadastral parcel no.3089/1 at "Sello-Oborr", a house and yard with a surface of 0.02,20 ha. In reaching this decision the Court annulled an uncertified formal contract, dated 30 April 2001, by which the cadastral property was sold to N.A. by J.S. the authorized representative and custodian of the property for other inheritors.

9. The Municipal Court ordered, *inter alia*, J.S. to conclude a contract for sale of the cadastral property with the Applicant and certify it before the Municipal Court within a deadline of 15 days or it would be subject to forcible execution. The Municipal Court stated that if J.S. failed to comply with this deadline the Judgment would serve as a ground to have the Applicant registered as owner in the property records.

10. The Municipal Court ordered the N.A. to comply with the transfer of ownership rights of the contested cadastral parcel.

11. On 23 October 2001 the District Court of Gjilan in its Decision AC.nr.128/01 rejected an appeal by J.S. and N.A. and confirmed the Judgment C.nr.53/2001.

12. On 6 February 2002 the Supreme Court of Kosovo by its Judgment, Rev.nr.11/2002, granted J.S. and N.A. reversed the Decision of the District Court of Gjilan, Ac.nr.128/2001, and the

Decision of the Municipal Court of Vitia C.nr.53/2001. The Supreme Court fully rejected as ungrounded the Applicant's summary claim regarding the confirmation of the presale right to immovable property evidenced as cadastral parcel no. 3089/1, at "Sello-Oborr" and to annual the uncertified contract dated 30 April 2001.

13. The Supreme Court after reviewing the appealed Judgment, pursuant to the provision of Article 386 of the Law on Contested Procedure *SFRY* OG No. 4/1977 (hereinafter LCP), found the revision grounded because of erroneous application of the material right in the case.

14. The Supreme Court held that according to Article 4 Paragraph 2 of the Law on Transfer of Immovable Property Official Gazette of Serbia no. 43/81, 24/89, 30/89 and 40/89 (hereinafter "LTIP"), a contract which has not been drafted pursuant to Article 4 Paragraph 1 of the LTIP should not have legal effect. In this case the contract between the parties was not certified by the court so it did not have legal effect therefore it is considered as null and void, and its conclusion did not provide for the presale right either. Pursuant to Article 26 Paragraph 2 of the LTIP, a claim can be filed within a deadline of one year from the day of the conclusion of contract, but in this case there was no valid contract. Therefore the Supreme Court held that the first instance court and the second instance court have erroneously applied the material right.

15. The Supreme Court also held that it reached its Decision because, as indicated in the case files, the claimant did not deposit the immovable property price at the time when he filed the claim and he failed to do so even at the time when the proceedings before the second instance court were ongoing, which was in contradiction with Paragraph 2 of Article 26 of the LTIP.

Applicant's allegations

16. The Applicant alleges that when the Supreme Court of Kosovo in its Judgment Rev.nr.11/2002 of 6 February 2002 unfairly applied the LTIP it violated several of his Constitutional rights; his right to equality before the law guaranteed by Article 24 of

the Constitution, his right to a fair trial under Article 31 of the Constitution, his right to judicial protection as guaranteed by Article 54 of the Constitution, and his rights under Article 22 of the Constitution because his right to a fair trial under Article 6 Paragraph 1 of the European Convention of Human Rights was not respected.

Assessment of admissibility

17. In order to be able to adjudicate the Applicant's Referral, the Court needs first to examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution, further specified in the Law on the Constitutional Court and the Rules of Procedure.

18. From the documents in the referral it appears that the Judgment of the Supreme Court of Kosovo Ac.nr. 128/2001 was adopted on the 6 of February 2002 which was prior to the Constitution entering into force (which took place on 15 June 2008). The Applicant even states on page 6 of his referral that the Court was not operational when he received the Judgment of the Supreme Court.

19. The Court considers that the public authorities of the Republic of Kosovo can only be required to answer to facts and acts which occurred subsequently to the entry into force of the Constitution. Accordingly, the Court cannot deal with the a Referral relating to events that occurred before the entry into force of the Constitution (see, the Court's Resolution on Inadmissibility in Case No 18/10, Denić *et al* of 17 August 2011*)*.

20. It follows that the referral is inadmissible pursuant to Rule 36.3 (h) of the Rules of procedure which provides that a referral may also be deemed inadmissible if the "Referral is incompatible "*ratione temporis*", with the Constitution.

FOR THESE REASONS

The Constitutional Court pursuant to Article 113.7 of the Constitution, and Rule 36.3 (h) of the Rules of the Procedure unanimously:

DECIDES

I. TO REJECT the Referral as Inadmissible;

II. This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20 (4) of the Law; and

III. This Decision is effective immediately.

Judge Rapporteur **President of the Constitutional Court**

Kadri Kryeziu, Prof. Dr. Enver Hasani

KI 06/11 dated 10 February 2012- Request for constitutional review of the Notification of the Senate of the University of Prishtina, Ref. No. 4/49, dated 03.12.2010

Case KI 06/11, decision dated 27 January 2012
Keywords: individual referral, right to work, non exhaustion of legal remedies, resolution of inadmissibility

The Applicant filed a referral pursuant to the article 113.7 of the Constitution of Kosovo, by claiming that the Notice from the Senate of the Prishtina University, ref. no. 4/449, dated 03.12.2010, violates his rights guaranteed by the Constitution, Article 49 of the Constitution (Right to Work and Exercise the Profession) and article 25 (Right to Life).
The applicant requested a Constitutional review of the notice ref. no. 4/449, dated 03.12.2010 signed by the UP Rector, Mr. Mujë Rugova whereby the faculty of medicine (the financial service), the legal advisor of UP, the academic office and professors Mr. Shaban Hasi and Mr. Lutfi Dervishi have been notified that the selection issue of these two professors is rejected because the said persons are undergoing judicial proceedings and at the same time the financial service of UP has been obliged to remove the said persons from the payroll.

By examining the documents submitted in the Referral by the Applicant, the Court finds that the Applicant has not fulfilled the rule for the exhaustion of legal remedies because he has not provided evidence, except a complaint filed with the UP Senate, that he had followed any other legal remedy or that he has received a decision on merits from an administrative body or regular Court prior to addressing the Constitutional Court with a Referral.

The Constitutional Court has concluded that pursuant to Article 113.7 of the Constitution of the Republic of Kosovo, Article 47.2 of the Law on the Constitutional Court and rule 36.1 (a) of the Rules of Procedure, to reject the referral.

Pristine, 27 January 2012
Ref. No.: RK192 /12

RESOLUTION ON INADMISSIBILITY

in

Case No. KI 06/11

Applicant

Prof. Dr. Shaban Hasi

Request for constitutional review of the Notification of the Senate of the University of Prishtina, Ref. No. 4/49, dated 03.12.2010

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Enver Hasani, President
Kadri Kryeziu, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Ivan Čukalović, Judge
Gjyljeta Mushkolaj, Judge and
Iliriana Islami, Judge

Applicant

1. The Applicant is Prof. Dr. Shaban Hasi, from Gllogoc, residing at Jasharajs' Street, no number, in Gllogoc.

Challenged decision

2. The challenged decision is the Notification of the Senate of the University of Prishtina (hereinafter referred to as "UP") Ref. No. 4/449, dated 03.12.2010.

Subject matter

3. The subject matter of the case submitted with the Constitutional Court of the Republic of Kosovo on 21.11.2011 is the constitutional review of the Notification Ref. No. 4/449, dated 03.12.2010, signed by UP Rector, Mr. Mujë Rugova, whereby the Faculty of Medicine (the financial service), the legal advisor of UP, the academic office and professors Mr. Shaban Hasi and Mr. Lutfi Dervishi have been notified that the selection issue of these two professors is rejected because the said persons are undergoing judicial proceedings and at the same time the financial service of UP has been obliged to remove the said persons from the payroll.

Legal basis

4. Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter referred to as the "Constitution"), Article 47 of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo, of 16 December 2009 (hereinafter referred to as the "Law"), and Rule 56.2 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter referred to as the "Rules of Procedure").

Proceedings before the Court

5. On 21 January 2011, Prof. Dr. Shaban Hasi submitted the Referral with the Constitutional Court of Kosovo requesting constitutional review of the Notification of the Senate of the University of Prishtina (hereinafter referred to as the "UP") Ref. No. 4/449, dated 03.12.2010.

6. On 14 February 2011, the President of the Court appointed Judge Kadri Kryeziu as Judge Rapporteur and the Review Panel composed of judges Altay Suroy (Presiding), Ivan Čukalović and Gjyljeta Mushkolaj, members.

7. On 3 March 2011, the Constitutional Court notified the Applicant and the University of Prishtina on the registration of the Referral that was submitted with this Court, requesting the UP to reply in written concerning the Referral and possible comments.

8. The Constitutional Court did not receive any reply from the UP within the 45 day time limit.

9. On 9 June 2011, after having considered the Report of the Judge Rapporteur, Kadri Kryeziu, the Review Panel, composed of Judges Altay Suroy (Presiding), Ivan Čukalović and Gjyljeta Mushkolaj, Panel members, recommended to the full Court on the inadmissibility of the Referral.

Summary of the facts

10. Prof. Shaban Hasi, according to his assertion in the Referral addressed to the Constitutional Court, has been working at the Faculty of Medicine since 1987.

11. The University of Prishtina with an indefinite date of the month of December 2010, had sent Notification Ref. No. 4/449 to the Faculty of Medicine and a copy of it to the UP archive, to the office for academic issues, to the Faculty, to the legal advisor of UP, to the abovementioned persons (Prof. Dr. Shaban Hasi and Prof. Dr. Lutfi Dervishi) and to the financial service of the UP, which had been signed by the Rector of UP, Prof. Dr. Mujë Rugova, and the legal advisor of UP, in which it had stressed that UP, in the meeting of the Senate held on 8.11.2010, had been decided that “the selection issue of Prof Shaban Hasi and Prof Lutfi Dervishi should be rejected because the said persons are undergoing judicial proceedings”.

12. The financial service of UP has also been obliged through this notification to remove the abovementioned persons from the payroll as of the date the meeting of the Senate was held (8.11.2010).

13. Prof. Dr. Shaban Hasi complained through his lawyer Shaqir Behrami, to the UP Senate because of one-sided termination of the contract with the Faculty of Medicine and without the decision of the Senate with the proposal that the Senate should render the decision to ANNUL Notification Ref. 4/449 and extend the employment relationship for the post he had prior to this notification.

14. Prof. Dr. Shaban Hasi did not receive any reply from the UP Senate regarding this complaint.

15. On 7 December 2010, at the request of Prof. Dr. Shaban Hasi, the Municipal Court in Gllogoc issued a certificate confirming that no plenipotentiary indictment has been filed against Mr. Shaban Hasi, nor he has been convicted under a judgment for a criminal offence punishable by imprisonment up to 3 (three) years or a fine.

16. On 14.12.2010, the Faculty of Medicine, through document Ref. No. 4333, signed by the Dean of the Faculty, sent a reply to his request confirming that the Faculty has no data that Prof. Shaban Hasi has ever been convicted or that he has been issued a warning for his work by the Deanery of this Faculty.

17. On 20.12.2010, the Deanery of the Faculty of Medicine, through the official document Ref. No. 4421, sent another reply to Prof. Shaban Hasi confirming that the Rectorate of U.P. has not requested any clarification or written information from the Deanery of the Faculty of Medicine concerning the issue raised against him (eventual judicial proceedings) and that the Deanery of the Faculty of Medicine is not aware of this issue.

18. Finally on 21.01.2011, Prof. Dr. Shaban Hasi submitted a Referral with the Constitutional Court claiming the violation of constitutionally guaranteed rights mentioned in the Referral.

Applicant's allegations

19. The Applicant has stressed he considers that the notification he is challenging with the Court has violated his constitutionally guaranteed rights to live and work.

20. The Applicant also stressed in the Constitutional Court that Notification Ref. No. 4/449, signed by UP Rector, which does not even have the form of the decision, has unlawfully denied him the right to exercise the duty of the professor for the subject of Surgery at the Faculty of Medicine, because he is allegedly undergoing court proceedings. The Applicant claims he has never been in court proceedings and he possesses relevant documentation confirming these claims. He calls the Notification of the Rector arbitrary and claims that his constitutionally guaranteed right to work and live has been violated by this action.

Assessment of the admissibility of the Referral

21. In order to be able to adjudicate the Applicant's Referral, the Court needs first to examine whether the Applicant has fulfilled all admissibility requirements laid down in the Constitution.

22. In this relation, the Court refers to Article 113.7 of the Constitution, which states that:

"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."*

The Court also takes into account: Article 46 of the Law on the Constitutional Court of the Republic of Kosovo, concerning individual referrals, which stipulates that:

The Constitutional Court receives and processes a referral made in accordance with Article 113,

Paragraph 7 of the Constitutional, if it determines that all legal requirements have been met.

23. By examining documents submitted in the Referral by the Applicant, the Court finds that the Applicant has not fulfilled the rule for the exhaustion of legal remedies because he has not provided evidence, except a complaint filed with the UP Senate, that he had followed any other legal remedy or that he has received a decision on merits from an administrative body or regular Court prior to addressing the Constitutional Court with a Referral.

24. In this direction, the Court stresses that the legal requirement of the exhaustion "of all legal remedies provided by law" is absolutely necessary as an essential requirement to submit a Referral with the Constitutional Court, and in addition to being a legal requirement provided by the Constitution and the Law on the Constitutional Court, it is also provided by Rule 36, para (a) of the Rules of Procedure of the Constitutional Court as an essential legal requirement.

25. Always referring to this admissibility requirement, the Court notes that Article 25.5 of the **Law No. 2002/03 on Higher Education in Kosovo, promulgated** by Michael Steiner, Special Representative of the Secretary General, on 12 May 2003, clearly stipulates that:

"Academic and other staff of providers of higher education shall have the right to challenge any decision or action of a provider of higher education in relation to them before the Ministry and then to a court of competent jurisdiction."

26. From what was said in the foregoing paragraphs, it is clear that the Applicant has not used this legal possibility to use the legal remedy.

27. The Court wishes to emphasize that the rationale of the rule for the exhaustion of legal remedies is to afford the authorities concerned, including the courts, the opportunity to prevent or

put right the alleged violation of the Constitution. This rule is based on the assumption that the legal order of Kosovo will provide an effective remedy for the violation of constitutional rights (see, *mutatis mutandis*, ECHR, Selmouni v. France, no. 25803/94, Decision of 28 July 1999).

28. The Court had applied such a rationale while examining previous Referrals in the Cases: KI 55/10, Hamide Osaj, Request for Constitutional Review of Supreme Court of Kosovo Judgment, Pkl. nr. 43/2010, dated 4 June 2010; Case No. KI 20/10 Muhamet Bucaliu against the Decision of the State Prosecutor KMLC. Nr. 09/10, dated 24 February 2010 (Decision of Constitutional Court, dated 15 October 2010).

29. Under these circumstances, the Referral is **inadmissible** because its Applicant **has not exhausted** all legal remedies before addressing the **Constitutional** Court.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution of the Republic of Kosovo, Article 47.2 of the Law on the Constitutional Court and Rule 36.1 (a) of the Rules of Procedure, on 14 June 2011, unanimously

DECIDES

I. TO REJECT the Referral as inadmissible;

II. This Decision shall be notified to the Parties and shall be published in the Official Gazette in accordance with Article 20-4 of the Law on the Constitutional Court; and

III. This Decision is effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Kadri Kryeziu	Prof. Dr. Enver Hasani

KI 90,91,92,93,94 and 95/10, dated 10 February 2012 - Constitutional Review of the Decision of the Kosovo Agency for Privatization on privatization of the new Enterprise Jatex - industrial complex LLC, during the 45 A wave of privatization

Case KI 90,91,92,93,94 and 95/10, decision of the Kosovo Privatization Agency for privatizing the New Jatex Company industrial compound on the 45 A wave of privatization
Keywords; individual referral, non exhaustion of legal remedies, decision on inadmissibility,

The Representatives requested the constitutional review of the Kosovo Privatization Agency's decision to privatize the New Jatex Company industrial compound, in the 45 A wave of privatization.

Applicants claim that as shareholders the decision of the KAP has violated their rights to property guaranteed by the Constitution of the Republic of Kosovo, more precisely according to them there was violation of Article 46 paragraph 1 and 3 of the Constitution.

Applicants have also stated that even though they have requested for interim measures from the Special Chamber of the Supreme Court they do not recognize the jurisdiction of this court, therefore they request from the Constitutional Court to render a decision based on merits of the case.

The Court rejects the Referral as inadmissible, given that Applicants did not exhaust all the legal remedies provided by law, before addressing the Constitutional Court

Pristine, 27 January 2012
No. ref.: 190/12

RESOLUTION ON INADMISSIBILITY

in

Case No.KI 90,91,92,93,94 and 95/10,
Joint Decision UR 90-10-bk/10 dated 8 October 2010

Applicants

All the shareholders of the Holding "Jatex-Conitex" JSC, Holding "Jatex-Modatex" JSC, Holding Jatex-Jatex Commerce JSC, Holding Corporacy "Jatex" JSC, Holding "Jatex-Junitex" JSC, Holding"Jatex-Tricotex" JSC

Represented by lawyers: Mr. Gazmend Nushi and Mr.Ahmet Hasolli

Constitutional Review of the Decision of the Kosovo Agency for Privatization on privatization of the new Enterprise Jatex - industrial complex LLC, during the 45 A wave of privatization

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Enver Hasani, President
Kadri Kryeziu, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Ivan Čukalović, Judge

Gjyljeta Mushkolaj, Judge and
Iliriana Islami, Judge

Applicants

1. Applicants are the shareholders of the Holding Corporacy "Jatex", with its units: holding "Jatex-Conitex" JSC, Holding 'Jatex-Modatex" JSC, Holding Jatex-Jatex Commerce JSC, Holding "Jatex-Junitex" JSC, Holding "Jatex-Tricotex" JSC based in Gjakova and Junik, represented by authorized lawyers Mr. Gazmend Zhushi and Mr. Ahmet Hasolli.

Challenged Decisions

2. Challenged decisions at the Constitutional Court are:

   Decision of KAP on approval of the recommendations for treatment of enterprises; "Emin Duraku" "Jatex" and "Deva" as socially owned enterprises, dated 29 April 2010, and

   Decision of KAP on announcing the 45 A wave of privatization to privatize the new Jatex Enterprise - industrial complex LLC.

Subject Matter

3. Decision of the KAP on announcing the 45 A wave of privatization to privatize the new Jatex Enterprise - industrial complex LLC, which according to the representatives of the shareholders has been taken without legal basis and by such an action the KAP has violated Articles 46.1 and 46.3 of the Constitution of Kosovo (the right to own property) in conjunction with Article 1 of the Protocol of the European Convention on Human Rights.

Legal Basis

4. Article 113.7 of the Constitution of the Republic of Kosovo (hereafter: the "Constitution"), Article 47 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo of 16 December 2009 (hereafter: the "Law"), and Rule 56 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the "Rules of Procedure").

Proceedings before the Court

5. On 29 September 2010 representatives of the Applicants, lawyers Mr. Gazmend Nushi and Mr. Ahmet Hasolli submitted the Referral to the Constitutional Court describing as illegal decisions of KAP, dated 29 April 2010, on approval of the recommendations for treatment of "Emin Duraku", "Jatex" and "Deva" enterprises as SOE, as well as the decision of the KAP on announcing the 45 A wave of privatization to privatize the new Jatex Enterprise – industrial complex LLC.

6. On 9 November 2010 the Constitutional Court notified the parties on the case registration and asked for their eventual opinion regarding the Referral.

7. On 23 November 2010 and on 10 March 2011 the Constitutional Court has received in written the answer and comments from the Kosovo Agency for Privatization, regarding the Referral.

8. On 12 May 2011 after reviewing the report of Judge Rapporteur Kadri Kryeziu, the Review Panel composed of Judges: Snezhana Botusharova(presiding), Robert Carolan and Altay Suroy recommended to the full Court the inadmissibility of the Referral.

Summary of the facts

9. According to the applicants of the six former BOAL, now claimants, in 1990 in compliance to the legislation applicable at that time, they had separated from the Industrial Combine

"Emin Duraku" and been transformed into joint stock companies. Such transformation, according to them, had been done in compliance with the Law on Business Organizations (Offi. Gazz. of SFRY no. 77/88, 40/89, 46/90).

10. On 16 August 1991 taking into account the fact that many stages of their production were related to each other and the fact that all the companies except "Junitex" were located at the same complex in Gjakova, they took a DECISION on establishing HOLDING CORPORACY "JATEX" JSC.

11. With this decision the companies decided that they carry 51% of their shares to the 'HOLDING CORPORACY' and keep 49 % for themselves.

12. On 22 November 1991 the District Commercial Court in Gjakova registered Holding Corporacy "Jatex" by Decision No. Fi.2917/91, the District Commercial Court in Gjakova also registered the other joint enterprises, which have filed their request with the Constitutional Court.

13. On 24 December 1992 Holding took the Decision 06-194/2 on emanation of internal shares in APOENA, and each shareholder was provided with these action sheets.

14. In such a form of structuring the Holding Corporacy "Jatex" and other joint enterprises have functioned till 1999.

15. Acting in compliance with the Judgment of the District Commercial Court in Prishtina VII.C 29/06, Ministry of Trade and Industry – Office for Registration of Business, Enterprises and Trade Name in Kosovo, registered Holding "Jatex" and all other companies, which now have submitted the Referral to the Constitutional Court, by qualifying them as **"other enterprises under the jurisdiction of KTA".**

16. On 22 April 2010 Kosovo Agency for Privatization, issued a press release through which informs the public about the decision of the KAP board, that enterprises "Emin Duraku", "Jatex" and "Deva" from Gjakova shall be treated as socially owned enterprises.

17. On 20 May 2010 KAP had sent a special notice in writing to "Jatex" Enterprise regarding the Decision of the KAP Board on qualifying the "Emin Duraku" Company in Gjakova, part of which before the separation was "Jatex", as a 100% socially owned company, putting it under the jurisdiction of the KAP, and at the same time informed them on legal basis upon which the decision was made.

18. On 30 August 2010 KAP had sent a notice on refusing the appeal of "Holding Corporacy Jatex" and informing them that the KAP will continue to administer "Jatex" Company as a social enterprise, and instructed them that this company can appeal with Special Chamber of the Supreme Court.

19. On 7 September 2010 the KAP has announced the 45A wave of privatization, publishing the new enterprises: "Jatex fabrika e re"LLC and "Jatex Kompleksi Industrial", part of which as to KAP's additional clarification are Holding Corporacy "Jatex", holding "Jatex-Conitex" JSC, Holding "Jatex-Modatex" JSC, Holding jatex-jatex Commerce JSC, Holding "Jatex-Junitex" JSC and Holding "Jatex-Tricotex" JSC.

20. On 21 October 2010 KAP, rendered a Resolution **SCC- 10 - 0215** with which they approved the request of the plaintiff and ENFORSED **interim measures** by STOPPING the sale of the announced assets for privatization of the new enterprise "Jatex Fabrika e Re" LLC and new factory "Jatex Kompleksi Industrial" LLC until the final decision on solving the suit with this Court.

21. From the submitted documentation of the case file as well as from the answers of the parties involved in this case, it's observed that the proceedings with the Special Chamber of the Supreme Court are still pending.

Applicants' allegations

22. Applicants claim that as shareholders the decision of the KAP has violated their rights to property guaranteed by the Constitution of the Republic of Kosovo, more precisely

according to them there was violation of Article 46 paragraph 1 and 3 of the Constitution.

23. Applicants of the Referral also complain that the Kosovo Agency for Privatization did not consider the legal status of the Holding "Jatex-Corporacy" JSC enterprise and other abovementioned units, defined by the legislation applicable during 1991 and continuous operation of these enterprises with the same status until 1999, when the same arbitrarily decided on 29 April 2010 to define the new legal status of these enterprises qualifying them and their assets as 100% socially owned, and unfairly put them under KAP's management. With this decision, which according to them is unconstitutional, without their approval they have been deprived of their ownership rights on stocks acquired through an absolutely legal manner, according to them.

24. Applicants have also stated that even though they have requested for interim measures from the Special Chamber of the Supreme Court they do not recognize the jurisdiction of this court, therefore they request from the Constitutional Court to render a decision based on merits of the case.

Comments of the Public Authority

25. On 23 November 2010 the Kosovo Agency for Privatization sent a written reply regarding the case KI 95/10, stating that "Applicants have filed their complaint with the Special Chamber of the Supreme Court as well, case file no.SCC-10 - 0215 and that this Chamber on 21 October 2010 has approved the interim measures through Judgment no. SCC- 10-0215 by which the KAP is not allowed to sell the announced assets for privatization until the final decision on this claim is made".

26. Acting in accordance to the request of the Constitutional Court for additional clarification, KAP on 10 March 2001 has submitted additional reply regarding the claim through which they explained that: all joint stock companies which have submitted requests to the Constitutional Court are assets of the

Enterprise "Jatex Fabrika e re" and the new Enterprise "Jatex Kompleksi Industrial" JSC, which have been tendered in the 45A wave of privatization.

Admissibility of the Referral

27. In order to be able to judge on Applicants' Referral, the Court preliminarily assesses whether the party meets the requirements of admissibility and in that regard refers to the Article 113.7 of the Constitution which states:

"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".

In conjunction with Article 21.4 of the Constitution defining that:

"*Fundamental rights and freedoms set forth in the Constitution are also valid for legal persons to the extent applicable.*"

28. Having reviewed all the submitted documentation of the case file by the parties, the Court in an uncontested manner finds that the parties which have submitted the Referral to the Constitutional Court also have filed their suit with the Special Chamber of the Supreme Court, which Court did not issue a final decision yet and the proceedings are still pending, what implies the fact that the parties have not exhausted all the legal remedies provided by law and in these conditions did not meet the criteria for admissibility of the Referra.l

29. The Court cannot accept as reasonable the request of Applicants' for not recognizing the jurisdiction of the Special Chamber of the Supreme Court, when by UNMIK Regulation **2002/13** (of 13 June 2002 **)** Article 1.1 clearly defines: by this

establishes the **Special Chamber of the Supreme Court of Kosovo** on Kosovo Trust Agency Related Matters (hereafter: "Special Chamber").

30. Constitutional Court also realizes the fact that it's exactly this "legal decision" of this Special Chamber of the Supreme Court (Resolution on interim measures No.SCC- 10-0215) which suspended the privatization of enterprises these Applicants have interest on, and this resolution was taken based on their representatives Referral, therefore, the Constitutional Court cannot render any decision as long as the proceedings with the Supreme Court are pending.

31. The Court wishes to emphasize that the justification for the rule of exhaustion of remedies is made in order to provide the concerned authorities, including the courts, the opportunity to prevent or remedy the alleged violation of the Constitution. This rule is based on the assumption that the legal order of Kosovo will provide efficient means of law for violation of constitutional rights (see, mutatis mutandis, ECHR, Selmouni v. France no. 25803/94, Decision of 28 July 1999).

32. Similar reasoning the Court applied during the previous reviews of Referrals for cases: KI 55/10 Hamide Osaj requesting the Constitutional Review of the Judgement of the Supreme Court of Kosovo, Pkl. No. 43/2010, dated 4 June2010 ; Case No. KI *20/10* Muhamet Bucaliu against the Decision of the State Prosecutor KMLC.No.*09/10* od 24 February 2010(Decision of Constitutional Court , dated 15 October 2010**)**

33. In these circumstances, the Referral is **inadmissible** because the parties **did not exhaust all legal remedies** before addressing to the **Constitutional** Court and the Applicants did not meet the criteria of the admissibility, therefore

FOR THESE REASONS

Pursuant Article 49 of the Law on the Constitutional Court, and Rule 36 paragraph 1 (a) of the Rules of Procedure, the Constitutional Court on the session held on 12 May 2011 unanimously:

DECIDED

I. TO REJECT the Referral as inadmissible, given that Applicants did not exhaust all the legal remedies provided by law, before addressing the Constitutional Court;

II. This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20 (4) of the Law on the Constitutional Court; and

III. This Decision is effective immediately.

Judge Rapporteur **President of the Constitutional Court**

Kadri Kryeziu Prof. Dr. Enver Hasani

KI 19/09 dated 10 February 2012- Decision of the Supreme Court of Kosovo, No 120/2008, dated 1 January 2009.

Case KI 19/09, decision dated 30 January 2012
Keywords: individual referral, manifestly ungrounded referral, KEK Disciplinary Committee, right to work, violation of individual rights and freedoms.

The applicant filed the referral pursuant to Article 113.7 of the Constitution of Kosovo, thereby claiming that his constitutional rights were violated by the judgment of the Supreme Court of Kosovo, which approved the KEK complaint, thereby annulling the judgment of the District Court, and thereby supporting the dismissal of the applicant from working relations with KEK. The applicant claimed that the Supreme Court had violated his right to work, and constitutional rights guaranteed by Articles 49 and 54 of the Constitution of Kosovo.

The Court found that the referral of applicant was inadmissible, pursuant to Rule 56.2 of the Rules of Procedure, since the applicant had failed in submitting any prima facie evidence demonstrating such violation of constitutional rights. The Court argued its decision thereby reminding that it is not its role, according to the Constitution, to act as a Court of Appeal, or a fourth instance court on the decisions rendered by regular courts. By quoting the ECtHR decision in the case of Shub v. Lithuania, the Court further reasoned that after the review of general proceedings before regular courts, it did not find any indication that the general proceedings have been unfair or flawed with arbitrarity, and that the Supreme Court had provided sufficient reasons in finding the complaints of applicants ungrounded. Due to the reasons provided above, the Court decided to find the referral of Applicants as inadmissible.

Pristine, 30 January 2012
Ref. No.: 196/12

RESOLUTION ON INADMISSIBILITY

in

Case No. KI 19/09

Applicant

Mehmet Llapashtica

vs.

Decision of the Supreme Court of Kosovo, No 120/2008, dated 1 January 2009.

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Enver Hasani, President
Kadri Kryeziu, Deputy President
Robert Carolan, Judge
Altay Suroy, Judge,
Almiro Rodrigues, Judge
Ivan Cukalovic, Judge
Snezhana Botusharova, Judge
Gjyljeta Mushkolaj, Judge and
lliriana Islami, Judge

Applicant

1. The Applicant is Mr. Mehmet Llapashtica, residing in Pristina.

Challenged Decision

2. Decision of the Supreme Court of Kosovo, No 120/2008, dated 1 January 2009.

Subject Matter

3. The Applicant filed a Referral with the Secretariat of the Constitutional Court (hereinafter: the "Court"), alleging that his right to work protected by the Constitution, in particular, Article 49, his right to work, had been violated by the Kosovo Energy Corporation (hereinafter referred to as "KEK").

Legal basis

4. Article 113 (7) of the Constitution of the Republic of Kosovo (hereinafter: the "Constitution"); Article 22 (7) and (8) of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo of 16 December 2008 (hereinafter: the "Law"); and Rule 56(2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the "Rules of Procedure").

Proceedings before the Court

5. On 19 September 2009 the Applicant filed a Referral with the Secretariat of the Court.

6. The President of the Court appointed Judge Ivan Čukalović to be the Judge Rapporteur and appointed a Review Panel comprising of Judges Robert Carolan (presiding) and Judges Almiro Rodrigues and Gjyljeta Mushkolaj. The Review Panel considered the Report of the Reporting Judge and made a recommendation on the Referral to the full Court.

7. In response to the notification of the Referral sent to KEK the Legal Office of KEK replied to the Constitutional Court and included, *inter alia,* the Disciplinary complaint and the minutes of an oral hearing held by KEK into the matter, dated, 28 April 2004.

8. The Review Panel considered the report of the Judge Rapporteur on 16 June 2010 and made a recommendation to the Court that the Referral was inadmissible.

Summary of the facts

9. The Applicant was employed by the Kosovo Energy Corporation (KEK) as an electro-fitter in Pristina. Disciplinary action was taken by KEK against the Applicant arising from the unauthorized taking of an electrical transformer, the property of KEK. During the course of an oral review the Applicant denied having taken the transformer without permission but he admitted that, with others, he had received €800 for works carried out privately outside working hours.

10. Through a Disciplinary Commission dated 28 April 2004 KEK found the Applicant had violated his employment duties and they terminated his contract.

11. At a second instance Disciplinary Commission he appealed this Decision where he alleged that he did not transfer the transformer at the request of others but that he had the permission of the head of the KEK district. This second instance Disciplinary Commission rejected his appeal by decision dated 2 June 2006.

12. The Applicant appealed his dismissal to the Municipal Court of Pristina who upheld his suit and the Court in its Judgment Cl. Br. 167/2006, dated 28 September 2006 ordered that the Applicant be returned to work. This Decision was appealed by KEK to the District Court of Pristina which through its Judgment AC. nr. 1016/2006, dated 31 July 2007 rejected the Appeal of KEK and upheld the Decision of the Municipal Court.

13. KEK appealed this Decision to the Supreme Court of Kosovo which through its Judgment, Rev. nr. 120/2008, dated 1 January 2009, upheld the Appeal of KEK and quashed the Judgment of the District Court thereby upholding the dismissal of the Applicant from employment with KEK. The Supreme Court found that the Municipal Court wrongly applied the material law when it found Applicant's suit well founded.

14. The Supreme Court stated that the Essential Labour Law of Kosovo, UNMIK Regulation No. 2001/27, which entered into force on 8 December 2001, provided for the termination of a labour contract. The Court noted that the Law provided for termination of the labour contract in cases of serious misconduct including theft, destruction of property, damage or unauthorised use of employer assets. For these reasons the Supreme Court found the Appeal of KEK well founded and reversed both Judgments of the Municipal and District Courts and rejected the Applicant's claim.

Applicant's allegations

15. The Applicant alleges, without further elaboration, that his right to work has been violated.

Assessment of the admissibility of the Referral

16. Article 49 of the Constitution provides that:

The right to work is guaranteed.

17. Article 54 of the Constitution provides that:

Everyone enjoys the right of judicial protection if any right guaranteed by this Constitution or by law has been violated or denied and has the right to an effective legal remedy if found that such right has been violated.

18. The Constitutional Court reiterates that it is not its task under the Constitution to act as a court of appeal, or a court of fourth

instance, in respect of the decisions taken by ordinary courts. It is the role of the latter to interpret and apply the pertinent rules of both procedural and substantive law (see, *mutatis mutandis*, Garcia Ruiz v. Spain [GC), *no. 30544/96*, § 28, European Court on Human Rights [ECHRJ1999-1).

19. The Constitutional Court can only consider whether the evidence has been presented in such a manner and the proceedings in general, viewed in their entirety, have been conducted in such a way that the Applicant had a fair trial (see, *Constituional Court Judgment of 23 June 2010, in the Case No. KI 40/09, Imer Ibrahimi and 48 other former employees of the Kosovo Energy Corporation against 49 individual judgments of the Supreme Court of the Republic of Kosovo, paras 66 and 67).*

20. The Applicant merely disputes whether the Supreme Court correctly applied the applicable law and merely disagrees with the factual findings of the Supreme Court decision with respect to the employee status of the successful recruits for the disputed position it appears that the Applicant's claim is inadmissible

21. Having examined proceedings before the ordinary cours as a whole, the Constitutional Court does not find that the relevant proceedings were in any way unfair or tainted by arbitrariness (see *mutatis mutandis*, Shub v. Lithuania, ECHR Decision as to the Admissibility of Application *no_17064/06* of 30 June 2009)_

22. Furthermore the Applicant had not submitted any prima facie evidence indicating a violation of his rights under the Constitution (*see Vanek v. Slovak Republic, ECHR Decision as to the Admissibility of Application no. 53363/99 of 31 May 2005*).

23. It follows that the Referral is manifestly ill-founded and must be rejected.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution of the Republic of Kosovo, Article 22 (7) and (8) of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo and Rule 56.2 of the Rules of Procedure, unanimously

DECIDES

I. TO REJECT the referral as Inadmissible;

II. This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20.4 of the Law; and

III. The Decision is effective immediately.

Judge Rapporteur **President of the Constitutional Court**

Ivan Čukalović Prof. Dr. Enver Hasani

KI 14/10 and KI 15/10 dated 10 February 2012- Ministry of Internal Affairs, Kosovo Judicial Council and Ministry of Justice

Cases: KI 14/10 and KI 15/10.
Keywords; individual referral,

The Applicants complain that their right to freedom of movement as guaranteed by Article 35 (2) of the Constitution has been violated. The Applicants' argue that the Municipal Court in Prishtina unfairly and erroneously interpret the applicable legal provisions failing to provide certificates in which, as alleged is a necessary document for the Ministry of Internal Affairs to issue any passport of the Republic of Kosovo.

The Applicants' requested imposition of a interim measures in order "to avoid further discrimination and violations of the right to freedom of movement of citizens with the conditioning of any ongoing criminal procedure".
For the foregoing reasons, further examination of the Referrals is discontinued and the Court finds that there are no special circumstances regarding respect for human rights which would require further examination of the Referral.
The Constitutional Court decides to strike out the referral.

Pristine, 30 January 2012
Ref. No.: TK 194/12

DECISION TO STRIKE OUT THE REFERRAL

in

Case No. KI 14/10 and KI 15/10

Besnik Musa and Hekuran Muhaxhiri

against

Ministry of Internal Affairs,

Kosovo Judicial Council

and

Ministry of Justice

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Enver Hasani, President
Kadri Kryeziu, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Ivan Čukalović, Judge
Gjyljeta Mushkolaj, Judge and
Iliriana Islami, Judge

Applicants

1. The Applicants' are Mr. Besnik Musa and Mr. Hekuran Muhaxhiri residing in Gjakova. In the proceedings before the Constitutional Court they are represented by Mr Teki Bokshi, a lawyer from Gjakova.

2. The Present cases are similar to KI 06/10 "Valon Bislimi against the Ministry of Internal Affairs, the Judicial Council and the Ministry of Justice. In this case, the Court decided that there has been a violation of the Applicant's right to freedom of movement guaranteed by Article 35 (2) of the Constitution in conjunction with Article 2 of Protocol No.4 to the European Convention on Human Rights.

In addition, the Court has decided that the practice based on Memorandum of Understanding of 21 August 2008, applied by the Ministry of Internal Affairs and Municipal Court prevents the Applicant in enjoying his right to an effective legal remedy in violation of Article 54 of the Constitution in conjunction with Article 13 of the European Convention on Human Rights.

The Constitutional Court found that the Ministry of Internal Affairs should decide on the Applicant's application for passport of 27 April 2009 in accordance with Law on Travel Documents within 30 days after receipt of its Judgment. *(See Judgement KI 06/10 dated 30 October 2010).*

Subject matter

3. The subject matter of these Referrals is the assessment of the constitutionality of the alleged violation of the Applicant's freedom of movement as guaranteed by Article 35 (2) of the Constitution of the Republic of Kosovo (hereinafter referred to as: the Constitution). According to the Applicants their rights to leave their country have been violated by refusing the issuance of their passports which is required to travel abroad. The Applicants further argued that in the Kosovo legal system there is no effective legal remedy to pursue to address his right to leave the country.

4. The Applicants' through their representative have also submitted the requests for interim measures in order to avoid "further discriminations and violations of the right to freedom of movement of citizens with the conditioning of any ongoing criminal procedure."

Legal basis

5. The Referrals are based on Articles 113.7 of the Constitution, Articles 20 and 27 of the Law No. 03/L-121 on the Constitutional Court of the Republic Kosovo (hereinafter referred to as: the Law) and Rule 32 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter referred to as: the

Rules of Procedure).

Summary of the facts

6. The Applicants supports their Referrals solely by reference to the documents referred to in the Referral made to the Court.

The Applicant's complaints

7. The Applicants complain that their right to freedom of movement as guaranteed by Article 35 (2) of the Constitution has been violated. The Applicants' argue that the Municipal Court in Gjakova unfairly and erroneously interpret the applicable legal provisions failing to provide certificates in which, as alleged is a necessary document for the Ministry of Internal Affairs to issue any passport of the Republic of Kosovo.

8. The Applicants' also complain that there are no legal remedies in Kosovo that can be used to remedy their situation. Therefore according to them there is a need to create mechanisms within the State for the citizens of Kosovo that are in their situation to prevent further violation of the right to be given a passport.

9. The Applicants' argue that their right to freedom of movement have been violated due to the erroneous application of Article 271(2) of the Kosovo Criminal Procedure Code (CPC) as well as Articles 27.1.item A and Article 28.2 of the Law on Travel Documents. According to the Applicants' both laws provide that the limitation of the right to free of movements caused by the refusal of the issuance of a passport can only be imposed in cases where a prior decision of the competent court has been issued.

10. The Applicants' also argue that the Ministry of Internal Affairs does not have any legal basis to deprive them of their constitutional right based on absence of the certificate issued by the Court that a person is not under investigation. In substance, according to the Applicants, the restriction imposed on their right to freedom of movement is not based on law but it is a matter of erroneousness interpretation of the laws and practice, including the misinterpretation of a Memorandum of

Understanding entered into between the Ministry of Internal Affairs, the Kosovo Judicial Council and the Ministry of Justice, dated 21 August 2008.

11. Finally, the Applicants' requested imposition of a interim measures in order "to avoid further discrimination and violations of the right to freedom of movement of citizens with the conditioning of any ongoing criminal procedure".

Summary of the Proceeding before the court

12. The Applicants' submitted their Referrals to the Constitutional Court on 5 February 2010.

13. On 19 February 2010, the President, by Order No.GJR. 06/10, appointed Judge Kadri Kryeziu as Judge Rapporteur. On the same date, the President, by Order No.KSH. 06/10, appointed the Review Panel composed of Judge Ivan Čukalović, Judge Enver Hasani and Judge Iliriana Islami.

14. The Constitutional Court on 25 March 2011, consequent to the Judgment of the Constitutional Court KI 06/10 dated 30 October 2010 has requested from the Applicants' to inform the Constitutional Court whether they have received their passports.

15. On 6 April 2011 the Applicants' legal representative informed the Constitutional Court that following the Judgement of the Constitutional Court KI 06/10, the Applicants have been issued with passports.

16. Consequently, the Applicants' representative informed the Constitutional Court that their claim had been satisfied.

17. On 16 May 2011, after having considered the Report of the Judge Rapporteur, the Review Panel made a recommendation to the full Court to strike out the referral.

The Court's Assessment

18. In order to be able to decide on the Applicants' request the Constitutional Court needs first to examine, whether the conditions prescribed in Rule 32 of the Rules of Procedure have been satisfied.

19. Rule 32 of the Rules of Procedure, in the pertinent part, reads as follows:
1) A party may withdraw a filed referral or a reply at any time before the beginning of a hearing on the referral or at any time before the Court decision is made without a hearing.

(2) Notwithstanding a withdrawal of a referral, the Court may determine to decide the referral.

(3)The Court shall decide such a referral without a hearing and solely on the basis of the referral, any replies, and the documents attached to the filings.

(4) The Court may dismiss a referral when the Court determines a claim to be moot or does not otherwise present a case or controversy.

20. For the foregoing reasons, further examination of the Referrals is discontinued and the Court finds that there are no special circumstances regarding respect for human rights which would require further examination of the Referrals (see, *mutatis mutandis*, the decision of the Constitutional Court in the case of Rafet Hoxha KI 24/09 dated 24 March 2010).

FOR THESE REASONS

The Constitutional Court, pursuant to Article 20 of the Law and Rule 32 of the Rules of Procedure, unanimously,

DECIDES

I. TO STRIKE OUT the Referral.

II. This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20.4 of the Law.

III. This Decision is effective immediately.

Judge Rapporteur **President of the Constitutional Court**

Kadri Kryeziu, Prof. Dr. Enver Hasani

KI 30/09 dated 15 February 2012- Constitutional Review of the Decision of the Supreme Court of Kosovo, A.No. 1360/08, dated 19 June 2009

Case KI 30/09, decision dated 30 January 2012
Keywords: Directorate for Economy and Finance, Directorate for Property Issues, individual referral, manifestly ungrounded referral, Kosovo comprehensive status settlement proposal, violation of individual rights and freedoms, land expropriation.

The applicants filed the referral pursuant to Article 113.7 of the Constitution of Kosovo, thereby claiming that their constitutional rights were violated by the judgment of the Supreme Court of Kosovo, which upheld the Decision of the Directorate for Property Issues of the Municipality of Gjakova on the request of Applicants for restoration of property. The applicants claimed that the Supreme Court has violated their rights guaranteed by Articles 24 and 29 of the Constitution of Kosovo, and Article 1 of Protocol 1 to the European Convention for Protection of Human Rights and Freedoms.

The court found that the applicants' referral was inadmissible, pursuant to Rule 56 of Rules of Procedure, due to the fact that applicants had not presented any evidence to prove the allegations on violations of constitutional rights in any way. The Court argued its decision thereby reminding that it is not its role, according to the Constitution, to act as a Court of Appeal, or a fourth instance court on the decisions rendered by regular courts. By quoting the ECtHR decision in the case of Vanek v. Slovac Republic, the Court further reasoned that after the review of documents filed by the Applicants, it did not find any indication that the general proceedings have been unfair or flawed with arbitrarity, and that the Supreme Court had provided sufficient reasons in finding the complaints of applicants ungrounded. Due to the reasons provided above, the Court decided to find the referral of Applicants as inadmissible.

Pristine, 30 January 2012
Ref. No. RK 193/12

RESOLUTION ON INADMISSIBILITY

in

Case No. KI 30/09

Applicant

Agim Iliaz Dyla and Others

Constitutional Review of the Decision of the Supreme Court of Kosovo, A.No. 1360/08, dated 19 June 2009

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Enver Hasani, President
Kadri Kryeziu, Deputy-President
Robert Carolan, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Ivan Čukalović, Judge
Gjyljeta Mushkolaj, Judge and
Iliriana Islami, Judge

Applicants

1. Applicants are Agim Iliaz Dyla, Njazi Iliaz Dyla, and Myrteza Iliaz Dyla. Applicants are two brothers and one sister who all reside in Gjakova and are representing themselves.

The Contested Decision

2. The challenged decision is that of the Supreme Court of Kosovo, A.No.1360/08, dated 19 June 2009.

Subject Matter

3. The subject matter of the Referral concerns the request of the Applicants to annul a decision on expropriation of property originally made, in 1969, by the Municipality of Gjakova.

Legal Basis

4. Articles 113 of the Constitution of the Republic of Kosovo (hereinafter referred to as: the Constitution), Article 22 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter referred to as: the Law), and Article 56 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter referred to as: the Rules of Procedure).

Proceedings before the Court

5. On 14 July 2009, the Applicants submitted their Referral to the Court.

6. On 29 January 2010, pursuant to Article 22.2 of the Law and Article 33.2 of the Rules of Procedure, the Court sent a copy of the Referral to the Supreme Court of Kosovo for a reply. The Supreme Court of Kosovo did not file a formal response to the Referral.

7. On 15 June 2010, the Reporting Judge, Gjylieta Mushkolaj, presented her Report to the Review Panel, which was composed of Judges Robert Carolan (Presiding), Snezhana Botusharova, and Kadri Kryeziu.

Summary of the facts

8. The Municipality of Gjakova on 11 June 1969, by a Decision Number 03-477-1-1069 of the Directorate for Economy and Finance, expropriated cadastral parcels No. 4350/1 and 4350/02 from the father of the Applicants. The parcels were expropriated in accordance with the needs of the "Services and Repairs Division of 'Kompresor' – Gjakova," a socially owned enterprise.

9. On 09.04.2003, the Applicants submitted a Request to the Municipal Government of Gjakova to annul Decision 03-477-1-1069, dated 11.06.1969.

10. Not having receiving a decision from the Directorate for Economy and Finance, the Applicants submitted another request for continuance of the proceedings to the Directorate on 05.07.2005.

11. On an unreported date, the Directorate declared itself incompetent to deal with the matter and submitted the case to the Special Chamber of the Supreme Court of Kosovo for Kosovo Trust Agency Related Matters. The Special Chamber, it is alleged, however, never received the case.

12. The Applicants submitted another complaint on the administrative silence of the Directorate. As a result, the Kosovo Cadastral Agency issued Conclusion No. 421/07, dated 17.07.2007, which ordered the Directorate to deliberate on the matter within 15 days of the Conclusion.

13. On 11.09.2008, the Directorate for Property-Legal Matters of the Municipality of Gjakova issued Decision No. 11-465-6/03-08, which rejected the Applicants' request for de-expropriation.

14. The Applicants appealed the decision to the Municipal Government of Gjakova, and, on 05.11.2008, the Mayor of Gjakova issued Decision No. 11-465-06/08-08, which rejected the request for appeal.

15. Applicants then submitted an appeal to the Supreme Court of Kosovo. On 19.06.2009, the Supreme Court issued Judgment A.No. 1360/08, which upheld the Decision of the Directorate for Property-Legal Matters of the Municipality of Gjakova, No. 11-465-6/03-08, dated 11.09.2008.

Applicant's Allegations

16. Applicants complain that Decision No. 03-477/1-1969 of the Directorate for Economy and Finance of the Municipality of Gjakova, which expropriated the disputed land, was made for a

business interest rather than for a public interest. The Applicants allege that the public interest was required by law.

17. Applicants also complain that the Directorate for Property-Legal Matters for the Municipality of Gjakova unduly delayed deciding on the matter. Applicants state that this delay included ignoring the time limits prescribed by law and the Kosovo Cadastral Agency.

18. Applicants further allege that the Gjakova Municipal Government and the Supreme Court of Kosovo wrongly determined the applicable law concerning expropriations. The Government and Supreme Court applied the Kosovo Law on Expropriation (Official Gazette of SAPK, No. 21/78), as amended by the Law on Amendments and Supplements to the Law on Expropriation (Official Gazette of SAPK, No. 46/86). Applicants, however, claim that the applicable law was the Serbian Law on Expropriations.

19. For these reasons, Applicants claim that Decision A.No. 1360/08 of the Supreme Court of Kosovo violated Articles 24 and 29 on the Constitution, as well as Article 1 of Protocol 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms, which is incorporated into the Constitution through Article 22.2.

Judgment of the Supreme Court

20. The Supreme Court of Kosovo, in its Judgment A.No. 1360/08, dated 19.06.2009, considered the allegations of Applicants as unfounded. The Supreme Court held that the case file clearly indicated that the expropriation was decided for the needs of the Socially Owned Enterprise and not for the needs of a privately owned business. The Supreme Court further stated that Applicants failed to verify their allegations in any manner.

21. In its Judgment the Supreme Court also held that the de-expropriation request of Applicants was time-barred, because, according to the Law on Expropriation (Official Gazette of SAPK, No. 21/78), the Expropriation Decision No. 03-477/1-1969 became final in 1969. Article 21.4 of the aforementioned law stipulates that a final expropriation decision may be annulled if the expropriating party did not perform the

necessary construction/development of the pre-determined facility, provided that the previous owner of the expropriated property submits an adequate request within three years from the moment when the expropriation decision has taken final form.

22. Article 21.5 further stipulates that no request for the annulment of such a decision can be submitted after 10 years have passed from the time when the expropriation decision became final.

Assessment of the Admissibility of the Referral

23. The Constitutional Court reiterates that it is not its task under the Constitution to act as a court of appeal or a court of fourth instance in respect to decisions taken by ordinary courts. It is the role of such courts to interpret and apply the pertinent procedural and substantive laws (see, *mutatis mutandis*, García Ruiz v. Spain, no. 30544/96, § 28, European Court on Human Rights [ECHR] 1999-I).

24. The Constitutional Court can only consider whether the evidence has been presented in such a manner and the proceedings in general, viewed in their entirety, have been conducted in such a way that Applicants have had a fair trial (see, among other authorities, Report of the Eur. Commission on Human Rights in the case of Edwards v. United Kingdom, App. No. 13071/87, adopted on 10.07.1991).

25. Having examined the documents submitted by Applicants, however, the Constitutional Court does not find any indication that the proceedings were in any way unfair or tainted by arbitrariness (see *mutatis mutandis* Vanek v. Slovak Republic, App. No. 53363/99, ECHR Decision of 31.05.2005). The Supreme Court gave ample reasons why Applicants' claims were unfounded and time-barred. It therefore follows that this Referral is manifestly ill-founded and must be rejected.

26. Finally, as far as the question of restitution of property is concerned, the Constitutional Court rerfers to the Comprehensive Proposal for the Kosovo Status Settlement. Annex XII of the Settlement, in its Article 2 (Legislation to be Formally Approved During or Adopted After the Transition

Period) requires the Assembly to adopt, "as a matter of priority immediately upon the conclusion of the transition period…" inter alia, a "Law of Restitution" (Article 2.13).

27. The Court would also like to point out that the Constitution of Kosovo itself, which stipulates in Article 143.3 that "The Constitution…shall be interpreted in compliance with the Comprehensive Proposal for the Kosovo Status Settlement…." The Protection of Property guaranteed by Article 46 must, therefore, also be interpreted by the Court in light of the Settlement.

28. Furthermore, Article 143.1 of the Constitution provides that "All authorities in the Republic of Kosovo shall abide by all of the Republic of Kosovo's obligations under the Comprehensive Proposal for the Kosovo Status Settlement…."

29. As to the issue of property restitution, these provisions mean, *inter alia*, that the Assembly of Kosovo is under the obligation, as a matter of priority immediately upon the conclusion of the transition period (i.e. immediately after 26.07.2007), to adopt a "Law on Restitution." The Court notes, however, that no such law has thus far been adopted by the Assembly of Kosovo.

30. The Court also notes that in its Resolution on Inadmissibility in the case of the Heirs of Ymer Loxha and Sehit Loxha, K.I. 14/09, dated 15 October 2010, the Court reminded that authorities of the Republic of Kosovo of the *obligation "to establish an independent mechanism to formulate the policy, legislative and institutional framework for addressing property restitution issues, as required by Annex VII, Article 6.1 of the Comprehensive Proposal for the Kosovo Status Settlement, and the Assembly to adopt a Law on Restitution, pursuant to Article 143 of the Constitution in conjunction with Article 2.13 of Annex XII of the Comprehensive Proposal for the Kosovo Status Settlement."*

FOR THESE REASONS

The Constitutional Court, pursuant to Article 20 of the Law and Article 56 of the Rules of Procedure by a majority vote,

DECIDES

I. TO REJECT the Referral as inadmissible;

II. This Decision is to be notified to the Parties; and

III. This Decision shall be published in the Official Gazette in accordance with Article 20.4 of the Law and is effective immediately.

Judge Rapporteur **President of the Constitutional Court**

Dr. Gjyljeta Mushkolaj Prof. Dr. Enver Hasani

KI 03/11 dated 06 March 2012 - Constitutional Review of the Agreement of Cooperation, between the Office of the State Prosecutor and the Kosovo Anti-Corruption Agency,

Case KI 03/11, Agreement for Cooperation between the State Prosecutor's Office and the Kosovo Anti-Corruption Agency.
Keywords; individual referral, unauthorized party, decision of inadmissibility

The applicant alleges that the contested decision the Constitutional Court violated Article 109, paragraph 2 and 3, of the Constitution of the Republic of Kosovo.

The court finds that the referral is inadmissible.

Pristine, 30 January 2012
Ref.No.:RK195 /12

RESOLUTION ON INADMISSIBILITY

in

Case No. KI 03/11

Applicant

Organization for Democracy, Anti-Corruption and Dignity "Çohu", Represented by Mr. Arton Demhasaj, authorized by the organization

Constitutional Review of the Agreement of Cooperation, between the Office of the State Prosecutor and the Kosovo Anti-Corruption Agency,

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Enver Hasani, President
Kadri Kryeziu, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Ivan Čukalović, Judge
Gjyljeta Mushkolaj, Judge and
Iliriana Islami, Judge

Applicant

1. The Applicant of the Referral is the Organization for Democracy, Anti-Corruption and Dignity **"ÇOHU"**, which is represented by Mr. Arton Demhasaj.

Subject matter

2. The main issue of the filed case with the Constitutional Court of the Republic of Kosovo on 11 January 2011, as stressed in the Referral is: " the Assessment of the Conflict" that contains the Agreement of Cooperation, between the Office of the State Prosecutor and the Kosovo Anti-Corruption Agency, with the Code on Criminal Procedures of Kosovo.

Legal basis

3. Article 113.7 of the Constitution of the Republic of Kosovo (hereafter: the ”Constitution”), Article 47 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo dated 16 December 2009 (hereafter: the ”Law”), and the Article 29 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereafter: “Rules of Procedure”).

Proceedings before the Court

4. On 11 January 2011,the applicant submitted a referral to the Constitutional Court

5. On 04.March 2011 Constitutional Court informed State Prosecutor and the Kosovo Anti-Corruption Agency of the filing of the Referral and requested if they had any comments deemed interesting to be reviewed by the Court regarding the issue.

6. On 23 March 2011 the Kosovo Anti-Corruption Agency sent their written response to the Constitutional Court explaining their attitude concerning the referral.

7. On 19 May 2011, after having considered the Report of the Judge Rapporteur Robert Carolan, the Review Panel, composed of judges Kadri Kryeziu (presiding), Enver Hasani and Gjylijeta Mushkolaj, members made a recommendation to the full Court on the inadmissibility of the Referral

Summary of the facts

8. On 4 June 2010 the Kosovo Anti-Corruption Agency and the Office of Kosovo State Prosecutor have signed an Agreement of Cooperation through which they established partnership relations on fighting corruption through:

   a. Exchange of information regarding corruption;

b. Cooperation on investigation of cases that result with criminal acts of corruption;

c. Mutual help and technical assistance in investigations process; and

d. Providing mutual advice on solving different problems regarding anti-corruption.

9. On 5 October 2010, the Supreme Court of Kosovo by letter Agj.No.646/2010 notified the Kosovo Anti-Corruption Agency that is not within this Court's competence to give its opinion on the agreement assigned between these two institutions and that regarding this matter the organization " ÇOHU" may eventually address to the Constitutional Court of Kosovo.

10. On 11 January 2011, Organization for Democracy, Anti-Corruption and Dignity **"ÇOHU"** through Applicant filed complaint with the Constitutional Court challenged this agreement as unconstitutional and in contrary to the Code on Criminal Procedures in Kosovo.

Alleged violations of rights guaranteed by the Constitution

11. The Applicant alleges that the decision challenged with the Constitutional Court violates the Article 109 scope 2 and 3 of the Constitution of the Republic of Kosovo.

12. The Applicant states also that the Office of the State Prosecutor and the Kosovo Anti-Corruption Agency on 4 June 2010 signed the "**agreement of cooperation"** and that the scopes 5 and 6 of this agreement are in direct conflict with Articles 220, 221, 256 and 258 of the Code on Criminal Procedures of Kosovo.

Comments of the Kosovo Anti-Corruption Agency

13. The Kosovo Anti-Corruption Agency in their written reply states that none of these scopes of the agreement between the Office of the State Prosecutor questions constitutional

dispositions of the independent institutions and are within the legal framework of the Law on Kosovo Anti-Corruption Agency.

Assessment of admissibility of the referral

14. In order to adjudicate on the Applicant's Referral, the Court initially assesses whether the requesting party has fulfilled the admissibility criteria, regarding what it refers to the Article 113.1 of the Constitution which states:

" The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties."
And Article 113.7 in connection with Article 21.4 of the Constitution which provides:"

"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".

Respectively:

"Fundamental rights and freedoms set forth in the Constitution are also valid for legal persons to the extent applicable."

15. Reviewing this Referral the Court also refers to the Article 46 of the Law on the Constitutional Court of the Republic of Kosovo, regarding individual requests providing :

"The Constitutional Court receives and processes a referral made in accordance with Article 113, Paragraph 7 of the Constitutional, if it determines that all legal requirements have been met*"*.

16. Analyzing the submitted documentation on the case by the Applicant, it is obvious that **it did not meet** the main

requirements of the Article 113.1 of the Constitution regarding the filed request by the **"authorized party"** because

17. As mentioned on paragraph 10 of this report, individuals in accordance to the Article 113.7 of the Constitution are authorized to file against public authorities when these violate their individual rights and freedoms guaranteed by the Constitution, but they are not authorized to file complaints against eventual violations by any act of any public authority on behalf of other persons as well as they are not authorized to ask from the Constitutional Court reviews on constitutionality of laws, because the Constitution of Kosovo gives such Applicant right only to the authorized persons and does not recognize the legal institution of **Actio Popularis**.

18. Consequently the Applicant lacks the active legitimacy to file a case with Constitutional Court, respectively there was a lack of locus standi, due to which the court would have to declare as inadmissible (***see mutatis mutandis Convention (Municipal Section of Antilly v. France (dec.), no. 45129/98, ECHR 1999-VIII);***

19. Furthermore, the Court notes that even if the Applicant's request would be treated as "individual" according to the Article 113.7 in connection with Article 21.4 of the Constitution, the Applicant was not able to prove the "**status of the victim caused by the act of the public authority"** as defined by Article 34 of European Convention on Human Rights **(**see mutatis mutandis *Lindsay v. the United Kingdom*, no. 31699/96, Commission decision of 17 January 1997, 23 E.H.R.R. *Agrotexim and Others v. Greece*, judgment of 24 October 1995, Series A no. 330-A, pp. 22-26, §§ 59-72; *Terem Ltd, Chechetkin and Olius v. Ukraine*, no. 70297/01, § 28, 18 October 2005; *Veselá and Loyka v. Slovakia* (dec.), no. 54811/00, 13 December 2005);

20. Even if assuming the fact that the referral has been submitted by an authorized party, having in mind that the Applicant specifically stresses the inconsistency of the memorandum of understanding between the two parties, with the Code on Criminal Procedures in Kosovo, thus requests assessment of compliance of a legal act with the Law and not with the

Constitution, and taking into account the Article 112 .1 of the Constitution which provides: ***"The Constitutional Court id the final authority for interpretation of the Constitution and the compliance of laws with the Constitution."*** It is clear that the request of organization "Çohu" as submitted does not make a constitutional issue suitable to be reviewed by this Court, therefore and again based on this it should be rejected.

21. The same argumentation Constitutional Court has used in the case 44/10, (Gafurr Podvorica against Ministry of Labour And Social Welfare, Resolution on Inadmissibility date 18 March 2001)

22. Based on the above-mentioned facts, court considers that this referral is filed by

an non authorized party and did not meet the necessary criteria, therefore :

FOR THIS REASON

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 20 of the Law on the Constitutional Court, and Rule 36 paragraph 3(c) of the Rules of Procedure, in the session held on 19 May 2011 unanimously

DECIDES

I. TO REJECT the Referral as Inadmissible;

II. This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20,4 of the Law on the Constitutional Court; and

III. This Decision is effective immediately.

Judge Rapporteur **President of the Constitutional Court**

Robert Carolan Prof. Dr. Enver Hasani

KI 43/09 dated 10 February 2012- Constitutional Review of Protocol on Police Cooperation between the European Mission for Justice and Rule of Law and Ministry of Internal Affairs of the Republic of Serbia dated 11 September 2009

Case Kl 43/09 dated 11 May 2011,
Keywords; individual referral, constitutional review of protocol on police cooperation

The Applicant submitted the Referral based on Articles 113.7 and 21.4 of the Constitution, Articles 20, 22.7 and 22.8 of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo dated 15 January 2009.
The President of the Court appointed Judge Cukalovic as Judge Rapporteur a Review Panel composed by Judges Robert Carolan (Presiding), and Judges Kadri Kryeziu and Iliriana Islami.
On 25 September 2009 the Applicant filed the complaint in the Constitutional Court.
The Applicant considers that Protocol on Police Cooperation constitutes a breach of Articles 18(1), 65 (12) and Article 93(1) of the Constitution.

The Applicant in his referral raised some concerns regarding the respect and exercise of the state sovereignty by the institutions of the Republic of Kosovo and deems that an interpretation by the Constitutional Court would be necessary, with regard to the Protocol on Police Cooperation.

The Court reviewed the Referral of the Applicant and stated that the Constitution of Kosovo does not provide for *actio popularis*. In other words, an Applicant cannot complain in the abstract about measures by public authorities which have not been applied to them personally, such as is the case before this Court.

In the present case, the Applicant has not presented that it has been directly and currently violated by a public authority in its rights and freedoms guaranteed by Constitution (see Vanek v. Slovak Republic, ECHR Decision as to Admissibility of Application no. 53363/99 of 31 May 2005).

Taking into account all circumstances of the submitted Referral, the Constitutional Court pursuant to Article 113.1 and 113.7 of the Constitution, Articles 46, 47 and 48 of the Law and Rules 36 (1a) and 36 (3c) of the Rules of the Procedure, in the session held on 11 May 2011 unanimously decided to reject the Referral as inadmissible.

Pristine, 01 February 2012
Ref. No.: RK.197/12

RESOLUTION ON INADMISSIBILITY

in

Case No. KI 43/09

Applicant

Lëvizja FOL

Constitutional Review of Protocol on Police Cooperation between the European Mission for Justice and Rule of Law and Ministry of Internal Affairs of the Republic of Serbia of 11 September 2009

Composed of:

Enver Hasani, President
Kadri Kryeziu, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Ivan Čukalović, Judge

Gjyljeta Mushkolaj, Judge and
Iliriana Islami, Judge

Applicant

1. The Applicant is Lëvizja Fol (Speak up Movement), an independent NGO based in Pristina and represented by Ramadan Ilazi (Executive Director).

Challenged Act

2. The Applicant challenges the constitutionality of Protocol on Police Cooperation signed between the European Mission for Justice and Rule of Law (hereinafter: EULEX) and the Ministry of Internal Affairs of the Republic of Serbia on 11 September 2009.

Subject Matter

3. The Applicant requests the Constitutional Court to interpret Article 63 of the Constitution of the Republic of Kosovo that provides that "the Assembly is the legislative institution of the Republic of Kosovo..." *vis-a-vis* the unilateral signing of the above mentioned Protocol by EULEX.

4. The Applicant considers that the unilateral signing of the above mentioned Protocol by EULEX constitutes a breach of Articles 18(1), 65 (12) and Article 93(1) of the Constitution.

Legal Basis

5. Art. 113.7 of the Constitution of the Republic of Kosovo; Article 20 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter referred to as the Law), and Rule 36 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo.

Proceedings before the Court

6. On 25 September 2009 the Applicant filled the complaint with the Constitutional Court.

7. On 2 October 2009 the Court submitted to the Applicant a notification letter and suggested to the Applicant to file the referral form.

8. Consequently the Secretariat registered the Applicant's referral under no KI 43/09.

9. On 31 May 2010 the Applicant submitted its reply to the letter of 2 October 2009 emphasizing that their referral does not mean that "Speak UP Movement will became a party and that it will meet the administrative procedures so that the referral would be reviewed as a regular case." In the same time the Applicant re-express its interest that the Constitutional Court gives its opinion regarding the signing the abovementioned Protocol.

10. The President of the Court appointed Judge Cukalovic as Judge Rapporteur and he appointed a Review Panel composed by Judges Robert Carolan (Presiding), and Judges Kadri Kryeziu and Iliriana Islami.

11. On 16 May 2011 after having considered the Report of the Judge Rapporteur the Review Panel made a recommendation to the full Court on the inadmissibility of the Referral.

Summary of the facts

12. On 11 September 2009 was signed the Protocol on Police Cooperation between EULEX and Serbian Ministry of Internal Affairs.

Applicant's allegation

13. The applicant deems that the Protocol on Police Cooperation is in violation of Articles 18 (1), 63, 65 (12) and 93 (1)of the Constitution.

14. The Applicant in his referral raised some concerns regarding the respect and exercise of the state sovereignty by the institutions of the Republic of Kosovo and deems that an interpretation by the Constitutional Court would be necessary, with regard to the Protocol on Police Cooperation.

15. The Applicant notes that the implementation of the Protocol on Police Cooperation is impossible without the inclusion of Kosovo Institutions.

Assessment of the Admissibility of the Referral

16. In order to be able to adjudicate the Applicants' Referral, the Court needs first to examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution as further specified in the Law and the Rules of Procedure.

17. In their referral the Applicant refer to Article 113.7 of the Constitution and Article 32 of the Constitution.
Article 113.7 of the Constitution reads as follows:
"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."

18. Furthermore, Article 32 of the Constitution, reads:
"Every person has the right to pursue legal remedies against judicial and administrative decisions which infringe on his/her rights or interests, in the manner provided by law."

19. From the Applicant's submission it appears that while they does not consider themselves as a party in the proceedings before the Constitutional in time the they reiterated their interest that the Constitutional Court gives its opinion regarding the signing the abovementioned Protocol.

20. In this respect it should be recalled that Article 48 of the Law states:
"In his/her referral, the claimant should accurately clarify what rights and freedoms he/she claims to have been violated and what concrete act of public authority is subject to challenge."

21. For the purposes of the Constitution, a victim is a natural or legal person (see case of AAB-RIINVEST University L.L.C., Pristina vs. Government of the Republic of Kosovo, Case No. KI. 41 /09) whose Constitutional Rights are personally or directly affected by a measure or act of a Public Authority.

22. A person who is not affected in this manner does not have standing as a victim since the Constitution does not provide for *actio popularis*. In other words, an Applicant cannot complain in the abstract about measures by public authorities which have not been applied to them personally, such as is the case before this Court.

23. In the present case, the Applicant have not presented that it has been directly and currently violated by a public authority in its rights and freedoms guaranteed by the Constitution (see Vanek v. Slovak Republic, ECHR Decision as to Admissibility of Application no. 53363/99 of 31 May 2005).

24. Consequently, it follows that the Applicant is not an authorized party and the Referral must be rejected as Inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113(7) of the Constitution, Article 20 of the Law, and Rule 36 of the Rules of Procedure,

DECIDES

I. TO REJECT this Referral as Inadmissible;

II. The Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20.4 of the Law;

III. This Decision is effective immediately.

Judge Rapporteur **President of the Constitutional Court**

Prof. Dr. Ivan Čukalović Prof. Dr. Enver Hasani

KI 107/11 dated 06 March 2012- Request for Constitutional review of the Judgment of the District Court in Prizren Ac. No. 293/2010, dated 23 March 2011

Case KI 107/11, decision dated 7 February 2012
Keywords: right to work, individual referral, just satisfaction, manifestly ill-founded

The Applicant submitted referral based on Article 113.7 of the Constitution, alleging that by the Judgment of the District Court in Prizren, Ac. no. 293/2010 dated 23 March 2011 his rights guaranteed by the Constitution of the Republic of Kosovo, under Article 49 (Right to Work and Exercise Profession) and Article 41 of the European Convention on Human Rights (Just satisfaction) have been violated.

The Applicant requests constitutional review of Judgment of the District Court in Prizren, Ac. no. 293/2010 dated 23.3.2011, by which this Court rejected the proposal of the representative of the applicants, addressed to this court for repeating of the completed procedure by the Judgment of Municipal Court in Suhareka C. no. 423/2004 dated 23 November 2004, and amended by the Judgment of the Supreme Court Rev. no. 31/2007, dated 14 June 2007.

Deciding upon the Referral of the Applicant, after the review of the proceedings in entirety, the Constitutional Court did not find elements of arbitrariness, or alleged violations of human rights, as the applicants had claimed.

The Constitutional Court concluded that the Referral is manifestly ill-founded pursuant to the Rule 36 paragraph 2. item c and d) of the Rules of Procedure.

Pristine,06 February 2012
Re.No.RK 200/12

RESOLUTION ON INADMISSIBILITY

in

Case No. KI 107/11

Hamzi Bylykbashi, and others

Request for Constitutional review of the Judgment of the District Court in Prizren Ac. No. 293/2010, of 23 March 2011

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Enver Hasani, President
Kadri Kryeziu, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Ivan Čukalović, Judge
Gjyljeta Mushkolaj, Judge and
Iliriana Islami, Judge

Applicants

1. Applicants of the Referral are: Hamzi Bylykbashi, Ferat Kuqi, Nasibe Llapatinca, Sadri Abazi, Abaz Demiri, Shaban Basha, Tahir Gashi, Asbije Gashi, Sali Bytyqi, Hajrije Sallani, Gani Musliu, Xhemali Jahaj, Halil Durmishi, Igballe Koigeci, Hamdi Palushi, Baftijar Hoxha, Shaban Tahiri, Mahmut Kadolli, Hysen

Muqaj, Haki Baraliu, Hazir Bytyqi, Sinan Hajdari, Ramadan Sallahu, Ibrahim Berisha, Sahit Basha, Ismet Vranovci, Shefka Avdija, Sali Morina, Mexhit Baraliu, Xhemajl Kuqi, Mahmut Alijaj, Zenel Krasniqi, and Aziz Bukoshi, all former employees of Municipal Assembly, represented with authorization by Ethem Rogova, lawyer from Prizren.

Challenged decision

2. The challenged decision of the public authority alleging the violations guaranteed by the Constitution of Kosovo is the Judgment of the District Court in Prizren, **Ac. No. 293/2010 of 23 March 2011,** which the representative of the Applicants, according to the signed copy of the receipt of the Municipal Court in Suhareke, has received on **1 April 2011.**

Subject matter

3. Basic issue of the registered case with the Constitutional Court of the Republic of Kosovo, on 8 August 2011, is the constitutional review of Judgment of the District Court in Prizren Ac. No. 293/2010 of 23 March 2011, by which this Court has rejected the proposal of the representative of the applicants, addressed to this court for repeating of the completed procedure by the Judgment of Municipal Court in Suhareka C. no. 423/2004 dated 23 November 2004, and amended by the Judgment of the Supreme Court rev. no. 31/2007, dated 14 June 2007.

Legal basis

4. Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), Article 47 of the Law no. 03/L-121 on the Constitutional Court of the Republic of Kosovo dated 16 December 2009, which entered into force on 15 January 2010 (hereinafter: the Law) and Rule 29 of the Rules of

Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: Rules of Procedures).

Proceedings before the Court

5. On 15 July 2011, the Constitutional Court received by mail a letter, to which were attached the challenged decisions of public authorities, by which it was requested Constitutional Court to review the constitutionality of the Judgment of the District Court in Prizren Ac. No. 293/2010 dated 23 March 2011.

6. On 22 July 2011, Constitutional Court sent a notification to the representative of the applicants, lawyer Mr. Ethem Rogova, requesting that within the given deadline set in the notification, to supplement the referral by filling in also the official application form for submission of the referrals with the Constitutional Court.

7. On 28 July 2011, within the given deadline by the Court, Mr. Rogova submitted the response to the Constitutional Court regarding the request, and requested additional clarification of where to get the official application form.

8. On 4 August 2011, the Constitutional Court received by mail the repeated request from lawyer Ethem Rogova, this time with completed official application form and all copies of decisions of public authorities related to the case.

9. On 8 August 2011, the Applicant's referral was registered in the respective department of the Constitutional Court under KI 107/11.

10. On 8 August 2011, the same day, the Constitutional Court sent the notice on the registration of the referral to the parties involved in the subject and at the same time requested from the representative of the applicants to supplement the referral with

the written authorization for representation and with the ID copies of the represented persons.

11. On 22 August 2011, the Constitutional Court received by lawyer Rogova the additional required documentation.

12. On 23 August 2011, President of the Court, by Decision GJR KI 107/11, appointed Judge Robert Carolan to draft the preliminary report regarding the referral.

13. On the same day, President of the Court, by decision KSH-KI 107/11, appointed Review Panel composed of: Ivan Cukalovic (presiding), and judges Mr.sc. Kadri Kryeziu and Prof. Dr. Enver Hasani, as members of the Panel.

14. On 17 November 2011, the Constitutional Court received by fax from Municipal Court in Suhareke the copy of the service note of Judgment of the District Court in Prizren Ac no. 293/2010 of 23 March 2011, confirming that Mr. Hamzi Bylykbashi, the first one in the list of complainers and the one who has the authorization to represent his colleagues, has received this decision on 1 April 2011.

Summary of facts

15. In 2001 (no date specified), the Chief Executive of the Suhareke Municipality has released a circular addressed to all municipal employees in civil service (local administration), in form of voluntary retirement offer for all those who meet conditions specified in circular, which are at least 45 years of age, and at least 15 years of service (experience). Voluntary retirement should be compensated in kind (material means), amounting to a monthly salary, for each year of service and will not exceed the total of 8000 Dm.

16. The circular specified that this offer is intended to provide a material support package for those whose employment will be

terminated in the municipality, because according to the recommendation of the Commission for public administration reform, and according to the decision of the Municipal Assembly of Suhareke, "the number of the employees in the municipal administration should be reduced". While the application for offered pension is voluntary.

17. Following the deadline set on the circular, to this offer of the Chief Executive responded a large number of employees that met the required conditions, while the municipality officially selected "for voluntary retirement" 33 of the most recent applicants, who filed the referral with the Constitutional Court.

18. According to the documents in the case file, all employees who have been granted the right to voluntary retirement, have **received resolutions in writing for termination of their employment contract upon agreement**, wherein are specified the date of termination of employment and the material compensation they are entitled. All employees had received these resolutions and had signed it, while as evidence along with the referral at the Constitutional Court is filed also the resolution (in copy) 02 no. 334 dated 30 July 2001 for the employee Mr. Sadri Abazi, who was given also the legal advice that an aggrieved party has the right to appeal within 15 days of its receipt.

19. On 22 December 2003, the Municipal Court in Suhareke, acting on the appeal of 33 former employees of the municipal administration of the municipality of Suhareke, has issued Judgment C. no. 159/03 by which it rejected the claimsuit of the plaintiffs in their entirety **as unfounded**, and the reasoning of the judgment that its groundlessness relies on the fact that all employees have signed resolutions for termination of employment upon agreement, that they have received compensation upon resolutions and that, even though they had available legal remedy of appeal they have not used it, so these decisions are final.

20. Against this judgment, within the legal time limit, the representative of the plaintiffs has filed a complaint in District Court in Prizren.

21. On 23 June 2004, the District Court in Prizren issued the Judgment Ac. 42/2004 by which it **approved** the appeal of the plaintiffs representatives (Hamzi Bylykbashi and 32 others), annulled Judgment C. no. 159/03 of 22 December 2003 and the case was returned for appeal to the Municipal Court in Suhareke. In the reasoning of its decision the District Court stated that the court of first instance had based its own decision on determination of erroneous and incomplete factual situation and in the erroneous application of substantive law, and therefore necessarily the court's decision had to be annulled by the court of second instance.

22. On 23 November 2004, Municipal Court in Suhareke, taking into account the decision of the District Court in the repeated procedure, issued Judgment C. no. 423/04 and approved the claimsuit of the plaintiffs, and also canceled all resolutions for termination of employment upon agreement, by obliging the respondent Municipality of Suhareke, within 15 days to return the plaintiffs to their job positions according to the qualifications they possess.

23. Against this Judgment the Municipality of Suhareke filed a complaint with the District Court in Prizren.

24. On 10 November 2006, the District Court in Prizren, issued Judgment Ac. no. 30/2005, by which it rejected as ungrounded the appeal of the respondent – Municipality of Prizren and **confirmed** the Judgment C. no. 423/2004 of 23 November 2004, of the Municipal Court in Suhareke, concluding that the Judgment of first instance fully and completely confirmed the factual situation and fairly applied the substantial provisions.

25. Against this Judgment, the Municipality of Suhareke filed a request for revision with the Supreme Court of Kosovo.

26. On 14 June 2007, the Supreme Court of Kosovo issued Judgment rev. no. 31/2007, by which it ACCEPTED the revision of the respondent- Municipality of Suhareke, and **changed** the Judgment pf the District Court in Prizren Ac. No. 30/2005 of 10 November 2006, and the Judgment of the Municipal Court in Suhareke C. no. 423/2004 of 23 November 2004, so that the claim of the plaintiffs in this legal matter was REJECTED as **out of time (untimely)**.

27. In reasoning of this Judgment, the Supreme Court noted that the courts of lower instances "On factual situation rightly and fully have found, erroneously have applied the substantive law when finding that the plaintiff's claimsuit is based, for which reason both judgments of the lower instance were amended so that the plaintiff's claim be rejected as out of time. "

28. The Supreme Court further in the reasoning of the Judgment Rev. no. 31/2007, stipulated that its judgment was based on the fact that the applicable law at the time the dispute occurred (Law on State Administration of Kosovo, Official Gazette 30/80) with Article 213 provided that the deadline for appeal to the authority of second instance was 15 days from the date of decision, and that after the decision from the second instance , a party still dissatisfied within 30 days had the right to address with the competent court and the Supreme Court also cited the fundamental Law on Labor Relations, as applicable Law in Kosovo which in Article 83 par. 2 provided that " Judicial protection before the court cannot be required if the employee had not previously sought protection before the competent authority of the employer", thus taking into account the fact that employees of Suhareka Municipality had not used this right, and their claim was out of time.

29. Supreme Court also noted that "subject matter in this dispute is the legality of the resolutions of the respondent by which plaintiffs have been terminated their labor relation, against which the plaintiffs have not sought legal protection under the abovementioned legal provisions, so the low instance courts have erroneously applied the substantive law when they approved the claim stating that the plaintiff has acted contrary to legal provisions regulating retirement issues, and in fact the respondent's resolutions have nothing to do with the retirement of the plaintiffs but with the termination of their labor relationship under the agreement" (see Judgment of Supreme Court Rev. no. 31/2007, dated 14 June 2007. P.3)

30. Unsatisfied with this Judgment, the applicants through their authorized representative Ethem Rogova, have filed **request for repeating of the procedure** in the District Court in Prizren.

31. On 21 March 2011, the District Court in Prizren issued Judgment Ac. no. 293/2010, by which rejected the request for repeating of the completed procedure with the Judgment of the Municipal Court in Suhareke C. no. 423/2004, of 23 November 2004 as amended by the Judgment of the Supreme Court Rev. no. 31/2007 of 14 June 2007, stating that there were no facts that would justify repeating the procedure.

Alleged violations of the constitutionally guaranteed rights

32. The applicants are alleging that by the Judgment of the District Court in Prizren, that their rights guaranteed by the Constitution of the Republic of Kosovo, under the: Article 49 (Right to Work and Exercise profession), Article 41 of the European Convention on Human Rights (Just satisfaction) have been violated.

Assessment of the admissibility

33. In order to be able to adjudicate the Applicant's referral, the Court first needs to examine whether the Applicant has fulfilled all the admissibility requirements laid down in the Constitution, the Law on the Constitutional Court and the Rules of Procedure of the Court.

34. In this connection, the Court refers to Article 113.7 of the Constitution, which provides:

"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"*

The Court also considers:

Article 49 of the Law on Constitutional Court providing that:

"*The referral should be submitted within a period of four (4) months. The deadline shall be counted from the day upon which the claimant has been served with a court decision. In all other cases, the deadline shall be counted from the day when the decision or act is publicly announced. If the claim is made against a law, then the deadline shall be counted from the day when the law entered into force".*

and
Rule 36 of the Rules of Procedure of the Constitutional Court which provides:

"(1) The Court may only deal with referrals if:
c) The referral is not manifestly ill-founded.

35. Referring to the alleged violation of the rights guaranteed by the Constitution of the Republic of Kosovo and the Conventions and other international instruments by the applicant, the Constitutional Court concludes:

36. The authorized representative by the applicants, has sent by mail to the Constitutional Court on 15 July 2011 a written request to which were attached all the judgments and necessary decisions, and following the request of the Court, and the deadline given by the Court, had completed the case file with standard application form. The court therefore considers that the date of first communication with the Court 15 July 2011 makes the referral timely under the law and the rules of procedure, even though it was not registered with the Court until 8 August 2011.

37. In this regard, the Constitutional Court refers to the ECHR case law in the case of Kamevuako against Holland (application no. 65938/09 of 1 June 2010) wherein it was noted that "as a general rule should be considered the date of submission of an application before the date of communication with the court by the applicant, even if the subject matter is briefly explained, provided that a completely filled application form is filed within the time limit specified by the Court.

38. The Court always considers that the four month rule is to promote legal certainty of the law, to ensure that the cases raising for constitutional issues will be dealt within a reasonable time and to protect the authorities and other persons concerned from being in a situation of uncertainty for a prolonged period of time (see *mutatis mutandis* PM against United Kingdom Application no. 6638 /03 of 19 July 2005).

39. The Applicants claimed violation of their rights guaranteed by the Constitution according to the Article 49 of the Constitution, the Right to Work and Exercise Profession.

40. Regarding this allegation, the Constitutional Court emphasizes that the right to work and exercise profession, is a right specified by the Constitution of the Republic of Kosovo (Article 49), and that first of all it means that each individual has the

right to work and exercise a profession in complete freedom and under the same conditions as all other citizens. At the same time, the right to work can be regulated by the pertinent rules of the relevant working areas.

41. Constitutional Court is not a court for verifying the facts and wants to emphasize that finding of fair and complete factual situation is full jurisdiction of regular courts, as in this concrete case by the Supreme Court by approving the revision of the respondent or the revision of the District Court by rejecting the request for retrial by the plaintiff, and that the role of the Constitutional Court is only to ensure compliance with the rights guaranteed by the Constitution and other legal instruments, and therefore cannot act as a"forth instance court" (see, mutatis mutandis, shall, Akdivar v. Turkey, 16 September 1996, RJD, 1996-IV, before . 65) with respect to verifying the facts or applying the applicable law.

42. The simple fact that the applicants are unsatisfied with the result of the case cannot serve them the right to file a substantiated referral on the violation of Article 31 of the Constitution (see mutatis mutandis ECHR Judgment Application no. 5503/02, Mezotur-Tiszazugi Tarsulat against Hungary, Judgment of 26 July 2005, or Tengerakis against Cyprus no. 35698/03, decision of 9 November 2006, § 74).

43. In this case, the Applicants failed in a timely manner to exhaust all of their legal remedies as described in Paragraph 28 of this Resolution. For this Court to now act on their referral, this Court would have to ignore the fact that the Applicants failed to act in a timely manner to exhaust all of their legal remedies. This Court does not have that authority. This Court cannot act as a fourth instance court substituting its judgment of the facts and/or the applicable law for that of the regular courts.

44. To declare a judgment or resolution of a public authority as unconstitutional, the applicant should prima facie indicate that

"the decision of public authority as such, would be an indicator of a violation of the request for a fair trial if its unreasoning is so obvious that the decision can be considered as extremely arbitrary decision (see ECHR. *Khamidov against Rusia*, no. 72118/01, Judgment of 15 November 2007, § 175).

45. Constitutional Court in the District Court's Judgment Ac. No. 293/2010 of 21 March 2011, did not found elements of arbitrariness, or alleged violations of human rights, as the applicants had claimed.

46. In these circumstances the applicants "does not sufficiently substantiate their claim" and cannot be concluded that the referral was grounded, therefore the Court in compliance with Rule 36 paragraph 2 item c and d, holds that the claim is rejected as manifestly unfounded.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution of the Republic of Kosovo, Article 47 of the Law on Constitutional Court and the Rule 36 of the Rules of Procedure, unanimously

DECIDES

I. TO REJECT the Referral as Inadmissible.

II. This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20.4 of the Law.

III. This Decision is effective immediately.

Judge Rapporteur **President of the Constitutional Court**

Robert Carolan Prof. Dr Enver Hasani

KI 64/11 dated 15 February 2012- Constitutional Review of the Judgment to the Supreme Court of Kosovo, Rev.Nr.184/2008 dated 27 January 2009

Case KI 64/11, dated 14 February 2012
Keywords; right to work, out of time, Individual Referral

The Applicant submitted the Referral in compliance with Article 113.7 of the Constitution of Kosovo, alleging that by decision of the Supreme Court of the Republic of Kosovo Rev.No.184/2008 dated 27 January 2009, was violated his right to work pursuant to Article 49.1 of the Constitution.

The Applicant had submitted another Referral in the Constitutional Court on 19 December 2009 for the same matter, which was registered under the no. KI74/09. The Applicant had employment contract with KEK-un, which was terminated on 24 April 2006.

The Applicant initiated judicial proceedings at the Municipal Court in Lipjan, after this at the District Court in Prishtina and the Supreme Court.
The Supreme Court (Rev. no. 184/2008) annulled the judgments of District Court and of the Municipal Court, thereby upholding the dismissal of the Applicant from employment with KEK.

The Constitutional Court concludes that the Referral registered under no. 64/11 does not provide sufficient grounds for a new decision pursuant to Rule 36 (3) (e) of the Rules of Procedure.
The Court maintains the conclusion on inadmissibility reached in the Resolution made in the Referral 74/09, because it was and it still is out of time, as provided by Article 49 of the Law.

Pristine, 14 February 2012
Ref. No.: RK191/12

RESOLUTION ON INADMISSIBILITY

in

Case No. KI 64/11

Applicant

Feti Gashi

Constitutional Review of the Judgment to the Supreme Court of Kosovo, Rev.Nr.184/2008 dated 27 January 2009

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Enver Hasani, President
Kadri Kryeziu, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Ivan Čukalović, Judge
Gjyljeta Mushkolaj, Judge and
Iliriana Islami, Judge.

Applicant

1. The Applicant is Feti Gashi from the village of Mramor, Hajvali.

Challenged decision

2. The Applicant challenges the decision of the Supreme Court of Kosovo Rev.Nr.184/2008 dated 27 January 2009, claiming

that his right to work under Article 49 of the Constitution had been violated.

3. On 19 December 2009, the Applicant submitted an earlier referral to the Court on the same subject matter. This referral was registered under no. KI 74/09.

Legal Basis

4. The Referral is based on Article 113 (7) of the Constitution, Articles 46, 47, 48 and 49 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter, the "Law"), and Rule 56 (2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter, the "Rules").

Proceedings before the Court

5. On 15 December 2010, after having considered the Report of the Judge Rapporteur and the proposal of Review Panel in the Referral registered under no. KI 74/09, the Court found that the Referral was inadmissible, because it was not filed within the four month time limit pursuant to Article 49 of the Law.

6. On 12 May 2011, the Applicant submitted to the Court a second Referral registered under no. KI 64/11.

7. On 17 August 2011, the President appointed Judge Almiro Rodrigues as Judge Rapporteur and a Review Panel composed of Judges Altay Suroy (Presiding), Kadri Kryeziu and Gjyljeta Mushkolaj.

8. On 18 January 2011, the Review Panel considered the Report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

Summary of the facts

9. The Applicant had an employment contract with KEK which was terminated on 24 April 2006. In fact, the KEK Disciplinary Commission issued a decision finding that the Applicant had violated his employment duties.

10. In June 2006, in an attempt to protect his interests and rights which were allegedly violated, the Applicant instituted judicial proceedings at the Municipal Court of Lipjan, then also at the District Court in Pristina and the Supreme Court.

11. In fact, on 27 January 2009, the Supreme Court (Rev.Nr.184/2008) quashed the Judgements of the District and Municipal Courts, thereby upholding the dismissal of the Applicant from employment with KEK. The Supreme Court found that the courts wrongly applied the material law when they deemed the Applicant's claim as grounded.

12. On 16 March 2009, the Applicant wrote a letter to the President of the Assembly of EULEX Judges, requesting an amendment to the judgement of the Supreme Court. The Applicant claims that he has never received a reply from EULEX.

Assessment of admissibility

13. On 19 December 2009, the Applicant filed with the Court the Referral 74/09. As mentioned above, he wrote the letter to the President of the Assembly of EULEX Judges on 16 March 2009. Thus, the letter to the President of the Assembly of EULEX Judges was delivered before having filed with the Court the Referral 74/09.

14. Even though that letter has not been mentioned in the earlier Referral 74/09, the second Referral 64/11 is exclusively based on that letter which is presented by the Applicant as a new fact brought to the case.

15. The Applicant considers that his earlier Referral registered under No 74/09 was submitted in time by virtue of his letter sent to the President of the Assembly of EULEX Judges on 16 March 2009 and because he is still waiting for a reply from EULEX.

16. In relation to the admissibility requirements, the Court refers to Rule 36 (3) (e) of the Rules, which states that a referral may be found inadmissible if "*the Court has already issued a*

Decision on the matter concerned and the Referral does not provide sufficient grounds for a new decision."

17. In applying that Rule to this case, it is relevant to consider whether the Applicant's Referral provides "*sufficient grounds for a new decision*".

18. The Court recalls that the Applicant claims that his letter to the President of the Assembly of EULEX Judges is a new fact for the purpose of a new decision, as it allegedly shows that the case is yet to be finalised.

19. The Court notes that the Applicant's request to the President of the Assembly of EULEX Judges is based on Article 6, in conjunction with Article 5(6), of the Law on Jurisdiction, Case Selection and Case Allocation to EULEX Judges and Prosecutors in Kosovo.

20. Article 6 (Provisions concerning the EULEX Property Rights Coordinator in Kosovo) of the aforementioned Law provides:
"6.1 The EULEX Property Rights Coordinator in Kosovo will assist in coordinating
*property rights issues, including c**l**aims resolution, between different actors involved in this subject matter including, but not limited to the Kosovo Property Agency, the Kosovo Property Claims Commission, the Kosovo Trust Agency, the Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency related matters, ordinary courts, or the Kosovo Police Service.*
6.2 All actors dealing with property rights issues, including claims resolution in Kosovo will be obliged to supply the EULEX Property Rights Coordinator free of charge with any information requested of them. The EULEX Property Rights Coordinator will have access to all the elements required for implementation of its mandate."

21. Article 5 (6) of the same Law reads as follows:
"5.6 In the performance of their function to monitor, mentor and advise, EULEX judges will have the authority to request in written form information about the status of any ongoing or closed civil case falling under the jurisdiction or competence of any court of Kosovo. EULEX judges will be

entitled to receive free copies of the documents pertaining to any dispute or civil proceeding falling under the jurisdiction or competence of any of the courts of Kosovo."

22. The Applicant has not received a reply to his request to EULEX and he is not certain whether his request was registered as a case pending before EULEX.

23. On the other side, the Court also refers to Article 113 (7) of the Constitution which establishes that *"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".* It appears that the Judgment of the Supreme Court (Rev.Nr.184/2008), dated of 27 January 2009, is final and binding *(res judicata)*. Thus, except for its execution, no other legal remedies are effective and available against its validity.

24. Moreover, the letter sent by the Applicant to the President of the Assembly of EULEX Judges is not a legal remedy provided by law and it does not have the potential to affect the Judgment of the Supreme Court.

25. Furthermore, in accordance with the European Court jurisprudence, applicants are only obliged to exhaust domestic remedies that are available in theory and in practice at the relevant time, that is to say, that are accessible, capable of providing redress in respect of their complaints and offering reasonable prospects of success (Judgment of the European Court of Human Rights Grand Chamber in the *Case Sejdovic v. Italy*, Application no. 56581/00 of 1 March 2006 para.46).

26. The letter sent by the Applicant to the President of the Assembly of EULEX Judges is therefore incapable of providing the redress sought by the Applicant and does not offer any prospect of success in effectively obtaining a favourable change of the judgment of the Supreme Court.

27. Thus, the Court concludes that the Referral registered under No 64/11 does not provide sufficient grounds for a new decision pursuant to Rule 36 (3) (e) of the Rules.

28. Therefore, the Court maintains the conclusion on inadmissibility reached in the Resolution made in the Referral 74/09, because it was and it still is out of time, pursuant to Article 49 of the Law.

FOR THESE REASONS

The Constitutional Court pursuant to Article 113 (7) of the Constitution and Rule 36 (3) (e) of the Rules, unanimously,

DECIDES

I. TO REJECT the Referral as Inadmissible;

II. This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20 (4) of the Law; and

III. This Decision is effective immediately.

Judge Rapporteur **President of the Constitutional Court**

Almiro Rodrigues Prof. Dr. Enver Hasani

KI 128/11 dated 15 February 2012- Review of the Judgment of the Supreme Court (Rev. no. 225/2007), dated 25 September 2007

Case KI 128/11, Judgment of the Supreme Court of Kosovo dated 25.9.2007.
Keywords; individual referral, ratione temporis, Decision on inadmissibility.

The Applicant alleges that his "fundamental right to work, guaranteed by Article 49.1 of the Constitution of Republic of Kosovo, was violated".

The Applicant requests from the Constitutional Court of Kosovo "to annul the Ruling of the Supreme Court of Kosovo Rev. no. 225/2007, dated 25/09/2007" and "to approve [his] referral to return in the working place".

The Court considers that the public authorities of the Republic of Kosovo can only be required to answer to events which occurred subsequent to the entry into force of the Constitution i.e. from 15 June 2008. Accordingly, the Court cannot deal with a Referral relating to events that occurred before the entry into force of the Constitution.

The Court finds that the referral is inadmissible and it is filed “ratione temporis”.

Pristine, 14 February 2012
Ref.No.:RK198/12

RESOLUTION ON INADMISSIBILITY

In

Case No. KI 128/11

Applicant

Boshnjaku Ismet

Review of the
Judgment of the Supreme Court (Rev. no. 225/2007), dated of 25 September 2007

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Enver Hasani, President
Kadri Kryeziu, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Ivan Čukalović, Judge
Gjyljeta Mushkolaj, Judge and
Iliriana Islami, Judge.

The Applicant

1. The Applicant is Boshnjaku Ismet from Batllavë, Podujevo.

Challenged Decision

2. The Applicant challenges the decision of the Supreme Court (Rev. no. 225/2007), dated of
   25 September 2007, served on him on 15 January 2008.

Subject Matter

3. The Applicant alleges that his "fundamental right to work, guaranteed by Article 49.1 of the Constitution of Republic of Kosovo, was violated".

4. The Applicant requests from the Constitutional Court of Kosovo "to annul the Ruling of the Supreme Court of Kosovo Rev. no. 225/2007, dated 25/09/2007" and "to approve [his] referral to return in the working place".

Legal Basis

5. The Referral is based on Article 113 (7) of the Constitution, Articles 46, 47, 48 and 49 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter, the "Law"), and Rule 56 (2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter, the "Rules").

Proceedings before the Court

6. On 07 October 2011, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter, the "Court").

7. On 16 January 2012 the President appointed Judge Almiro Rodrigues as Judge Rapporteur and a Review Panel composed of Judges Ivan Čukalović (Presiding), Kadri Kryeziu and Gjyljeta Mushkolaj.

8. On 18 January 2012, the Review Panel considered the Report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

9. The Applicant had an employment relationship with the SOE "Llapi", which terminated on a date in 1991, after almost 13 years.

10. The Applicant, aiming at protecting his allegedly violated interests and rights, initiated judicial proceedings which commenced at the Municipal Court of Podujevo, passing through, on appeal to the District Court in Prishtina and which were finally dealt with at the Supreme Court.

11. In fact, on 25 September 2007, the Supreme Court (Rev. no. 225/2007) refused the Applicant's appeal against the Judgment of the District Court (Ac. No. 1043/2006, dated 10 May 2007).

Assessment of admissibility

12. In order to be able to adjudicate the Applicants' Referral, the Court first examines whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution, further specified in the Law and in Rule 36 of the Rules.

13. The Court considers that the public authorities of the Republic of Kosovo can only be required to answer to events which occurred subsequent to the entry into force of the Constitution i.e. from 15 June 2008. Accordingly, the Court cannot deal with a Referral relating to events that occurred before the entry into force of the Constitution (see, the Court's Resolution on Inadmissibility in Case No 18/10, Denic et al of 17 August 2011).

14. The matter does not fall under the temporal jurisdiction of the Constitutional Court as the Judgment of the Supreme Court (Rev. no. 225/2007), dated 25 September 2007, was served on the

Applicant on 15 January 2008, a date before 15 June 2008, the date of entering into force of the Constitution, .

15. Furthermore, Rule 36 (3) h) of the Rules foresees that *"a Referral may also be deemed inadmissible"* if "*the Referral is incompatible ratione temporis with the Constitution"*. Therefore, the Court considers that the Referral is out of time "*ratione temporis*".

FOR THESE REASONS

The Constitutional Court pursuant to Article 113 (7) of the Constitution and Rule 36 (3) (h) of the Rules, unanimously:

DECIDES

I. TO REJECT the Referral as inadmissible.

II. This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20 (4) of the Law.

III. This Decision is effective immediately.

Judge Rapporteur **President of the Constitutional Court**

Almiro Rodrigues Prof. Dr. Enver Hasani

KI 26/10 dated 15 March 2012 - Constitutional Review of Decision C. nr. 14/2008 of the Municipal Court of Vushtrri dated 10.10.2008, and Decision C. nr. 260/2008 of the Municipal Court of Vushtrri dated 02.07.2008

Case KI 26/10, decision dated 27 February 2012
Keywords: individual referral, right to property, equality before the law, right to a fair and impartial trial, right to legal remedies.

The Applicant filed a referral with the Court claiming a violation of his constitutional rights in connection with two interrelated matters: (1) a property right issue regarding a certain cadastral plot and the house built on it; and (2) a property right issue regarding a water tap located on the contested cadastral plot. He claimed a violation of Articles 3 [Equality before the Law], 24 [Equality before the Law], 31 [Right to a Fair and Impartial trial], 32 [Right to Legal Remedies], 36 [Right to Privacy], 46 [Protection of Property], 54 [Judicial Protection of Rights] and 102 [General Principles of the Judicial System] of the Constitution.

As to the cadastral plot and the house built on it, he complains, in particular, about the length of the lawsuit involving him and members of his family, allegedly initiated in August 1992. He further claims that the Municipal Court in Vushtrri had not only ignored all relevant legal proof that he is the sole owner of the cadastral plot and the house built on it. Moreover, the Municipal Court had also ignored the binding instructions of the Supreme Court and the District Court which had quashed it judgments of the on the ground that they violated the essential provisions of the Law on Contested Procedure and had instructed the municipal Court to retry the case. As to the water tap issue the Applicant complained that the Municipal Court of Vushtrri had violated the Law on Contested Procedure by ruling that the Applicant had lost the right to use the water tap, since he had not exercised the factual possession since 2004.

The Constitutional Court decided to reject the Applicant's claim regarding the cadastral plot and the house built on it on the ground that the retrial proceedings before the Municipal Court in Vushtrri were still pending and that the Applicant had, so far, not shown that he had raised the constitutional complaints, which he now raises before the Court, in the retrial proceedings before the Municipal Court, let alone, if his claim would be rejected by that court, in appeal

proceedings before the District Court, and, if again, not successful, before the Supreme Court in last instance.
As to the water tap issue the Court noted that the Applicant had no intention to submit the alleged violations of his constitutional rights which he raised in his Referral, to the Supreme Court as the court of last instance. In these circumstances, the Court concluded that the Referral was inadmissible, since the Applicant had not exhausted all legal remedies available to him under applicable law.

Pristine, 27 February 2012
Ref.No.:RK201/12

RESOLUTION ON INADMISSIBILITY

in

Case No. KI 26/10

Applicant

Emin Behrami

CONSTITUTIONAL REVIEW

of

Decision C. nr. 14/2008 of the Municipal Court of Vushtrri dated 10.10.2008,

and

Decision C. nr. 260/2008 of the Municipal Court of Vushtrri dated 02.07.2008

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Enver Hasani, President
Kadri Kryeziu, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Ivan Čukalović, Judge
Gjyljeta Mushkolaj, Judge and
Iliriana Islami, Judge

Applicant

1. The Applicant is Mr. Emin Behrami from the Municipality of Vushtrri.

Challenged decisions

2. The Applicant challenges the Judgments of the Municipal Court of Vushtrri C. nr. 14/2008 dated 10 October 2008 and C. nr. 260/2008 dated 2 July 2008, served upon the Applicant on 4 July 2008.

Subject matter

3. The Applicant claims a violation of his constitutional rights guaranteed by Article 24 [Equality Before the Law]; Article 46 [Protection of Property]; Article 54 [Judicial Protection of Rights] and Article 32 [Right to Legal Remedies] of the Constitution of the Republic of Kosovo (hereinafter, the "Constitution").

Legal basis

4. Articles 113.7 and 21.4 of the Constitution, Articles 20, 22(7) and 22(8) of Law No. 03/L-121 on the Constitutional Court of

the Republic of Kosovo of 15 January 2009 (hereinafter, the "Law") and Rule 56 (2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter, the "Rules of Procedure").

Proceedings before the Court

5. On 27 April 2010, the Applicant filed a Referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the "Court").

6. On 27 April 2010, by Decision of the President, No. GJR. 26/10, Judge Almiro Rodrigues was appointed as Judge Rapporteur. On the same date, the President, by Decision No. KSH. 26/10, appointed the Review Panel composed of Judges Snezhana Botusharova (Presiding), Enver Hasani and Gjyljeta Mushkolaj.

7. On 24 August 2010, the Referral was communicated to the Municipal Court in Vushtrri, who replied on 13 September 2010.

8. On 21 December 2010, the District Court in Mitrovica was requested by the Court to submit additional documents pertinent to the case and replied on 28 December 2010.

9. On 3 May 2011, a notification was sent to the Municipal Court in Vushtrri regarding the state of Case Ac.nr.14/2008.

Summary of the facts

10. The Applicant claims a violation of his constitutional rights in connection to two interrelated matters: (1) a property right issue regarding the cadastral plot and the house built on it; and (2) a property rights issue regarding a water tap located in the contested cadastral plot.

Property issue regarding the cadastral plot and the house built on it

11. On 22 December 1977, the Municipal Court in Vushtrri, by Judgment C.nr.357/1977,f decided to confer upon the Applicant the right to half of the cadastral plot no.3001/12, situated at a place called "Selishte" in Vushtrri.

12. On 31 March 1978, the Secretariat for Economy and Municipal Affairs in Vushtrri, by Decision 03-no.353-19 issued to the Applicant a building permission for that plot.

13. On 24 January 1979, the Applicant agreed with his father to separate the family property. The Applicant received cadastral plot no. 3001/14, which contained a house and a yard.

14. On 15 December 1980, the Chair of the Islamic Community in Pristina concluded a loan agreement of 50.000 (fifty thousand) dinars with the Applicant in order to finish the construction of his house in the above-mentioned cadastral plot.

15. On 5 December 1994, the Municipal Court in Vushtrri, by Judgment P.br.110/94, conferred upon the Applicant the right to use parts of the house owned by him to the Applicant's father and his family.

16. On 6 April 1995, the District Court in Mitrovica, by Judgment GZH.br.132/95, upheld Judgment P.br.110/94 of the Municipal Court in Vushtrri.

17. On 12 May 1995, the Applicant's father requested the Municipal Court in Vushtrri to grant him the joint property right to the house owned by the Applicant.

18. On 8 November 1995, the Municipal Court, by Decision P.br.35/95, granted the request, which was appealed by the Applicant before the District Court in Mitrovica.

19. On 17 May 1996, the District Court in Mitrovica, by Decision GZH.br.43/96, rejected the Applicant's appeal as unfounded.

20. On 28 May 1996, Applicant's father and his family submitted a request to the Municipal Court in Vushtrri to initiate execution proceedings regarding its Decision P.br.35/95 dated 8

November 1995, and Decision GZH. br.43/96 of the District Court in Mitrovica, which was granted on 5 June 1996.

21. On 7 October 1996, the Municipal Court in Vushtrri, by Decision I-164/96, rejected Applicant's objection against the execution order as unfounded.

22. On 23 February 1997, the Supreme Court of Serbia, by Decision Rev.3277/96, abrogated Decisions: P.br.110/94 of 5 December 1994; GZH-br.132/95 of 6 April 1995; P. br. 35/95 of 8 November 1995; GZH. br. 43/96 of 17 May 1996 and I.br.164/96 of 7 October 1996 and referred the said decisions back to the Municipal Court of Vushtrri for retrial.

23. On 17 April 1997, the Applicant requested the Municipal Court in Vushtrri, to suspend the execution procedure in Case P.br.164/96.

24. On 13 May 1997, the Municipal Court, by Decision I.br.142/97, annulled the execution proceedings against the Applicant.

25. As a result, the Applicant's father and his family occupied parts of the Applicant's house.

26. On 17 June 1997, the Applicant filed a complaint with the Municipal Court in Vushtrri, demanding the imposition of interim measures against the occupation of the house by his father and the latter's family. This complaint was allegedly not taken into account by the said court.

27. On 17 July 1997, the Applicant's father and his family filed a complaint with the Municipal Court in Vushtrri, demanding the imposition of interim measures against the Applicant.

28. On 29 July 1997, the Municipal Court in Vushtrri, by Decision P.br.138/97, imposed interim measures upon the Applicant allowing the Applicant's father and his family to be connected to the electricity and water supply network in the part of the house inhabited by them, under threat of forced execution.

29. On 20 August 1997, the Applicant filed a complaint with the same court, requesting it to review Decision P.br.138/97.

30. On 7 December 1998, the Municipal Court in Vushtrri, by Decision P.br.119/97, legalized the occupation by the Applicant's father and his family of 2/3 of the Applicant's house and imposed pecuniary measures or imprisonment against the Applicant and his sons.

31. Upon the law-suit brought by the Applicant's father on 17 December 1998, the Municipal Court in Vushtrri, by Decision P.br.220/97, ruled that the disputed cadastral plot was common property of the family and that the Applicant should recognize and allow the registration of the said cadastral plot in the Cadaster Office in Vushtrri. This decision was served upon the Applicant on 21 January 1999.

32. On 1 January 1999, the Applicant appealed against Decision P.br.119/97 of the Municipal Court in Vushtrri to the District Court in Mitrovica, but the procedure was halted because of the events happening in Kosovo at that time.

33. On 7 April 2000, the Applicant took legal action before the Municipal Court in Vushtrri against the Applicant's father and his family, asking for the return of the immovable property to him.

34. By Judgment K-nr. 20/2000 of 29 June 2000, the Municipal Court in Vushtrri approved the claim of the Applicant and ordered the Applicant's father and his family to free the space under the roof on the second floor of the house.

35. Upon the appeal of the Applicant's father, the District Court in Mitrovica, by Decision Ac. No. 26/2001 of 9 January 2001, annulled Judgment K-nr. 20/2000 of 29 June 2000 of the Municipal Court of Vushtrri and remanded the case to the same court for retrial.

36. On 4 September 2001, the Municipal Court in Vushtrri, by Judgment K.nr. 63/2001, approved the claim of the Applicant's father and his family, after having verified that the disputed

cadastral plot together with the house built on it had been common property during the family union of the litigants, thus, rejecting the Applicant's claim that he was the sole owner of the contested cadastral plot and the house.

37. On 10 October 2002, the District Court of Mitrovica, by Judgment Ac. nr. 28/2002, upheld Judgment K. nr. 63/2001 and rejected the claim of the Applicant to be the sole owner of the contested cadastral plot and house.

38. On 24 April 2003, the Supreme Court, By Decision Rev. nr. 19/2003, accepted the revision of the Applicant and quashed Judgments Ac. nr. 28/2002 of the District Court of Mitrovica and C. nr. 63/2001 of the Municipal Court of Vushtrri and remanded the case to the first instance court for retrial.

39. On 16 December 2003, the Municipal Court of Vushtrri, by Judgment K. nr. 92/03, granted the law-suit of the Applicant's father and his family and confirmed that the disputed cadastral plot and house are common property of the family communion, and that the Applicant was obliged to accept this judgment and allow for the registration of the disputed property at the cadastral office in the name of the Applicant's father and his family as well.

40. On 4 January 2005, the District Court in Mitrovica, by Decision Ac. nr. 49/04, granted the appeal of the Applicant, annulled Judgment K. nr. 92/03 of the Municipal Court in Vushtrri and remanded the case to the same court for retrial.

41. On 22 December 2005, the Municipal Court in Vushtrri, by Judgment C. nr. 447/05, approved the claim of the Applicant's father and his family and confirmed that the contested cadastral plot and house was the common property of the family communion of the Applicant's father and the Applicant.

42. On 27 December 2007, the District Court in Mitrovica, by Decision Ac. nr. 61/2006, quashed Judgment C. nr. 447/05 of the Municipal Court in Vushtrri and remanded the case to the said court for retrial.

43. On 10 October 2008, the Municipal Court in Vushtrri summoned the Applicant's father to a hearing of the case, where he made a statement which was recorded in the court register under C.nr.14/2008 and sent to the District Court in Mitrovica, which processed the case under a new number Ac.nr.91/08.

44. On 7 April 2009, the Applicant submitted a complaint to the District Court in Mitrovica, stating that the Municipal Court in Vushtrri, in a public session of 10 October 2008 ending with Judgment C. nr. 14/2008 (N.B. the minutes of that public session only contain declarations of the Applicant's father), did not summon him nor his legal representative as a respondent party, and was not served with a copy of the said judgment.

45. On 8 June 2009, the Applicant submitted a complaint to the District Court in Mitrovica, requesting to be served with Decision Ac. nr. 91/08, and warned the said Court that he would wait to be served with that decision until 26 June 2009 at the latest.

46. On 31 January 2011, the Applicant was served with a note from the District Court in Mitrovica regarding case Ac. nr. 91/08, which was also sent to the Municipal Court in Vushtrri, stating the following:

"*By Decision Ac.nr.61/2006 of the District Court in Mitrovica of 27 December 2007, Judgment C.nr.447/05 of the Municipal Court in Vushtrri of 22 December 2005 is quashed and the case is remanded to the same court for retrial.*

From the documents of the case it transpires that the Municipal Court in Vushtrri (Minutes of 10 October 2008), without a judicial session, has summoned only Halil Qerimi [the Applicant's father] and, without taking adequate actions in retrial in accordance with the recommendations by the above-mentioned decision of the District Court in Mitrovica, Ac.nr.61/2006; the case was once again sent back to the District Court in Mitrovica.

The Municipal Court in Vushtrri had a duty to summon litigating parties in the retrial session, so that they set forth their allegations and then take a due decision as a result of facts verified in a rightful and thorough manner in a regular judicial process. The parties ought to have been served with decisions accompanied by legal counsel regarding complaints, and only if the parties set forth complaints in accordance with legal requirements, only then the case should be sent to the District Court to deliberate the case in the second instance".

"Attached with this note we forward complete documents of the case Ac.nr.14/2008 for retrial".

Water tap issue

47. On 16 of June 2008, the Applicant filed a law-suit with the Municipal Court in Vushtrri, against the respondent (Applicant's father and his family) on the grounds that the respondent has committed inhibition of possession to the detriment of the Applicant by not allowing his sons to put to function the water-tap which is situated on the part of the plot that belongs to the respondent.

48. On 2 July 2008, the Municipal Court in Vushtrri, through decision C. nr. 260/2008, rejected the law-suit of the Applicant as unfounded. In the reasoning part, the Municipal Court in Vushtrri stated that the Applicant has lost the possession of the said water-tap, because since 2004 he has not exercised the factual power over the said object. The Municipal Court in Vushtrri reached its decision based on article 74 of the law on property relations, official gazette of ex- SFRY where it is stipulated that:

"*Possession is lost when the holder ceases to exercise factual possession of the object*".

49. On 7 July 2008, , the Applicant lodged an appeal against the decision C. nr. 260/2008 with the District Court , whereby he complained that the Municipal Court in Vushtrri through the said decision has committed serious violation of the provisions of the Law on Contested Procedure, erroneous verification of the factual situation and wrongful application of the substantive law.

Applicant's allegations

As to the cadastral plot and the house built on it

50. The Applicant alleges that the Municipal Court in Vushtrri through judgment C. nr. 14/2008 dated 10 October 2008 violated his rights within the meaning of Article 24 [Equality Before the Law] and Article 46 [Protection of Property] of the Constitution, because he was not summoned by the said court even though he was a party to the proceedings.

51. The Applicant claims that the Municipal Court in Vushtrri has ignored all relevant legal proof that he is the sole owner of the contested cadastral plot and of the house built on it, because the said court has allegedly allowed forceful usurpation of 2/3 of the Applicant's house.

52. Furthermore, the Applicant claims that the Municipal Court in Vushtrri has deliberately ignored binding instructions of the Supreme Court of Kosovo and District Court in Mitrovica, whereby the latter has dozens of times quashed the judgments of the Municipal Court in Vushtrri due to essential violations of the Law on Contested Procedure, and has remanded the case to the said court for retrial.

53. The Applicant claims that his case is pending before the ordinary courts since 1992, and it has not been settled yet due to deliberate delays by the Municipal Court in Vushtrri.

Assessment of the Admissibility of the Referral

Property right issue

54. In the instant case, the Applicant complains that his rights guaranteed by Articles 3 [Equality before the Law], 24 [Equality before the Law], 31 [Right to a Fair and Impartial Trial], 32 [Right to Legal Remedies], 36 [Right to Privacy], 46 [Protection of Property], 54 [Judicial Protection of Rights] and 102 [General Principles of the Judicial System] of the Constitution have been violated. The Applicant complains, in particular, about the length of proceedings regarding the lawsuit involving him and members of his family, allegedly initiated on 4 August 1992.

55. However, the Court needs first to examine, whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution and the Law with respect to his complaints under the Constitution.

56. In this respect, the Court notes that the period to be taken into consideration for the adjudication of the Applicant's Referral did not begin to run on 4 August 1992, when the lawsuit involving the Applicant and his father was apparently filed, but rather on 15 June 2008, when the Constitution of the Republic of Kosovo entered into force and established the jurisdiction of this Court to adjudicate referrals under Article 113 [Authorized Parties] of the Constitution.

57. As to Article 113, the Court refers to its paragraph 7, providing that "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". This means that, before applying to this Court, the Applicant must first have tried to obtain a decision on the subject matter of the complaint from the ordinary courts, including appealing to the highest court which has jurisdiction in the case.

58. The Court emphasizes that the rationale for the exhaustion rule is to afford the authorities concerned, including the courts, the opportunity to prevent or put right the alleged violation of the Constitution. This rule is based on the assumption that the Kosovo legal order will provide an effective remedy for the

violation of constitutional rights (see, mutatis mutandis, ECHR, Selmouni v. France, no. 25803/94, decision of 28 July 1999). However, it is not necessary for the constitutional rights to be explicitly raised in the proceedings concerned. As long as the issue was raised implicitly or in substance, the exhaustion of remedies requirement is satisfied (see, mutatis mutandis, ECHR, Azinas v. Cyprus, no 56679/00, decision of 28 April 2004).

59. This Court applied the same reasoning, when it issued the Resolution on Inadmissibility in the case of AAB-RIINVEST University L.L.C., Pristina vs. Government of the Republic of Kosovo, Case KI 41/09 of 27 January 2010, and the Resolution on Inadmissibility in the case of Mimoza Kusari-Lila vs. The Central Election Commission, Case No. 73/09 of 23 March 2010.

60. In this connection, the Court considers that applicants are only required to exhaust remedies that are available and effective. Discretionary or extraordinary remedies need not to be exhausted, for example, requesting a court to revise its decision (see, mutatis mutandis, ECtHR, Cinar v. Turkey, no. 28602/95, decision of 13 November 2003).

61. As to the present case, the Court needs, therefore, first to consider whether, since 15 June 2008 when the Court's jurisdiction to adjudicate referrals was established, the Applicant had raised the constitutional complaints, which he is now submitting to this Court, before the courts dealing with his case and, if not successful, before the Supreme Court in last instance or had made use of any other available remedy under applicable law.

62. In this respect, the Court notes that, on 20 June 2008, when the case was apparently pending before the Municipal Court in Vushtrri, the Applicant complained to the President of the District Court in Mitrovica about the conduct of the judges of the Municipal Court, in particular of its President, calling them corrupt and violators of the law.

63. On 1 August 2008, the Applicant wrote to the President of the Municipal Court, stating that it was not clear on the basis of which law suit the Court was acting and that the suit of the other party should be rejected as ungrounded and unsubstantiated.

64. On 10 October 2008, the Municipal Court summoned only the Applicant's father to the hearing, but not the Applicant. As a consequence, the latter appealed to the President of the District Court in Mitrovica complaining that, by doing so, the President of the Municipal Court had intentionally committed an essential and absolute violation of the Law on Contested Procedure, for which he should be punished, while the case should be quashed immediately.

65. On 14 April 2009, the District Court informed the Applicant that the appeal hearing would be held somewhere in May 2009.

66. On 8 June 2009, the Applicant submitted a further complaint to the District Court, requesting it to quash the illegal judgment of the Municipal Court as unlawful and unfounded on the basis of "any legal evidence for 17 years in a row". He added that, if you do not uphold my law suit as lawful and grounded on all necessary legal evidence for more than 30 years, which are in line with Decision Rev.nr. 19/03 of the Supreme Court, dated 24 April 2003, I will believe that you are helping the violators of the law from the first instance court in Vushtrri."

67. On 12 June 2009, the President of the District Court informed the Applicant that he would be summoned to participate in the main hearing before that Court. The date of the hearing and subsequent court decision have not been communicated to this Court.

68. On 31 January 2011, the Applicant received a communication from the District Court in Mitrovica, stating that it had returned the case to the Municipal Court in Vushtrri for retrial. In the District Court's opinion, "the Municipal Court had the duty to summon the litigating parties to the retrial session in order to enable them to set out their allegations and to take a decision

after having verified the facts in a rightful and thorough manner in a regular judicial process".

69. In view of these facts, the Court emphasizes that the Applicant's appeal to the District Court against the manner the Municipal Court had handled the proceedings has indeed been successful.

70. As to the retrial proceedings before the Municipal Court in Vushtrri, the Court notes that, on 25 August 2011, it received a communication from that court stating that the court case had not been concluded yet due to a lack of judges, and that, during the third phase of appointment of judges, only the President had been appointed, who, on 27 May 2011, had requested the President of the District Court in Mitrovica to delegate a judge in order to enable the Municipal Court to decide on the retrial case. In the absence of any further information from the Municipal Court or the Applicant, the Court assumes that the case is still pending before that court.

71. As to these proceedings pending before the Municipal Court in Vushtrri, the Court notes that the Applicant has, so far, not shown that he has raised the constitutional complaints, which he now raises before this Court, in these proceedings, let alone, if his claim would have been rejected by that Municipal Court, in appeal proceedings before the District Court, and, if again not successful, before the Supreme Court in last instance.

72. In these circumstances, the Court finds that the Applicant has not exhausted all legal remedies available under applicable law, as required by Article 113.7 of the Constitution and Article 47 of the Law.

73. The Court concludes that the Applicant's complaint is premature and that this part of the Referral is, therefore, inadmissible.

Water tap issue

74. As to this particular allegation, the Court notes that, on 7 July 2008, the Applicant filed an appeal with the District Court of

Mitrovica against the decision C.nr. 260/2008 delivered by the Municipal Court in Vushtrri.

75. Meanwhile, on 3 May 2011, the District Court in Mitrovica, by Decision AC.nr. 21/11, refused the appeal as ungrounded. On 22 June 2011, the Applicant informed this Court that he would not appeal this decision.

76. Thus, the Court notes that the Applicant does not intend to raise before the Supreme Court, as the court of last instance, the alleged violations of his constitutional rights regarding the water tap issue, raised in his Referral.

77. In these circumstances, the Court must conclude that, regarding this part of the Referral, the Applicant has also not exhausted all available remedies available to him under applicable law.

78. Accordingly, the Referral is inadmissible.

FOR THESE REASONS.

The Court, pursuant to Article 113.7 of the Constitution, Articles 22 (7) and (8) and 47 of the Law as well as Rules 34 and 35 of the Rules of Procedure, by majority,

DECIDES

I. TO REJECT the Referral as inadmissible;

II. This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20(4) of the Law; and

III. This Decision is effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Almiro Rodrigues	Prof. Dr. Enver Hasani

KO 04/11 dated 06 March 2012 - Constitutional Review of Articles 35, 36, 37 and 38 of the Law on Expropriation of Immovable Property, No. 03/L-139

Case KO 04/11, Decision dated 1 March 2012.
Keywords: equality before law, request of Supreme Court, compensation of damage, Law on expropriation, separation of power, presumption of constitutionality of law.

The Applicant filed Referral based on Article 113.8 of the Constitution, alleging that the Articles 35, 36,37 and 38 of the Law on Expropriation of Immovable Property are in contradiction to the Article 102 (5) of the Constitution. The Applicants stated that the challenged Articles require the parties in proceedings to submit appeals with a Municipal Court, if the decision was issued by a Municipal Authority, and by the Supreme Court, if the decision on expropriation was issued by the Government. The Applicant further stated that the appeal may be filed against the decisions of the Supreme Court, although, there is no provision for an appeal against a decision of the Supreme Court allowed by the Constitution. The Applicant argues that the parties are put in an unequal situation; when the Municipal Court issues a decision, parties have right to pursue all remedies, including the remedy before the Supreme Court, but when the first instance decision is issued by the Supreme Court it is unclear which is the Court of the appellate jurisdiction. Consequently, according to the Applicant, the Articles 35,36,37 and 38 of the Law on Expropriation are in contradiction with Article 24 (1) of the Constitution, which provides that all are equal before the law.

Finally, the Applicant argues that implementation of the challenged provisions of the Law on expropriation would have a negative impact on the backlog of cases before the Supreme Court. The Applicant stated that at the time of making the Referral there were about 200 cases on expropriation.

The Court concluded that the Referral was admissible, because the Supreme Court based on Article 113.8 of the Constitution is authorized party and that it has met three procedural requirements: (1) the challenged law should have been directly implemented by the

Applicant in the pending case; (2) the legality of the challenged law was a precondition for making a decision on the pending case by the Applicant; (3) the Applicant specified which provisions of the law were considered in contradiction with the Constitution.

Regarding the merits of the Referral, the Court examined Article 4 of the Law on Expropriation and counted the particular conditions that are implemented in the municipalities, where they want to expropriate the land for their functions. The Court further reasoned that Article 4 of the Law on Expropriation has to do with the mandate of the municipality in relation to its planning, construction of municipal roads, public facilities and such like. The Court also noted that based on Article 4 of the Law on Expropriation, if the expropriating authority is the Government, the functions relate to inter-municipal roads, railways, generation and transmission of energy, telecommunication lines and facilities, dams, public water reservoirs and others.

The Court further elaborated the nature and the distinction of the expropriation, made by the municipality on one side and by the Government on the other and that the parties in the first case could have appealed in the respective municipal courts, while in the last case, the parties may have filed appeal in the Supreme Court. Furthermore, the Court reasoned that Article 102 of the Constitution, allows the cases to be directly referred to the Supreme Court, without right of appeal, and that the Court was satisfied that there is no constitutional violation in providing that appeals against decisions of Municipalities are dealt with in the relevant Municipal Court and by providing that appeals against decisions of the Government are dealt within the Supreme Court.

Citing its case law in the Case KO 98/11, dated 20 September 2011, concerning the immunities of Deputies of the Assembly of the Republic of Kosovo, the President of the Republic of Kosovo and Members of the Government of the Republic of Kosovo, the Court reasoned that the Republic of Kosovo is defined by the Constitution as a democratic Republic based on the principle of the separation of powers and the checks and balances among them. The Court based on principle of the separation of powers, stated that the issue of the work load and the way of compensation of expropriated property are matters entirely within the jurisdiction of judiciary, the legislature and the Government. The Court held the Referral is admissible form

procedural-formal aspect; that the Articles 35, 36, 37 and 38 of the Law on expropriation no. 03/L-139 are in compliance with the Constitution; The Judgment will be notified to the parties and will be published in the Official Gazette, pursuant to Article 20.4 of the Law and that the Judgment is effective immediately.

Pristine,01 March 2012
Ref. No.:AGJ203/12

JUDGMENT

in

Case No. KO 4/11

Applicant

Supreme Court of Kosovo

Constitutional Review of Articles 35, 36, 37 and 38 of the Law on Expropriation of Immovable Property, No. 03/L-139

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Enver Hasani, President
Kadri Kryeziu, Deputy-President
Robert Carolan, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Ivan Čukalović, Judge
Gjyljeta Mushkolaj, Judge and
Iliriana Islami, Judge

The Applicant

1. The Applicant is the Supreme Court of the Republic of Kosovo.

Legal Basis

2. The Referral is based on Art. 113.8 of the Constitution; Articles 51, 52, 53 of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter referred to as the "Law"), and Rule 75 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter referred to as the "Rules").

Subject Matter

3. The subject matter of the Referral is a request by the Supreme Court to assess the constitutionality of Articles 35, 36, 37 and 38 of the Law on Expropriation No. 03/L-139.

The Applicant's Submission

4. The Applicant argues, firstly, that Articles 35, 36, 37 and 38 of the 2009 Law are in contradiction with Article 102 (5) of the Constitution, which in the relevant part reads as follows:

> *"...The law may allow the right to refer a case directly to the Supreme Court, in which case there would be no right of appeal."*

5. The Applicant states that the contested Articles require the parties in proceedings to submit appeals with a Municipal Court, if the decision was issued by a Municipal Authority, and by the Supreme Court, if the decision on expropriation was issued by the Government.

6. The Applicant further states that *"These decisions can be appealed ..."* and that it is implied therefore that the Supreme Court decisions may also be appealed, although, there is no provision for an appeal against a decision of the Supreme Court allowed by the Constitution.

7. The Applicant argues that the parties are put in an unequal situation; when the Municipal Court issues a decision, parties have right to pursue all remedies, including the remedy before the Supreme Court, but when the first instance decision is issued by the Supreme Court it is unclear which is the Court of the appellate jurisdiction. Consequently, according to the Applicant, the said Articles of the 2009 Law on Expropriation are in contradiction with Article 24 (1) of the Constitution, which reads as follows: *1. All are equal before the law. Everyone enjoys the right to equal legal protection without discrimination.*

8. The Applicant further argues that the said Articles are in contradiction with Article 32 of the Constitution [Right to Legal Remedies], which reads as follows: *"Every person has the right to pursue legal remedies against judicial and administrative decisions which infringe on his/her rights or interests, in the manner provided by law*." In this respect the Applicant argues that although the said Articles of the 2009 Law on Expropriation formally provide for a right to appeal there is, in fact, no further Court that would decide such an Appeal from the Supreme Court.

9. The Applicant further argues that the said Articles of the 2009 Law on Expropriation contravene the Law on Non Contentious Procedure and the Law on Regular Courts.

10. Finally, the Applicant argues that implementation of the contested provisions of the 2009 Law would have a negative impact on the backlog of cases before the Supreme Court. The Applicant stated that at the time of making the Referral there were about 200 cases on expropriation in Prizren. The Applicant further states that "Many more cases will come on the occasion of expropriation up to Merdare; there will surely be thousands of such cases. In such situations, the observance of time limits stipulated by law would simply be utopian, even if we had 30 judges more to deal with these cases only."

Proceedings before the Court

11. On 17 January 2011, the Applicant filed a Referral with the Secretariat of the Constitutional Court.

12. On 14 February 2011, the President of the Constitutional Court appointed Judge Ivan Čukalović as the Judge Rapporteur and he appointed a Review Panel composed of Judges Robert Carolan, presiding, Altay Suroy and Iliriana Islami.

13. On 11 May 2011 the Court notified the receipt of the Referral to the President of the Supreme Court and to the President of Assembly of the Republic of Kosovo.

14. On 17 June 2011 the Constitutional Court requested the Applicant, pursuant to Article 113(8) of the Constitution to refer to particular judicial proceedings, i.e. a case, in which the Applicant was uncertain as to the compatibility of the contested law with the Constitution. The Constitutional Court also asked the Applicant to clarify whether their request addressed the Law on Expropriation of Immovable Property with amendments and supplements (2010/03-L-205, hereinafter referred to as the "2010 Amendments to the 2009 Law on Expropriation) or the 2009 Law on Expropriation of Immovable Property (2009/03-L-139).

15. On 12 July 2011 the Applicant replied to the Constitutional Court clarifying that the referral has been addressed regarding constitutionality of the 2009 Law on Expropriation. By the same letter the Applicant reiterated that the contested provisions of the aforementioned 2009 Law were Articles 35, 36, 37 and 38.

16. On 20 October 2011 the Supreme Court forwarded to the Constitutional Court two cases out of some two hundred and fifty appeals that had, by then, been submitted by the owners of land who challenged a final decision of the Government of Kosovo on evaluation of the amount for compensation for the expropriated property in order to construct the Vermice – Merdare national highway.

17. On 24 October 2011 the Constitutional Court notified to the Government of Kosovo of the making of the Referral.

18. On 3 November 2011 the Constitutional Court requested the Supreme Court to suspend all procedures in relation to cases

pending before it concerning the application of the contested Articles of the Law on Expropriation, pursuant to Article 53 of the Law on the Constitutional Court.

Comments from Parties

19. The Constitutional Court has not received comments on the Referral from the Assembly of the Republic of Kosovo or from the Government of Kosovo.

Contested provisions of 2009 Law on Expropriation and its relationship with 2010 Amendments to the 2009 Law on Expropriation

20. The 2009 Law on Expropriation was amended in 2010 by the Law on Amending and Supplementing Law No. 03/L-139 on Expropriation of Immovable Property, Law no. 03/L-205. *Inter alia,* these amendments affected, in part, all the contested Articles 35, 36, 37 and 38 of the Law on Expropriation. However, these amendments did not affect the substance of the Referral, which concerned, in what Court proceedings were to be brought when challenging a decision of an Expropriating Authority. It remained the case that when the Expropriating Authority was a Municipality the Municipal Court was the correct venue where the land was situate and when the Expropriating Authority was the Government the correct venue was the Supreme Court

Contested provisions of the 2009 Law on Expropriation

21. Therefore, for the sake of completeness, and for the purposes of understanding the issues that were raised in this Referral in their current context, the relevant text of the contested provisions as amended by the 2010 Law is set out as follows:

CHAPTER XI
LEGAL REMEDIES

Article 35
Complaints Challenging a Preliminary Decision on the Legitimacy of a Proposed Expropriation

1. If a Person is an Owner or an Interest Holder with respect to immovable property that is the subject of an expropriation procedure, and such Person reasonably believes that the concerned Preliminary Decision – or any aspect thereof - is contrary to one or more of the conditions established in paragraph 1 of Article 4 of this law, such Person shall have the right to file a complaint with a court of competent jurisdiction challenging such Preliminary Decision, in whole or in part.
2. If the Expropriating Authority is the Expropriating Authority of a Municipality, the complaint shall be filed with the concerned municipal court. If the Expropriating Authority is the Government, the complaint shall be filed with the Supreme Court of Kosovo. …

Article 36
Complaints Challenging the Adequacy of Compensation

1. If an Expropriating Authority issues a Final Decision under Article 11 of this law, any concerned Owner or Interest Holder with respect to property and/or rights expropriated by such decision may file a complaint with a court of competent jurisdiction challenging the amount of compensation and/or damages that such decision provides shall be paid to such Owner and/or Interest Holder.
2. If the Expropriating Authority is the Expropriating Authority of a Municipality, the complaint shall be filed with the concerned municipal court. If the Expropriating Authority is the Government, the complaint shall be filed with the Supreme Court of Kosovo. …

Article 37
Complaints for Compensation for Damages Arising from a Partial Expropriation

1. If, as provided in paragraph 3 of Article 18 of this law, a Final Decision authorizes the expropriation of part of a parcel of immovable property and, as a result, the un-expropriated part suffers, or is reasonably expected to suffer, a loss of value, the Owner of the un-expropriated part such shall have the right to file a complaint under this Article requesting the competent court to issue a judgment ordering the

Expropriating Authority to pay compensation for such loss in value, if and to the extent such compensation is not provided for in the Final Decision.
2. If the Expropriating Authority is the Expropriating Authority of a Municipality, the complaint shall be filed with the concerned municipal court. If the Expropriating Authority is the Government, the complaint shall be filed with the Supreme Court of Kosovo. …

Article 38
Complaints Challenging the Legitimacy of a Decision Authorizing the Temporary Use of Property

1. If a Person is an Owner or an Interest Holder with respect to immovable property that is the subject of a decision issued by the Government authorizing the temporary use of such property, and such Person reasonably believes that the decision does not satisfy the conditions specified in Article 29 of this law, such Person shall have the right to file a complaint with the Supreme Court of Kosovo challenging such decision. …

22. It is appropriate here to quote one further important Article of the amended Law on Appropriation and that is Article 39. This Article was unaffected by the amendments brought about by the 2010 Law and is the same in the original as in the consolidated Law. It provides that when dealing with disputes within the scope of the contested Articles if there is a conflict between the provisions of the contested Articles and the provision of the Law on Administrative Procedure or any other procedural law these Articles shall prevail. It provides, in full, as follows:

Article 39
Other Disputes

1. Complaints and other legal disputes falling within the scope of Article 35, 36, 37 or 38 of this law shall be handled as provided in those Articles. In the event of a conflict between such an Article and the provisions of the Law on Administrative Procedure or any other procedural law, such Article shall prevail.

2. All other legal disputes relating to an act taken or a decision adopted by a Public Authority under the authority of this law shall be subject to and governed by the applicable provisions of the Law on Administrative Procedure; provided, however, that any provision of the Law on Administrative Procedure eliminating or unreasonably restricting the right of an affected Person (a Person who has been specifically affected by such an act or decision) to file a complaint with a competent court challenging such act or decision shall be not be applied.

Preliminary Assessment of the Admissibility of the Referral

23. In order to be able to adjudicate the Applicant's Referral, the Constitutional Court needs first to examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution, further specified in the Law on the Constitutional Court and the Rules of Procedure.

24. The Applicant submitted the referral to the Court in accordance with Article 113 (8) of the Constitution, which reads as follows:

> *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***.**

25. The Law on the Constitutional Court further specifies procedure for referrals submitted under Article 113, (8) of the Constitution. In particular Article 51 reads as follows:

Article 51

Accuracy of referral

1. *A referral pursuant to Article 113, Paragraph 8 of the Constitution shall be filed by a court only if the contested*

law is to be directly applied by the court with regard to the pending case and if the lawfulness of the contested law is a precondition for the decision regarding the case pending with the court.

2. 2. A referral shall specify which provisions of the law are considered incompatible with the Constitution."

26. Finally the Rules of the Procedure of the Constitutional Court provides, *inter alia*, as follows:

Rule 75

Filing of Referral

(1) Any Court of the Republic of Kosovo may submit a Referral to the Court pursuant to Article 113.8 of the Constitution, ex officio*, or upon the request of one of the parties to the case.*

(2) The referral shall state why a decision of the court depends on the question of the compatibility of the law to the Constitution. The file under consideration by the court shall be attached to the referral.

(3) (3) Any Court of the Republic of Kosovo may file a referral to initiate the procedure pursuant to Article 113. 8 of the Constitution regardless of whether a party in the case has disputed the constitutionality of the respective legal provision. "

27. In brief, the entirety of these provisions means that when a court is dealing with a pending case and it is unsure whether the law that has to be applied is compatible with the Constitution then that court may refer a question about the compatibility of the law with the Constitution to this Court. Of course, there have to be proceedings in being where the question is relevant to the decision to be made by the referring court.

28. The particular Articles of the Law that raise the doubt in the mind of the court must be clearly set out and the details of the

case under consideration should be attached to the Referral. The proceedings in the local court shall be suspended automatically when the Referral is made pending a decision of this Court.

29. Therefore, in order to assess admissibility this Court has first to consider if the contested law is to be directly applied by the Applicant with regard to a pending case and secondly and if the lawfulness of the contested law is a precondition for the decision regarding the case pending with the Applicant. Thirdly it is important to see if the Applicant specified which provisions of the contested law are considered incompatible with the Constitution.

30. It is clear from the Applicant's submissions as well as from the text of the contested provisions of the 2009 Law on Expropriation that the Applicant will have to apply the contested Articles of that Law.

31. As regards to the second condition the Court notes that Applicant forwarded two complaints from owners of expropriated land that had been submitted to the Applicant pursuant to the contested provisions of the 2009 Law on Expropriation. Both of these complaints concerned decisions of the Government to expropriate immovable property in Suhareka. Decisions have not yet been made by the Supreme Court in those cases. The Supreme Court has a doubt as to the constitutionality of the contested Articles and it is uncertain as to the compatibility of the Articles with the Constitution. This Court is satisfied that the Appellant's decision is dependent on the constitutionality of the Articles in question.

32. Finally the Court notes that the Applicant specified which provisions of the contested law are considered incompatible with the Constitution, Articles 35, 36, 37 and 38.

33. There are no other reasons for this Court to consider that the Referral is inadmissible and, consequently, the Court finds that it is admissible and it will deal with the merits of the Referral.

34. This Referral is the first case submitted by any Court in Kosovo where such Court has been uncertain as the compatibility of a

law with the Constitution and where the power under Article 113(8) of the Constitution has been exercised. Article 113(8) of the Constitution is a powerful tool in the administration of justice as it allows all Courts in Kosovo to refer questions of constitutional compatibility to this Court. Provided there is a pending case and the case depends on the question then there is no obstacle to the Referral.

35. There may arise many circumstances where local Courts have doubts or uncertainty as to whether the application of a law will infringe human rights and fundamental freedoms guaranteed by the Constitution and by the international instruments that are directly applicable in Kosovo, such as the European Convention on the Protection of Human Rights and Fundamental Freedoms and its Protocols. This Court is positioned within the constitutional framework to answer such questions and courts are empowered to submit such questions.

Assessment of the Merits

36. In essence, the Supreme Court makes two main points in relation to the contested provisions of the 2009 Law on Expropriation. The first is that because there are two different judicial procedures that persons having land expropriated can be obliged to use that there is a breach of the Constitution. One procedure is when a public authority other than the Government wishes to acquire the land. In such a case the procedure is to apply to the appropriate Municipal Court where the land is situated. However, if the land to be acquired if for the Government then the procedure is to apply to the Supreme Court. The same rule applies whether the challenge is in relation to the preliminary decision on the legitimacy of a proposed expropriation, the adequacy of compensation, damages arising from partial expropriation or the legitimacy of a decision authorizing the temporary use of property.

37. The second point the Applicant makes is that there are substantial number of cases lodged with the Supreme Court already arising from the expropriation in Prizren Municipality and many more expected arising from expropriations that are expected to take place along the route of the Vermice – Merdare

Highway. This Court notes the building by the Government of Kosovo of a national highway from Vermice to Merdare.

38. As to the first point, can it be argued that because there are two avenues of recourse for expropriation by different bodies*, ipso facto*, there is a breach of the Constitution, whether arising from discrimination or otherwise? When one looks at the persons who may expropriate land in the Republic of Kosovo the Definitions in the Law define "Expropriating Authority" as meaning *"a Municipality or the Government having the authority to expropriate property under the present law."* It is clear therefore that both Municipalities and the Government are the bodies that may exercise expropriation.

39. On examination of Article 4 of the Law on Expropriation there are general conditions that must be met if any Expropriating Authority wishes to expropriate immovable property. These general conditions are:

> *1. An Expropriating Authority shall have the authority to expropriate immovable property only when all of the following conditions are satisfied:*
> *1.1. the Expropriation is directly related to the accomplishment of a legitimate public purpose within its competence as specified in paragraph 2 or 3 of this Article;*
> *1.2. the legitimate public purpose cannot practically be achieved without the Expropriation;*
> *1.3. the public benefits to be derived from the Expropriation outweigh the interests that will be negatively affected thereby;*
> *1.4. the choice of the property to be expropriated has not been made for, or in the furtherance of, any discriminatory purpose or objective; and*
> *1.5. the Expropriating Authority has complied with all applicable provisions of this law.*

40. Article 4 then goes on to state what separate conditions apply to Municipalities when they wish to expropriate land for their functions. These functions are, not surprisingly, related to the mandate of a Municipality in relation to its planning, construction of municipal roads, public facilities and such like. They are set out as follows:

"…The Expropriating Authority of a Municipality may expropriate immovable property only if:

2.1. the conditions specified in paragraph 1 of this Article are satisfied;

2.2. the Expropriation will exclusively affect private rights falling within the scope of paragraph 3 of Article 3 of this law;

2.3. the concerned immovable property lies wholly within the Municipality's borders, and

2.4. the Expropriation is clearly and directly related to the accomplishment of one of the following public purposes:

2.4.1. the implementation of an urban and/or spatial plan that has been adopted and promulgated by a Municipal Public Authority in accordance with all applicable legal requirements;

2.4.2. the construction or enlargement of a building or facility to be used by a Municipal Public Authority to fulfill its public functions; or

2.4.3. the construction, enlargement, establishment or placement of any of the following infrastructure and/or facilities if this promotes the general economic and/or social welfare of the municipality or provides a public benefit to the population of the municipality and otherwise complies with applicable legal requirements:

2.4.3.1. municipal roads (roads lying entirely within the Municipality) providing transportation services to the public;

2.4.3.2. public facilities needed for the provision of public education, health and/or social welfare services within the Municipality by a Municipal Public Authority;

2.4.3.3. pipes for providing public water and sewage services to residences within the Municipality;

2.4.3.4. municipal landfill sites and sites for the depositing of public waste;

2.4.3.5. municipal public cemeteries; or

2.4.3.6. municipal public parks and municipal public sports facilities; or

2.4.4. the acquisition of the surface rights needed by a Municipal Public Authority to implement an artisanal mining

license granted to the Municipality by the ICMM pursuant to the Law on Mines and Minerals."

41. Different conditions apply to the Expropriating Authority is the Government. Here the functions relate to such things as inter-municipal roads, railways, generation and transmission of energy, telecommunication lines and facilities, dams, public water reservoirs and others. They are provided for in the following terms:

> *3. The Government shall have the authority to expropriate property for any legitimate public purpose not specified in sub-paragraphs 2.4.1 through 2.4.4 of this Article if the conditions specified in paragraph 2 of this Article are satisfied. With respect to such an Expropriation, the Government shall be the Expropriating Authority. Legitimate public purposes within the scope of this paragraph shall include, but not be limited to, the following:*

3.1. the implementation of an urban and/or spatial plan that has been adopted and promulgated by a Central Public Authority in accordance with all applicable legal requirements;
3.2. the construction or enlargement of a building or facility to be used by a Central Public Authority to fulfill its public functions;
3.3. the construction, enlargement, establishment or placement of infrastructure and/or facilities that promote the general economic and/or social welfare of Kosovo or provide another public benefit, including, but not limited to, the construction, enlargement, establishment or placement of:

> *3.3.1. state or inter-municipal roads providing transportation services to the public, including toll roads;*
> *3.3.2. railways providing transportation services to the public;*
> *3.3.3. works, facilities, safety areas or fuel storage or disposal sites for or relating to the generation, supply, transmission or distribution of energy;*
> *3.3.4. mines and other works, safety areas and facilities for or relating to activities involving the exploitation of mineral resources;*
> *3.3.5. telecommunication lines and facilities, including telegraph and telephone lines, as well as radio and television facilities;*

3.3.6. public facilities needed for the provision of public education, health and/or social welfare services by a Central Public Authority;

3.3.7. trunk pipelines required by a POE to provide water and sewage services to the public;

3.3.8. landfill sites and sites for the depositing of public waste;

3.3.9. dams;

3.3.10. public water reservoirs;

3.3.11. state cemeteries for distinguished veterans and public servants;

3.3.12. public airports, including the required security zones around public airports;

3.3.13. state public parks and state public sports facilities;

3.3.14. environmental or nature reserves, including those to which public access may be restricted; or

3.3.15. works, infrastructure, facilities, areas or sites covered by, or reasonably needed for the implementation of an Infrastructure Contract awarded by a Tendering Body; or

3.4. the protection of a monument of cultural heritage or a site of significant archeological, historic or scientific nature, but only if the site has been lawfully designated as such by a resolution of the Assembly and either:

3.4.1. the owner of the immovable property where such a monument or site is located refuses to protect or – due to objective impossibility – cannot protect such monument or site; or

3.4.2. such owner agrees to or requires the concerned property to be expropriated.

42. It appears to the Court that the legislators when enacting this Law were conscious of the distinction between expropriation by Municipalities and by the Government. In the contested Articles the Assembly provided that there should be different appeal mechanisms for expropriations by Municipalities and for expropriations by the Government. One can understand why this is so. Municipalities are confined to expropriations within their jurisdiction and for their particular statutory functions. They are localized within the area of the Municipality alone.

43. The expropriations by the Government have a different nature. Generally, these expropriations are more focused on the benefit of the national infrastructure. There is an obvious benefit to

having one overall authority in charge of the national development and the Assembly has determined that this power shall belong to the Government.

44. The Court finds it hard therefore to see that there is discrimination against anyone in relation to the "appeal" mechanisms that have been adopted in the Law on Expropriation. Nobody is denied the right to recourse to a judicial determination of their causes of complaint arising from decisions to expropriate immovable property or on the amount of compensation. For Municipal expropriations the venue of first instance is the Municipal Court where the property is situated. For Government expropriations the first and only instance is the Supreme Court.

45. The Constitutional Court bears in mind the particular permission contained in Article 102 [General Principles of the Judicial System] which allows a case to be referred directly to the Supreme Court without right of appeal, where it is specifically provided that:
"...The law may allow the right to refer a case directly to the Supreme Court, in which case there would be no right of appeal."

46. Therefore, this Court is satisfied that there is no constitutional violation in providing that appeals against decisions of Municipalities are dealt with in the relevant Municipal Court and by providing that appeals against decisions of the Government are dealt with in the Supreme Court.

47. Any argument about how parties affected by an expropriation decision may be confused as to the procedure to be applied in pursuing a grievance is answered by reference to Article 39 of the Law on Expropriations which provides that it is the provisions of Articles 35, 36, 37 and 38 which shall prevail: *"1. Complaints and other legal disputes falling within the scope of Article 35, 36, 37 or 38 of this law shall be handled as provided in those Articles. In the event of a conflict between such an Article and the provisions of the Law on Administrative Procedure or any other procedural law, such Article shall prevail."*

48. The second argument of the Applicant concerns the volume of cases that may be lodged with it arising from the construction of the national highway and the numerous expropriations that may follow. It may be that many persons will be aggrieved with decisions to expropriate land along the proposed route. Questions challenging a preliminary decision on the legitimacy of a proposed expropriation may occur in large numbers. However, the principles arising from these decisions may well be settled in the first cases decided on the merits. Complaints challenging the adequacy of compensation must follow the general principle of market value for the expropriated property as provided for in Article 15 of the Law on Expropriation:

Article 15
Basic Rules Governing the Determination of Amount of Compensation

1. Compensation shall be paid on the basis of the market value of the property as determined in accordance with the further provisions of this law and the subsidiary legislation issued pursuant to paragraph 6 of this Article.

49. The Courts of Kosovo, including the Supreme Court have the ability to apply this well established basis principle. It may be that large numbers of cases will not be referred to the Supreme Court as it anticipates.

50. This Court has previously pointed out that the Constitution is based on the doctrine of the separation of powers. In its Judgment in Referral, KO 98/11, dated 20 September 2011, Concerning the immunities of Deputies of the Assembly of the Republic of Kosovo, the President of the Republic of Kosovo and Members of the Government of the Republic of Kosovo the Court said, at paragraph 44, *"The Republic of Kosovo is defined by the Constitution as a democratic Republic based on the principle of the separation of powers and the checks and balances among them. The separation of powers is one of the bases that guarantees the democratic functioning of a State. The essence of the independence and effective functioning of these branches is the immunity provided to the persons embodying these powers."*

51. The Constitutional Court should not lightly interfere in the sphere of decision making of the Assembly when it decided on these challenged provisions, all the more so, when the remedy for the issue of dealing with a large number of cases is within the competence of the Applicant and the Assembly, be it in the allocation of extra resources to the Supreme Court to enable it to deal with the anticipated work load from the new Law on Expropriation, or the timely offer of full compensation for the expropriated property. These are matters entirely within the jurisdiction of and for discussion, if appropriate, between the judiciary, the legislature and the Government. The primary responsibility for the proper administration of Justice is the Government

52. The Constitutional Court cannot find that there is a violation of the Constitution on Kosovo on that basis either.

FOR THESE REASONS

Pursuant to Article 113.8 of the Constitution, Articles 51, 52, 53 of the Law and Rule 75 of the Rules, the Constitutional Court, by majority decision

DECIDES

I. To hold that the Referral is admissible;

II. To hold that Articles 35, 36, 37 and 38 of the Law on Expropriation, Law No. 03/L-139 are compatible with the Constitution of Kosovo;

III. Orders that this Judgment be served on the Parties and, in accordance with Article 20.4 of the Law, be published in the Official Gazette; and

IV. Declares that this Judgment is effective immediately.

Judge Rapporteur **President of the Constitutional Court**

Prof. Dr. Ivan Čukalović Prof. Dr. Enver Hasani

KI 37/11 dated 06 March 2012- Constitutional Review of the Judgment of the Supreme Court of Kosovo, Rev. no. 5/2008, dated 9 July 2010

Case KI 37/11, decision of Supreme Court of Kosovo
Keywords; individual referral, out of time, Decision on inadmissibility

The Applicant has stated that with the contested decision are violated her rights guaranteed by the Constitution provided in article 23 (Human Dignity), 24 (Equality Before the Law), 31 (Right to a Fair and Impartial Trial) and 49 (Right to Work and Exercise Profession)

The Applicant also emphasized that the Supreme Court of Kosovo by rejecting plaintiffs REVISION through Judgment Rev. no. 5/2008, dated 9 July 2010, has made it impossible for her to realize her right for the compensation of the unpaid salaries for the time she was unlawfully dismissed from work. The Applicant therefore requests the Constitutional Court to recognize this right to her.
The courts finds that the applicant have not met the referral admissibility criteria, because it has not filed the application within a period of 4 (four) months.

Pristine, 01 March 2012
Ref. No.: RK204/12

RESOLUTION ON INADMISSIBILITY

in

Case No. KI 37/11

Applicant

Jalldyze Kastrati

Constitutional Review of the Judgment of the Supreme Court of Kosovo, Rev. no. 5/2008, dated 9 July 2010

CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Enver Hasani, President
Kadri Kryeziu, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Ivan Cukalovic, Judge
Gjyljeta Mushkolaj, Judge and
Iliriana Islami, Judge

Applicant

1. The Applicant is Mrs. Jalldyze Kastrati, from Gjakova, residing at Mother Theresa street, apartment no. 7. She is represented by Mr. Hasan Shala, a lawyer from Gjakova.

Challenged Decision

2. The challenged decision is the Judgment of the Supreme Court, Rev. no. 5/2008, dated 9 July 2010, rejecting the Revision of the plaintiff Mrs. Jalldyze Kastrati from Gjakova, filed against the Judgment of the District Court in Peja, Ac. no. 318/2004, dated 8 May 2007, which the party received on 17 September 2010.

Subject Matter

3. The subject matter of the Referral submitted with the Constitutional Court of the Republic of Kosovo on 16 March 2011 is the labor dispute between the Applicant and her former employer 'Virgjinia" J.S.C. from Gjakova, which relates to the nonpayment of personal income for the period from 14 November 1994 to 28 August 1997, when she was unlawfully dismissed from work. The Applicant initiated court proceedings on this issue and, since she was not satisfied with the decision of District Court in Peja, she filed a Revision with the Supreme Court and the Judgment of the Supreme Court, Rev. no. 5/2008, dated 9 July 2010, is exactly the act of the public authority the Applicant is challenging, asking for its constitutional review.

Legal basis

4. Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter referred to as the "Constitution"), Article 47 of the Law No. 03/L-121 on the Constitutional Court of Republic of Kosovo of 15 January 2009 (hereinafter referred to as the "Law") and Rule 56.2 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter referred to as the "Rules of Procedure").

Proceedings before the Court

5. On 16 March 2011, Mrs. Jalldyze Kastrati filed a Referral with the Constitutional Court of Kosovo requesting the constitutional review of the Judgment of the Supreme Court of Kosovo, Rev. no. 5/2008, dated 9 July 2010.

6. On 23 March 2011, the Constitutional Court requested from Applicant's representative to submit to the Court with all documents on the progress of the case in all court instances, including decisions issued by regular courts.

7. On 4 April 2011, the Constitutional Court received the supplementation of the referral with requested documents from Applicant's legal representative.

8. On 18 April 2011, the President appointed Judge Ivan Čukalović as Judge Rapporteur and the Review Panel composed of Judges

Robert Carolan (Presiding), Kadri Kryeziu and Gjyljeta Mushkolaj, members.

9. On 14 June 2011, after having considered the Report of the Judge Rapporteur, Ivan Čukalović, the Review Panel, composed of Judges Robert Carolan (Presiding), Kadri Kryeziu and Gjyljeta Mushkolaj, Panel members, recommended to the full Court the inadmissibility of the Referral.

Summary of the facts

10. Mrs. Jalldyze Kastrati was in employment relationship for an indefinite period of time with AIC "Virgjinia" J.S.C in Gjakova.

11. On 15 November 1994, the Disciplinary Commission of the employer AIC "Virgjinia" J.S.C in Gjakova, issued Decision No. 105 pronouncing to Mrs. Kastrati the disciplinary measure of "the termination of employment relationship". Employer's Appeals Commission, through Decision no. 138, dated 23 December 1994, upheld the Decision of the Disciplinary Commission.

12. On 24 December 1996, the Municipal Court in Gjakova issued Judgment P. no. 9/95 approving the statement of claim of Mrs. Kastrati and annulled the decisions of the employer AIC "VIRXHINIA" J.S.C. and obliged the respondent to reinstate the plaintiff, Mrs. Kastrati, to her working place with all the rights from the employment relationship.

13. On 23 January 1998, the Municipal Court in Gjakova issued Judgment P. No. 60B/96, approving the other statement of claim of the plaintiff Mrs. Kastrati and obliged AIC "VIRXHINIA" J.S.C. to compensate her the unpaid personal income on behalf of the unlawful dismissal from work from 14 November 1994 to 28 August 1997, in the amount of 13,332.00 dinars of that time together with the legal interest rate from 1 January 1997.

14. On 27 November 1998, acting pursuant to the appeal of the respondent J.S.C. "Virgjinia" in Gjakova, the District Court in Peja through Resolution Ac. no. 673/98, annulled the Judgment of the Municipal Court in Gjakova, C. no. 608/96, dated 23 January 1998, and remanded the case to the first instance court for retrial

with the remark if the Judgment of the first instance court, C. nr. 9/1995, was final. Since this case had remained unfinished before the war in Kosovo, the plaintiff requested, through the submission of 12 February 2002, the continuation of the proceedings.

15. On 25 March 2004, through its Judgment C. no. 84/02, the Municipal Court in Gjakova completely determined the factual situation and approved plaintiff's statement of claim for the compensation of unpaid monthly salaries in the amount of 2,238.00 Euros and the payment of the procedural costs in the amount of 700.00 Euros.

16. On 8 May 2008, the District Court in Peja, through Judgment A.C no. 318/04, amended the Judgment of the Municipal Court in Gjakova, C. no. 84/02, dated 25 March 2004, so and rejected as unfounded the statement of claim of the plaintiff Jalldyze Kastrati for the compensation of unpaid salaries underlining that the current "VIRXHINIA" J.S.C. is not a successor of the former AIC "Virgjinia" J.S.C and the plaintiff is not in a "legal-civil or employment relationship" with the current employer "Virgjinia" J.S.C., so this employer has no obligations towards the plaintiff.

17. On 9 July 2010, the Supreme Court through Judgment Rev. nr. 5/2008 rejected as ungrounded the Revision filed by the plaintiff Mrs. Jalldyze Kastrati against the Judgment of the District Court in Peja, Ac. nr. 318/2004, dated 8 May 2007.

18. According to the personal statement written in the Referral submitted to the Constitutional Court, Mrs. Jalldyze Kastrati stated she had received the Judgment of the Supreme Court on 17 September 2010.

19. On 16 March 2011, Mrs. Jalldyze Kastrati through her representative, the lawyer Mr. Hasan Shala, submitted the Referral to the Constitutional Court claiming the violation of her constitutionally guaranteed rights mentioned in the Referral.

Applicant's allegations

20. The Applicant stressed that the challenged decision has violated her constitutionally guaranteed rights set forth with Articles 23

(Human Dignity); 24 (Equality Before the Law); 31 (Right to a Fair and Impartial Trial); and Article 49 (Right to Work and Exercise Profession).

21. The Applicant also emphasized that the Supreme Court of Kosovo by rejecting plaintiff's REVISION through Judgment Rev. no. 5/2008, dated 9 July 2010, has made it impossible for her to realize her right for the compensation of the unpaid salaries for the time she was unlawfully dismissed from work. The Applicant therefore requests the Constitutional Court to recognize this right to her.

Assessment of the admissibility of the Referral

22. In order to be able to adjudicate the Applicant's Referral, the Court needs first to examine whether the Applicant has fulfilled the admissibility conditions and requirements laid down in the Constitution.

23. In this respect, the Court refers to Article 113.7 of the Constitution which provides:

> *"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."*
>
> The Court also takes into consideration:
>
> Article 49 of the Law on the Constitutional Court of the Republic of Kosovo which refers to individual Referrals stipulating that:
>
> *"The referral should be submitted within a period of four (4) months. The deadline shall be counted from the day upon which the claimant has been served with a court decision. In all other cases, the deadline shall be counted from the day when the decision or act is publicly announced. If the claim is*

made against a law, then the deadline shall be counted from the day when the law entered into force."

24. Rule 36, paragraph 1, of the Rules of Procedure of the Constitutional Court of Kosovo clearly states: the Court may only deal with Referrals if:

"b) the Referral is filed within four months from the date on which the decision on the last effective remedy was served on the Applicant."

25. After reviewing the documents submitted with the Referral, the Court concludes that the Applicant has not fulfilled the admissibility requirement for submitting the Referral within the 4 (four) month period as required by legal provisions mentioned in previous paragraphs of this report, because she had received the Judgment of the Supreme Court Rev. no. 5/2008 on 17 September 2010, whereas she submitted the Referral to the Constitutional Court of the Republic of Kosovo on 16 March 2011, after the elapse of the 4 (four) month deadline she was obliged by the Law to submit it.

26. In the actual case, the Court emphasizes that the legal requirement of the compatibility with the four month deadline for the submission of a Referral is intended to promote the principle of legal certainty and to assure the parties that cases that are under the jurisdiction of the Constitutional Court shall be examined within a reasonable time limit to protect the authorities and other interested parties from being in situations of "uncertainty" for a long period of time (see (*ECHR P.M. v. the United Kingdom* Application no. 6638/03, of 24 August 2004)

27. Therefore, it results that the Applicant has not fulfilled admissibility requirements because the Referral was submitted after the elapse of the 4 (four) month deadline, as determined by the Law on the Constitutional Court, and

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 29 of the Law on the Constitutional Court, and Rule 36.1 (b) of the Rules of Procedure, in the session of 14 June 2001, unanimously

DECIDES

I. TO REJECT the Referral as inadmissible.

II. This Decision shall be notified to the Parties and published in the Official Gazette, in accordance with Article 20.4 of the Law on the Constitutional Court.

III. This Decision is effective immediately.

Judge Rapporteur **President of the Constitutional Court**

Ivan Čukalović Prof. Dr. Enver Hasani

Kl 59/11 dated 22 March 2012 - Concerning the constitutionality of the Judgment issued by the Supreme Court of the Republic of Kosovo, SCA 15/07 dated 26 December 2007

Case KI 59/11, decision dated 9 March 2012
Keywords: right to a fair trial, individual referral, manifestly ungrounded referral, Criminal Code, aggravated murder.

The applicant filed the referral pursuant to Article 113.7 of the Constitution of Kosovo, thereby claiming that his constitutional rights were violated by the judgment of the Supreme Court of Kosovo, which upheld the judgment of the District Court in Prishtina, by which the Applicant was convicted for murder in premeditation, and unlawful possession of arms. The Applicant claimed that the Supreme Court had violated his rights guaranted by Article 31, paragraph 2 of the Constitution of Kosovo.

The Court found that the referral of applicant was inadmissible, pursuant to Rule 36 (2) (b) and (d) of Rules of Procedure, because the applicant failed to support his allegations by evidence, in proving how and why were his constitutional rights violated. The Court further noted that the referral does not demonstrate that the Supreme Court had acted in an arbitrary or unfair manner. Due to the reasons provided above, the Court decided to find the referral of Applicant as inadmissible.

Pristine, 09 March 2012
Ref. No.: RK202/12

Resolution on Inadmissibility

In
Case No. Kl 59/11

Applicant

Zyfer Sahitolli

Concerning the constitutionality of the Judgment issued by the Supreme Court of the Republic of Kosovo, SCA 15/07 of 26 December 2007

The Constitutional Court composed of:

Enver Hasani, President
Kadri Kryeziu, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Ivan Čukalović, Judge
Gjyljeta Mushkolaj, Judge and
Iliriana Islami, Judge

Applicant

1. The Applicant is Zyfer Sahitolli residing in Lipjan Correctional Facility, Kosovo.

Subject Matter

2. The Applicant challenges the Judgment of the Supreme Court, No. 15/07, dated 26 December 2007, affirming the judgment and verdict of the District Court in Pristina, No. 297/2004, dated 15 September 2006, of the crime of aggravated murder in violation of Article 147, paragraph 1, subparagraph 11 of the Criminal Code of the Republic of Kosovo and unauthorized use of a firearm in violation of Article 328, paragraph 2 of the Criminal Code of the Republic of Kosovo. He was sentenced to 12 years in prison from 2 March 2004.

3. The Applicant wants the Constitutional Court to find a violation of his right to a fair trial and to be given a new trial and/or to have his conviction for premeditated murder reduced to murder with a disturbed state of mind.

Legal Basis

4. Article 113.1 and 7 of the Constitution of Kosovo; Article 20 of the Law; and, Rule 36 of the Rules.

Proceedings before the Court

5. On 29 April 2011, the Applicant submitted his Referral to the Court.

6. On 3 May 2011 the President of the Court appointed Judge Robert Carolan as Judge Rapporteur and a Review Panel of Judges Alay Suroy (Presiding), Ivan Cukalovic and Kadri Kryeziu.

7. On 27 June 2011 the Constitutional Court notified the District of Pristina and the Supreme Court of the making of the Referral by the Applicant. The Constitutional Court also requested the Supreme Court to furnish evidence of the service of the Judgment of the Supreme Court on him.

8. On 29 June 2011 the Court wrote to the Applicant requesting the date of service of the Judgment of the Supreme Court on him.

9. Replies were not received to the correspondence issued by the Court.

Summary of the Facts

10. On 15 September 2006, the Applicant was convicted by the District Court of Pristina of premeditated murder and illegal possession of a firearm.

11. On 26 December 2007 the Supreme Court of Kosovo affirmed the verdict and judgment of the District Court of Pristina convicting the Applicant of premeditated murder and illegal possession of a firearm. The Supreme Court did, however, modify the sentence imposed upon the Applicant by increasing it to 17 years from 2 March 2004.

12. On 2 March 2004 the Applicant and the deceased, Kadri Krasniqi, and his brother, Sabri Krasniqi met in the post office premises in the Village of Lipjan. During this meeting a quarrel began between the Applicant and the Krasniqi brothers because the brothers suspected that the Applicant had on numerous occasions called them on the telephone and had insulted them. During the quarrel Kadri Krasniqi punched the Applicant several times.

13. Later on 2 March 2004 the Applicant returned to Adem Jashari Street in Lipjan, and in a confrontation with Kadri Krasniqi,he fired two bullets into the body of Kadri Krasniqi which caused him to bleed to death.

14. After the Applicant shot Kadri Krasniqi he then chased Sabri Krasniqi who was fleeing towards the police station and fired several shots towards Sabri Krasniqi but was not able to hit him with any of the fired bullets.

15. The Applicant did not have a license to use or possess the firearm, a Helvan 9mm handgun with the serial number 1052235, that he used to shoot Kadri Krasniqi and that he used in shooting in the direction of Sabri Krasniqi.

16. The Applicant previously knew the deceased and his brother. Indeed, the Applicant had previously dated Sabri Krasniqi's wife before she married Sabri Krasniqi.

17. During the trial several witnesses to the shooting testified as well as a psychiatrist, Dr. Nazmije Musliu. Dr. Musliu testified with respect to the Applicant's state of mind at the time of the shooting.

18. The District Court carefully reviewed all of the witness testimony and then concluded that the evidence established that the Applicant shot the deceased, Kadri Krasniqi. It concluded that the shooting was not done in self-defense and that it was not the product of psychologically disturbed state of mind. It found that the Applicant could have retreated from the confrontation and further concluded that the Applicant intended to kill not only the deceased, but also the deceased's brother by chasing him and firing bullets in his direction when he was fleeing to the police station.

19. The Supreme Court carefully reviewed the findings and judgment of the District Court. It concluded that it was undisputed that the Applicant and the victims of this offense had previously known one another and that there were continuing disputes between them, that on the day of the murder there was a physical confrontation between the Applicant and the victims and that later that day the Applicant once again confronted the victims while this time armed with an unlicensed firearm.

20. The Supreme Court further concluded that as a matter of law the mitigating defense of a "disturbed state of mind" is an extraordinary defense that applies only in those situations where the perpetrator's body is in danger or injured and where the perpetrator does not provoke the assault on his

body. The Supreme Court found that in this case the Applicant had disturbed the injured party and had created the confrontation resulting in the shooting death of Kadri Krasniqi and the attempted shooting of Sabri Krasniqi. The Supreme Court concluded that this is not such an action that would allow the Applicant to claim that he was suffering from a disturbed psychological condition at the time of the shooting.

Disputed and Undisputed Facts

21. There are no undisputed facts. The conclusions to be made from the facts are, however, disputed.

Legal Arguments presented by the Applicant

22. The Applicant claimed that he did not have a fair trial implying a violation of Article 32, paragraph 2 of the Constitution of the Republic of Kosovo. He specifically claims that there was insufficient evidence for the courts to find him guilty of premeditated murder.

23. The Applicant also claimed that he was not allowed to have the victim, Sabri Krasniqi's wife to testify or his brother-in-law to testify that his children were in his father-in-law's house. He also claimed that he was not allowed to have his wife testify with respect to his plan of activities to have his children registered on the day of the shooting of Kadri Krasniqi.

24. The Applicant also claimed that he the indictment filed by the prosecutor and approved by the court was improper because he was not first interviewed by the prosecutor.

25. The Applicant also complained that he was not allowed to ask questions of the victim's father and was interrupted several times when interrogating the witness Sabri Krasniqi.

Assessment of the Admissibility of the Referrral

26. Article 32, paragraph 2, of the Constitution provides:

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

27. Article 6 of the European Convention on Human Rights provides:

1. *In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgement shall be pronounced publicly by the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.*
2. *Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.*
3. *Everyone charged with a criminal offence has the following minimum rights:*
    - *(a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;*
    - *(b) to have adequate time and the facilities for the preparation of his defence;*

- *(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;*
- *(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;*
- *(e) to have the free assistance of an interpreter if he cannot afford one.*

28. With respect to the witnesses that the Applicant wished to call or interrogate more extensively during the trial, there is no offer of proof by the Applicant as to what evidence could have been elicited from those witnesses that would be relevant to any issue or defense that the Applicant could raise to the indictment. Certainly the trial court can and must manage what is relevant and what is not relevant evidence in a case. The Applicant has made no showing before this Court or the Supreme Court that any of that evidence would have been relevant.

29. There was no evidence to support that any of the Applicant's rights pursuant to the Constitution of the Republic of Kosovo or the European Convention on Human Rights were violated.

30. Rule 36. 2 requires the Court to reject a Referral as manifestly ill-founded if the Referral is not prima facie justified or when the Applicant does not sufficiently substantiate his claim.

31. The Court refers to:

a. Rule 36 (1) (a) and (c) of the Rules: *the Court may only deal with referrals if all effective remedies available under the law have been exhausted and the referral is not manifestly ill-founded.*

b. Rule 36 (2) (b) and (d): *the Court shall reject a referral as being manifestly ill-founded when it is satisfied that the presented facts do not in any way justify the allegation of a violation of the constitutional right or the Applicant does not sufficiently substantiate his claim.*

32. In this regard, the Applicant has not substantiated his claim, explaining how and why a violation has been committed, nor has he furnished evidence to prove that a right guaranteed by the Constitution has been violated.

33. Moreover, the Referral does not indicate that the District or Supreme Court acted in an arbitrary or unfair manner. The mere fact that the Applicant is dissatisfied with the outcome of the case cannot of itself raise a valid claim of a breach of the Constitution. In these circumstances, the Applicant cannot be considered to have fulfilled the abovementioned established admissibility requirements.

34. There is no evidence to support the Applicant's claim.

FOR THESE REASONS

The Court, following deliberations on 29 November 2011, pursuant to Articles 113.7 of the Constitution, Articles 20 of the Law and Rule 56.2 of the Rules, unanimously

DECIDES

I. TO REJECT the Referral as inadmissible,

II. This Decision is to be notified to the Applicant, and

III. This Decision shall be published in accordance with Article 20(4) of the Law and is effective immediately.

Judge Rapporteur **President of the Constitutional Court**

Robert Carolan Prof. Dr. Enver Hasani

KI 51/10 dated 26 March 2012 - Constitutional Review of the Decision of President of the Republic of Kosovo on the appointment of Mr. Zdravković Goran as a member of the Central Election Commission representing the Serbian Community

Case KI 51/10, decision dated 9 March 2012
Keywords: actio popularis, violation of constitutional rights and freedoms, Central Election Commission, time-barred referral, President of the Republic of Kosovo.

The applicant filed the referral pursuant to Article 113.7 of the Constitution of Kosovo, thereby claiming that his constitutional rights were violated by the decision of the President of the Republic of Kosovo on appointment of Mr. Goran Zdravković as member to the Central Election Commission, as a representative of the Serbian community. The Applicant alleged that the President of the Republic of Kosovo had violated his rights and freedoms guaranteed by the Constitution, without quoting any specific constitutional provision.

The Court found that the referral of applicant was inadmissible, pursuant to Article 49 of the Law on the Constitutional Court of the Republic of Kosovo, since the Applicant had not filed his referral in compliance with timelines as provided by the mentioned provision. Quoting its case law in the case KI 41/09 *Universiteti AAB-RIINVEST LLC, Prishtina v. Government of the Republic of Kosovo,* the Court further noted that the Applicant had not clarified his referral, in compliance with Article 48 of the Law on the Constitutional Court, and had not proven how were his constitutional rights violated by an act of a public authority, since the Constitution of Kosovo does not provide on any *actio popularis remedy*. Due to the reasons provided above, the Court decided to find the referral of Applicant as inadmissible.

Pristine,09 March 2012
Ref. No.: RK199/12

RESOLUTION ON INADMISSIBILITY

in

Case No. KI51/10

Applicant

Živić Ljubiša

Constitutional Review of the Decision of President of the Republic of Kosovo on the appointment of Mr. Zdravković Goran as a member of the Central Election Commission representing the Serbian Community.

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Enver Hasani, President
Kadri Kryeziu, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Ivan Čukalović, Judge
Gjyljeta Mushkolaj, Judge and
Iliriana Islami, Judge

Applicant

1. The Applicant is Živić Ljubiša from Gračanica, President of the Independent Social Democrats League.

Opposing party

2. The opposing party is the President of the Republic of Kosovo.

Subject matter

3. The subject matter is the assessment of the constitutionality of the Decision of President of the Republic of Kosovo concerning the appointment of Mr. Zdravković Goran member of the Central Election Commission representing the Serbian Community.

Alleged violations of constitutionally guaranteed rights

4. The Applicant did not explicitly specify what rights guaranteed by the Constitution were alleged to have been violated.

Legal Basis

5. Article 113.7 of the Constitution, Article 22 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo of 16 December 2008 (hereinafter: the "Law") and Rule 56 (2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the “Rules of Procedure”).

Applicant’s complaint

6. On 29 June 2010, the Applicant filed a Referral with the Constitutional Court, alleging that the President of the Republic of Kosovo violated the Constitution and the Law on General Elections of the Republic of Kosovo by appointing Mr. Zdravković Goran as a member of the Central Election Commission (CEC) representing the Serbian community.

7. On 28 October 2010, the Applicant filed a new Request to the Constitutional Court requesting to annul the Decision of President of the Republic of Kosovo on the appointment of Mr. Zdravković Goran and return Mr. Živić Siniša to the position of

a member of the Central Election Commission representing the Serbian community.

Proceedings before the Constitutional Court

8. The Applicant lodged a Referral with the Constitutional Court on 29 June 2010.

9. By order of the President dated 9 July 2010, Judge Gjyljeta Mushkolaj was appointed as Judge Rapporteur. On the same date, the President appointed the Review Panel composed of Judge Robert Carolan presiding and Judges Altay Suroy and Kadri Kryeziu.

10. The Court deliberated on the Referral on 21 February 2011.

Comments of the opposing party

11. On 5 July 2010, the notification on the registration of the case and the request to reply was sent to the President of the Republic of Kosovo. On 02 August 2010, the President of the Republic of Kosovo through his duly appointed lawyers sent a reply to the Court.

Summary of the facts

12. On 04 July 2008 the President of the Republic of Kosovo, Dr. Fatmir Sejdiu, requested the representatives of the six biggest parliamentary groups and representatives of non-majority Communities in the Assembly of Kosovo to send their nominations for appointments to the CEC. Also, on 4 July 2008 the President of the Republic of Kosovo requested from the Serb Liberal Party, the largest political party representing the Serb Community in the Assembly of Kosovo, to send its proposal for appointment to the Central Election Commission.

13. On 14. July 2008, Mr. Stojanović Bojan, head of the parliamentary group of Serb Liberal Party sent a letter to the President proposing Mr. Mr. Zdravković Goran to be a member of CEC.

14. The President, on 15 July 2008, appointed Mr. Zdravković Goran as a member of CEC and representing the Serb community. This Decision of the President entered into force on the date when it was signed.

15. On 19. July 2008 Mr. Mr. Zdravković Goran was sworn in before the President and officially became a member of the CEC.

16. The Applicant complains that the President of the Republic of Kosovo violated the Constitution and the Law on General Elections of the Republic of Kosovo by appointing Mr. Mr. Zdravković Goran as a member of the Central Election Commission. According to the applicant, Mr. Zdravković Goran does not fulfil the conditions stipulated by the law to hold that position, regarding qualifications.

17. In his Second Request to the Constitutional Court of 28. October 2010, the Applicant asks the Constitutional Court to annul the Decision of the President of the Republic of Kosovo and replace Mr. Mr. Zdravković Goran with Mr. Živić Siniša, who previously held the position of a member of the Central Election Commission pursuant to the decision of Mr. Joachim Reucker, the Special Representative of the Secretary General, in accordance with the UNMIK Regulation No. 2007/25 of 29 August 2008. According to the Applicant, the rights of Mr. Živić Siniša were violated by the Decision of the President appointing Mr. Zdravković Goran as a member of CEC without any notification to Mr. Živić Siniša concerning his replacement.

Assessment of the Admissibility of the Referral

18. The Court needs to preliminarily assess whether the Applicant has fulfilled all admissibility requirements laid down in the Constitution, the Law and the Rules of Procedure of the Court.

19. The Court notes that Article 49 of the Law provides that the Referral should have been submitted within a period of four (4) month after the final decision in the case. Article 49 of the Law stipulates as follows:

The deadline shall be counted from the day upon which the claimant has been served with a court decision. In all other cases, the deadline shall be counted from the day when the decision or act is publicly announced. If the claim is made against a law, then the deadline shall be counted from the day when the law entered into force.

20. When that deadline of four months has arisen before the entry into force of the Law, Article 56 the Law provides that "it shall begin to be counted on the day upon which this Law enters into force". The Law entered into force on 15 January 2009, on the day of publication in the Official Gazette of the Republic of Kosovo".

21. The challenged decision of the President of the Republic of Kosovo was signed on 15 July 2008 and made public on the same day. The member appointed to the Central Election Commission by the same Decision of the President took his oath before the President of the Republic on 19 August 2008. Consequently, the deadline for the submission of the Referral with the Court expired on 15 May 2009, while the Applicant submitted the Referral on 29 June 2010. Hence, the Referral is out of time, pursuant to the above Article of the Law.

22. Even if the Referral were not out of time, in accordance with Article 113.1 of the Constitution, *"The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties"* and Article 113.7 of the Constitution provides that *"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."*

23. It is true that decisions of the President of the Republic concerning appointments of individuals are decisions of public authorities. They concern one or more specific addressees, and must be considered as decisions affecting the individual rights and freedoms of individuals guaranteed by the Constitution. As a consequence, they are subject to constitutional review, i.e. appealable to the Constitutional Court.

24. However, as it is required by Article 48 of the Law, the Applicant has not submitted any evidence, or substantiated his claim that his individual rights and freedoms have been violated by the decision of the Assembly. For the purposes of the Constitution, a victim is a natural or legal person (see case of *AAB-RIINVEST University L.L.C., Pristina vs. Government of the Republic of Kosovo, Case No. KI. 41 /09*) whose Constitutional Rights are personally or directly affected by a measure or act of a Public Authority. A person who is not affected in this manner does not have standing as a victim since the Constitution does not provide for *actio popularis*. In other words, an Applicant cannot complain in the abstract about measures by public authorities which have not been applied to them personally, such as is the case before this Court. The Referral is therefore also rejected as manifestly ill-founded.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 20 of the Law, and Section 56 (2) of the Rules of Procedure, unanimously

DECIDES

I. To REJECT this Referral as inadmissible;

II. The Secretariat shall notify the Parties of the Decision and shall publish it in the Official Gazette in accordance with Article 20.4 of the Law; and

III. This Decision is effective immediately.

Judge Rapporteur **President of the Constitutional Court**

Dr.Gjyljeta Mushkolaj Prof. Dr. Enver Hasani

KI 109/10 dated 29 March 2012- Constitutional Review of the District Court in Peja Judgment, Ac.no. 317/07 dated 12 November 2008

Case.KI 109/10, dated 9 March 2012
Keywords; Individual Referral, out of time.

The Applicant submitted the Referral based on Article 113.7 of the Constitution of the Republic of Kosovo, alleging that by the Judgment of the District Court in Peja, Ac. no 317/07 dated 12 November 2008 were violated his right, since the case was prolonged for 4 years in the Municipal Court in Decan.

The Applicant requests the Constitutional Court to order the compensation of damage that he allegedly suffered because electric energy transformer has been installed at his immovable property for more than 40 years.

The Court concluded that the Applicant's Referral is out of time as provided by Article 49 of the Law and Rule 36 (1) (b) of the Rules of Procedure.

The Constitutional Court concluded that the Referral is inadmissible.

Pristine, 09 March 2012
Ref. No.:RK205 /12

RESOLUTION ON INADMISSIBILITY

in

Case No. KI 109/10

Applicant

Ismet HEBIBI

**Constitutional Review of the District Court in Peja Judgment,
Ac.no. 317/07 dated 12 November 2008**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Enver Hasani, President
Kadri Kryeziu, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Ivan Čukalović, Judge
Gjyljeta Mushkolaj, Judge and
Iliriana Islami, Judge

Applicant

1. The Applicant is Ismet Hebibi, residing in Junik, Kosovo.

Challenged court decision

2. The challenged court decision is the Judgment of the District Court Ac. no 317/07 of 12 November 2008, which was served on the Applicant on 26 December 2008.

Subject matter

3. The Applicant alleges that his right has been violated since his case was prolonged for 4 years in the Municipal Court in Decan because a judge "for personal reasons tried to minimize his case and to render an illegal decision".

4. The Applicant requests the Constitutional Court to order the compensation of damage that he allegedly suffered because electric energy transformer has been installed at his immovable property for more than 40 years. The Applicant also asks the Court to order removal of the high voltage cable and broken electric transformer which presents a great danger for his family.

Legal basis

5. Article 113.7 of the Constitution, Articles 20 and 22 and 49 of the Law on the Constitutional Court and Rule 36 (1) (b) of the Rules of Procedure of the Constitutional Curt of the Republic of Kosovo.

Proceedings before the Court

6. On 29 October 2010 the Applicant submitted the Referral to the Court. In his Referral the Applicant requested not to have his identity revealed in the decision of this Court.

7. On 23 November 2010, the President, by Order No.GJR. 109/10, appointed Judge Altay Suroy as Judge Rapporteur. On the same date, the President, by Order No.KSH. 109/10, appointed the Review Panel composed of Judge Almiro Rodrigues (Presiding), Judge Ivan Čukalović and Judge Iliriana Islami.

8. On 18 May 2011 after having considered the Report of the Judge Rapporteur, the Review Panel made a recommendation to the full Court on the inadmissibility of the Referral.

Summary of the facts and allegations as presented by the Applicant

9. The Applicant is the owner of the immovable property No.1342 possession list 109 Municipality of Junik.

10. According to him, from 1968 to date his and many other families have been endangered by the electric energy transformer that was installed against the will of his family on their immovable property described above. This transformer was broken many times and thus presents a danger to his family. At one occasion high voltage killed a cow in the backyard.

11. In addition to material damage, fear and psychological anxiety that his and other families suffered, on 18 April 2008 the KEK electric transformer was destroyed by storm and the cable of high voltage was cut and fell on two houses and their backyards.

12. This situation continued for 42 years.

13. Consequently, the Applicant sued KEK in Peja before the Municipal Court in Decan, requesting compensation of damage in the amount of 17,230 Euro.

14. On 19 June 2007 the Municipal Court in Decan issued judgment C. no. 484/04 and rejected as ungrounded the Applicant's request as specified above.

15. Unsatisfied with that judgment the Applicant appealed to the District Court in Peja.

16. On 12 November 2008 the District Court issued judgment Ac.no. 317/07 and rejected as unfounded the Applicant's appeal.

17. According to the Municipal Court receipt found in the Applicant's case-file, the District Court judgment of 12 November 2008 was served on the Applicant on 26 December 2008.

18. The Applicant requested at least five times the exclusion of the presiding judge from his case before the Municipal Court in Decan C no. 448/04, due to lack of his credibility. Moreover the Applicant requested the transfer of his case to the Municipal Court in Peja or Gjakova.

Assessment of the admissibility of the Referral

19. In order to be able to adjudicate the Applicants' Referral, it is necessary to first examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution as further specified in the Law and the Rules of Procedure.

20. As to the Applicant's referral, the Court refers to Article 49 of the Law which insofar relevant reads as follows:

Deadlines

"The referral should be submitted within a period of four (4) months. The deadline shall be counted from the day upon which the claimant has been served with a court decision…."

21. The Court notes that the challenged judgment of the District Court of Peja Ac. no. 317/07 of 12 November 2008 was served on the Applicant on 26 December 2008. The Court also notes that the Applicant submitted the Referral to the Court on 29 October 2010.

22. In addition, even assuming that the Applicant had filed the Referral within the legal deadline, the Applicant has not shown that he has exhausted all legal remedies available to him within the meaning of Article 113.7 of the Constitution. (*See mutatis mutandis, ECHR Azinas v. Cyprus, no.56679100 decision of 28 April 2004, also see mutatis mutandis decision of 24 March 2010 in case no. KI73/09, Mimoza Kusari-Lila v. the Central Election Commission).*

23. In sum, it follows that the Referral is rejected as inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution of the Republic of Kosovo, Article 49, 56 and 58 of the Law and Section 36 1 (b) of the Rules of Procedure, on 18 May 2011, unanimously,

DECIDES

I. TO REJECT the referral as inadmissible;

II. TO REJECT the request on his identity not to be disclosed as ungrounded;

III. This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20.4 of the Law; and

IV. The Decision is effective immediately.

Judge Rapporteur **President of the Constitutional Court**

Altay Suroy Prof. Dr. Enver Hasani

KI 122/11 dated 22 March 2012- Constitutional Review of the Judgment of the Supreme Court of Kosovo SSC-11-0148, dated 15 June 2011.

Case KI 122/11, decision dated 15 March 2012.
Keywords: violation of constitutional rights and freedoms, irreparable damage, removal of referral from the list, lis pendens, interim measure, privatization process.

The applicant filed the referral pursuant to Article 113.7 and 116.2 of the Constitution of Kosovo, thereby claiming that the constitutional rights and freedoms were violated due to the Special Chamber of the Supreme Court failing to render a ruling within a reasonable time. The Applicant had also requested from the Court to remove the referral from the list, since his issue had remained without an object of review. The Applicant had claimed that the Special Chamber of the Supreme Court had violated his rights guaranteed by Articles 32 and 46 of the Constitution of Kosovo, and Article 6 of the European Convention for Protection of Human Rights and Fundamental Freedoms.

Upon review of the referral of the Applicant based on Articles 20 and 27 of the Law on the Constitutional Court, Rule 32 of the Rules of Procedure, the Court decided to reject the request for an interim measure, to reject the request for allowing *lis pendens,* and to remove the referral from the list, and to take no further measure in this case.

Pristine, 15 March 2012
Ref. No.: RMP – HKL 206/12

DECISION REJECTING INTERIM MEASURES AND STRIKING OUT THE REFERRAL

In

Case No. KI 122/11

The applicant

Reka Bujar owner of INTER STEEL LLC

Constitutional Review of the Judgment of the Supreme Court of Kosovo SSC-11-0148, dated 15 June 2011.

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Enver Hasani, President
Kadri Kryeziu, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Ivan Čukalović, Judge
Gjyljeta Mushkolaj, Judge and
Iliriana Islami, Judge.

The Applicant

1. The Applicant is Reka Bujar of Pristina, owner of INTER STEEL LLC represented by Interlex Associates l.l.c.

Challenged Decision

2. Judgment of the Supreme Court of Kosovo SSC-11-0148, dated 15 June 2011.

Subject Matter

3. The Referral concerns the decision of the Privatisation Agency of Kosovo (hereinafter "PAK") to proceed with the sale of NewCo LLamkos Steel Assets (hereinafter "Llamkos") by way of tender to another bidder in the privatization process.

4. The Applicant requested the Constitutional Court to grant an interim measure restraining PAK from concluding the sale of Llamkos as it would cause irreparable and irreversible harm to the Applicant. In the alternative, the Applicant requests the Court to oblige the Agency for Registration of Businesses in Kosovo to record a *lis pendens* note on the shares of Llamkos.

Legal Basis

5. Article 113.7 and 116.2 of the Constitution of the Republic of Kosovo (hereinafter referred to as "the Constitution"); Articles 20 and 27 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter referred to as the "Law"), and Rules 32, 55 and 56 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter referred to as the "Rules").

Proceedings before the Court

6. On 14 September 2011, the Applicant filed a Referral with the Secretariat of the Constitutional Court.

7. By order of the President dated 19 September 2011, Judge Snezhana Botusharova was appointed as Judge Rapporteur. On the same date, the President appointed the Review Panel composed of Judge Robert Carolan presiding and Judges Kadri Kryeziu and Iliriana Islami.

8. By letter dated 7 December 2011 the Court informed the Special Chamber of the Supreme Court of Kosovo of the making of the Referral and, *inter alia*, requested a response.

9. The request for interim measures and the request for the registration of a *lis pendens* were considered by the full Court on 12 December 2011.

10. The Special Chamber subsequently responded to the correspondence of the Court on 14 December 2011.

Summary of the facts

11. Llamkos was a Socially Owned Enterprise sold by the Kosovo Trust Agency however the arranged sale fell through. On 3 February 2011, PAK decided to sell the assets again. The Applicant's company placed a bid of €5,345,000 and was the second highest bidder. The first bidder did not complete the sale. The Applicant was informed of this and that he could qualify as the successful bidder following discussions with a representative of PAK.

12. However, following brief communication between the Applicant and PAK, the Applicant was informed by letter dated 27 April 2011, that PAK decided not to complete the sale of Llamkos to the Applicant. Subsequently, the third highest bidder made a public statement that it had won the bid. PAK later announced on 3 August 2011 that it had sold the enterprise to a third party.

13. On 17 May 2011, the Applicant filed a request for an injunction with the Special Chamber of the Supreme Court of Kosovo and also challenged the PAK decision not to complete the sale to the Applicant. The Trial Panel of the Special Chamber denied the request for an injunction by its decision dated 15 June 2011, served on the Applicant on 16 June 2011.

14. Prior to the decision of the Special Chamber, PAK wrote to the Applicant, by letter dated 1 June 2011, stating that "*The Liquidation Committee has communicated with the [Applicant's] bank and has gained the confidence that Inter Steel sh.p.k. in reality does not dispose with sufficient deposited or other funds for the payment of the bid price and satisfying the investment commitment*".

15. The Applicant denies the above and states that Raiffeisen Bank gave no specific information to anyone regarding the amount of

funds deposited in the bank. The Applicant maintains that Raiffeisen Bank gave a standard guarantee form that it had used previously for hundreds of KTA and PAK tenders.

16. On 29 June 2011, the Applicant filed an Appeal to the Appeal Panel of the Special Chamber seeking a reversal of the decision of the Special Chamber.

17. On 11 January 2012 the lawyers for the Applicant wrote to the Court informing it that because a Decision had, by then, been issued by the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo the issue was now moot.

The Applicant's allegations

18. The allegations of the Applicant are as set out in the facts above, namely that

    i) the privatization process for Llamkos was conducted improperly;

    ii) a decision was made on erroneous facts; and

    iii) there has been a violation of Article 32 [RIGHT TO LEGAL REMEDIES] and Article 46 [PROTECTION OF PROPERTY] of the Constitution read in conjunction with Article Protocol 1 and Article 6 of the European Convention on the Protection of Human Rights and Fundamental Freedoms because the Applicant's right to have a decision within a reasonable time by the Special Chamber was denied.

Assessment of the request for interim measures

19. The Applicant requested an interim measure to be issued by the Constitutional Court in order to restrain PAK from concluding the sale of Llamkos on the basis that it would cause irreparable and irreversible harm to the Applicant.

20. One of the tests for the granting of interim measures is whether unrecoverable and irreparable damages will be suffered.

21. *Article 116.2 of the Constitution provides:*

> *"While a proceeding is pending before the Constitutional Court, the Court may temporarily suspend the contested action or law until the Court renders a decision if the Court finds that application of the contested action or law would result in unrecoverable damages".*

22. *Article 27 of the Law on the Constitutional Court provides:*

> *"1. The Constitutional Court ex-officio or upon the referral of a party may temporarily decide upon interim measures in a case that is a subject of a proceeding, if such measures are necessary to avoid any risk or irreparable damages, or if such an interim measure is in the public interest.*
>
> *2. The duration of the interim measures shall be reasonable and proportionate".*

23. If a violation of a constitutional right were to be found then it may be the case that an action in damages could be a possible remedy.

24. However, as there was an Appeal still pending to the Appeal Panel of the Special Chamber of the Supreme Court, there was a possibility that the dispute could have been resolved in the Applicant's favour. Furthermore, it is established practice that the Constitutional Court should be slow to interfere in disputes that remain on foot between parties particularly in light of the presumption that the ordinary Courts in Kosovo are the proper venues to litigate in these instances.

FOR THESE REASONS

The Constitutional Court therefore, pursuant to Articles 20 and 27 of the Law and Rules 32, 55 and 56 of the Rules, unanimously

DECIDES

I. TO REJECT the request for interim measures,

II. TO REJECT the request to grant a *lis pendens*,

III. TO STRIKE OUT the Referral and to take no further steps in relation thereto,

IV. This Decision shall be notified to the parties and published in the Official Gazette, in accordance with Article 20(4) of the Law, and

V. This Decision is effective immediately.

Judge Rapporteur **President of the Constitutional Court**

Snezhana Botusharova Prof. Dr. Enver Hasani

KI 20/11 and KI 96/11 dated 05 April 2012- Constitutional Review of the Judgment of the Municipal Court in Gjilan, P.nr.550/08, dated 9 July 2009

Case KI 20/11 & 96/11, decision dated 7 March 2012
Keywords: execution of decisions, individual referral, joinder of Referral, out of time, right to fair and impartial trial, violation of individual rights and freedoms

The applicant filed a referral pursuant to Article 113.7 of the Constitution of Kosovo claiming that that the final judgment of the District Court was not executed by the competent authorities neither from the criminal nor from the civil point of view and as such remains a worthless document. The non-execution of the final District Court judgment constitutes, allegedly, a violation of Article 31 [Right to Fair and Impartial Trial] of the Constitution in connection with Article 6.1 of ECHR.
The Court held that the applicant's referral was out of time pursuant to Article 49 of the Law because the District Court Judgment, AP.nr.182/2009, of 29 April 2010, was served on the Applicant on 26 May 2010, while the Applicant submitted the Referral to the Constitutional Court on 30 June 2011, i.e. more than 4 months after the Applicant was served with the District Court Judgment. For this reason, the Court decided to reject the Applicant's referral as inadmissible.

Pristine, 15 March 2012
Ref. No.: RK207/12

RESOLUTION ON INADMISSIBILITY

in

Case No. KI 20/11 and KI 96/11

Applicant
Kushtrim Kqiku

Constitutional Review of the Judgment of the Municipal Court in Gjilan, P.nr.550/08, dated 9 July 2009,

and

Judgment of the District Court in Gjilan, AP.nr. 182/2009, dated 29 April 2010.

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Enver Hasani, President
Kadri Kryeziu, Deputy-President
Robert Carolan, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Ivan Čukalović, Judge
Gjyljeta Mushkolaj, Judge and
Iliriana Islami, Judge

Applicant

1. The Applicant is Mr. Kushtrim Kqiku residing in Gjilan.

Challenged decisions

2. The Applicant explicitly challenges the Judgment of the Municipal Court in Gjilan, P. nr. 550/08, of 9 July 2009, which was served on the Applicant on 10 July 2009.

3. Further, the Applicant makes also reference in the Referral to Judgment of the District Court in Gjilan, AP.nr.182/2009, of 29 April 2010, which was served on the Applicant on 26 May 2010.

Subject matter

4. The Applicant alleges a violation of Article 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo (hereinafter: the "Constitution") in connection with Article 6.1 of the European Convention on Human Rights and Fundamental Freedoms (hereinafter: "ECHR").

Legal basis

5. Article 113.7 of the Constitution, Article 22 of the Law on the Constitutional Court of the Republic of Kosovo of 15 January 2009, (No. 03/L-121), (hereinafter: the "Law") and Rule 56 (2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the "Rules of Procedure").

Proceedings before the court

6. On 18 February 2011, the Applicant's grandfather, Mr. Mahmut Kqiku, filed a Referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the "Court"), on behalf of his grandson, Mr. Kushtrim Kqiku, which is registered with Case number KI-20/11.

7. On 2 March 2011, the President, by Decision No.GJR. KI20/11, appointed Judge Ivan Čukalovič as Judge Rapporteur. On the same date, the President, by Decision No. KI20/11, appointed the Review Panel composed of Judges Robert Carolan (Presiding), Snezhana Botusharova and Iliriana Islami.

8. On 30 June 2011, the Applicant (Kushtrim Kqiku), filed a Referral with the Court regarding the same subject matter and directed against the same public authorities in the Republic of Kosovo, which is registered under Case number KI 96/11.

9. On 1 July 2011, the Court asked the Applicant (Kushtrim Kqiku) whether he gives authorization to his grandfather to file a Referral on his behalf.

10. On 7 July 2011, the Applicant replied to the Court's request by adding that he authorizes his grandfather *post festum*, but at the same time requested from the Court that from the said moment onwards any form of communication should be addressed to him and not to his grandfather Mahmut Kqiku.

11. On 5 September 2011, the Referral was communicated to the Municipal Court in Gjilan, Ministry of Justice (hereinafter: the "Ministry"), and European Union Rule of Law Mission in Kosovo (hereinafter: "EULEX").

12. On 27 October 2011, the President, by Decision KI20/11, KI96/11, ordered joineder of the two Referrals pursuant to Rule 37 (1) of the Rules of Procedure since they treat the same legal matters and are directed against the same public authorities in the Republic of Kosovo. On the same date, the Court notified the Applicant (Kushtrim Kqiku) about the joinder of the Referrals KI-20/11 and KI-96/11.

13. On 1 December 2011, the Applicant notified this Court that he did not object to the decision to join the Referrals.

14. On 24 January 2012, the Court requested the Municipal Court in Gjilan to submit to this Court the receipt showing the date on which the Applicant was served with the Judgment of the District Court in Gjilan, AP.nr.182/2009, of 29 April 2010.

15. On 8 February 2012, the Municipal Court in Gjilan replied to this Court and submitted the receipt showing the date on which the Applicant was served with the Judgment of the District Court in Gjilan, AP.nr.182/2009, of 29 April 2010.

16. On 7 March 2012, the Review Panel considered the Report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

17. On 15 November 2007, the Applicant entered into a sales contract with a third person (hereinafter: the "seller") for purchasing a vehicle.

18. On 9 April 2008, the Applicant filed a criminal report with the Public Prosecutor in Gjilan against the seller for having committed fraud.

19. On 30 May 2008, the Public Prosecutor in Gjilan filed an indictment against the seller with the Municipal Court in Gjilan, whereby the seller was alleged of having committed the criminal act of fraud under Article 261 (1) of the Provisional Criminal Code of Kosovo (hereinafter: "PCCK"), (PP. no. 684/2008).

20. On 11 August 2008, the Applicant filed a request with the Municipal Court in Gjilan to speed up the procedure (P. no. 550/08).

21. On 9 July 2009, the Municipal Court in Gjilan found the seller guilty of having committed fraud pursuant to Article 261 (1) of PCCK and held that the seller is obliged to pay the amount mentioned in the purchase contract (Judgment P. no. 550/08).

The seller complained to the District Court in Gjilan against this Judgment.

22. On 29 April 2010, the District Court in Gjilan found the complaint of the seller as ungrounded and upheld the judgment of the Municipal Court in Gjilan, P. no. 550/08, of 9 July 2009 (Judgment AP. no. 182/09).

23. On 29 April 2010, the Judgment of the Municipal Court in Gjilan, P. no. 550/08, of 9 July 2009 became final and binding.

24. As far as the execution proceedings with respect to the amount mentioned in the purchase contract and the proceedings for extradition, the facts are as follows:

a) Facts regarding the execution procedure

25. On 4 February 2009, the Applicant entered a judicial agreement with the seller, whereby they agreed that the seller would pay back the Applicant the amount mentioned in the purchase contract (E. no. 236/2008).

26. On 16 March 2011, the Applicant filed a request with the Municipal Court in Gjilan to expedite the executive procedure in relation to case E. no. 236/2008 of 4 February 2009.

b) Facts regarding the extradition

27. In the meantime, the seller fled from Kosovo and was not available for the execution of Judgments of the Municipal and District Court in Gjilan.

28. On 5 March 2011, the Applicant filed a request with the Municipal Court in Gjilan whereby he proposed them to make a formal request to the Ministry of Justice respectively to the International

Legal Cooperation Division to initiate procedure for the transfer of the seller to the Republic of Kosovo in order to execute the judgment of the Municipal Court in Gjilan (P. no. 550/08 of 9 July 2009) which became final and binding with the Judgment of the District Court in Gjilan (AP. no. 182/09 of 29 April 2010).

29. On 4 June 2011, the Applicant filed a request with the Eulex Kosovo Police Component, whereby he requested them to initiate the procedure of transferring the seller to the Republic of Kosovo pursuant to Article 507 (3) of PCPCK.

30. On 28 June 2011, the Applicant filed a request with the Municipal Court in Gjilan, whereby he requested them to initiate the procedure of transferring the seller to the Republic of Kosovo pursuant to Article 507 (3) of PCPCK.

Applicant's allegations

31. The Applicant alleges that the judicial agreement E. no. 236/08 as far as the substantive part is concerned i.e. the compensation of the injured party has stagnated, even though the matter is active as of 28 March 2008.

32. Further, the Applicant alleges that the final judgment dated 29 April 2010 was not executed neither from the criminal nor from the civil point of view and as such remains a worthless document which constitutes a violation of Article 31 [Right to Fair and Impartial Trial] of the Constitution in connection with Article 6.1 of ECHR.

33. From the submitted documents the Applicant asks the Court to:

    a) ascertain that there is a violation of Article 31 of the Constitution in connection with Article 6.1 of ECHR;

b) oblige the Municipal Court in Gjilan, Ministry of Justice and Eulex to initiate proceedings and make efforts to execute the final judgment of the Municipal Court in Gjilan, i.e. to extradite the seller; and

c) the Municipal Court in Gjilan, the Ministry of Justice and Eulex should report to the Court, and to the Applicant in periods which the Court deems reasonable, as to the progress made in this regard.

Assessment of the admissibility of the Referral

34. The Court notes that the Applicants complain about three issues:

a) the final judgment of the Municipal Court in Gjilan, P. no. 550/08, of 9 July 2009 was not executed and as such constitutes a violation of Article 31 [Right to Fair and Impartial Trial] of the Constitution in connection with Article 6.1 of ECHR;

b) the judicial agreement E. no. 236/08 concerning compensation to the Applicant has not been executed since 28 March 2008; and

c) the authorities in Kosovo, i.e. the Municipal Court in Gjilan, the Ministry of Justice and EULEX, have not initiated proceedings to extradite the seller.

35. In this respect, in order to be able to adjudicate the Applicants' Referral, the Court needs first to examine whether the Applicants have fulfilled the admissibility requirements laid down in the Constitution as further specified in the Law and the Rules of Procedure.

36. As to the District Court Judgment, AP.nr.182/2009, of 29 April 2010, , the Court notes that the Applicant was served with the District Court Judgment, AP.nr.182/2009, of 29 April 2010, on 26 May 2010.

37. The Constitutional Court also notes that the Applicant filed the Referral on 30 June 2011.

38. In these circumstances, the Referral is out of time pursuant to Article 49 of the Law.

39. It follows that the Referral is Inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 49 of the Law, and Rule 56 (2) of the Rules of Procedure, on 7 March 2012, unanimously

DECIDES

I. TO REJECT the Referral as Inadmissible;

II. This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20 (4) of the Law;

III. This Decision is effective immediately.

Judge Rapporteur **President of the Constitutional Court**

Ivan Čukalovič Prof. Dr. Enver Hasani

KO 05/12 dated19 March 2012 - Concerning the constitutionality of the Decision of the Assembly of the Republic of Kosovo, No. 04-V-279, dated 20 January 2012.

Case KO 05/12, decision dated 19 March 2012
Keywords: Referral of the deputies of the Assembly, challenging the decision of the Assembly, international agreements, separation of powers, presumption of non-implementation of ratification procedure, *ratione materiae*.

The Applicants submitted request pursuant to Article 113.5 of the Constitution, stating that the Decision No. 04-V-279, dated 20 January 2012 of the Assembly of the Republic of Kosovo was in contradiction with Article 18 of the Constitution. The Applicants stated that the Assembly of the Republic of Kosovo, by the abovementioned decision welcomed the agreements reached in the dialogue between the Government of the Republic of Kosovo and of the Republic of Serbia in contrary to the Constitution. The Applicants also stated that Kosovo and Serbia are two countries with legal subjectivity in the international law, and as a result, the agreements between them are international agreements as foreseen by the Article 3.1.5 of the Law No. 04/L-052 on international agreements. The Applicants cited in entirety the Article 18 of the Constitution regarding the ratification of the international agreements. They stated that through 'welcoming of the reached agreements' and through 'the supporting of their full implementation', the Assembly of the Republic of Kosovo has recognized and ratified these agreements as well it has undertaken the obligations that derive from these agreements. The Applicants claimed that the Assembly should have adopted a ratification procedure under Article 18 of the Constitution.

The Court required additional explanations from the Applicants regarding the substance of their Referral, filed in the Court. The Court concluded that the Applicants were the authorized party pursuant to Article 113.5 of the Constitution, because the Referral was submitted within legal time limit and the legal requirement regarding the number of deputies, who may challenged the decisions of the Assembly, by their substance and followed procedure, was met.

The Court concluded that the Applicants have not specified the Referral pursuant to Article 113.5 of the Constitution in conjunction with Article 42 of the Law on Constitutional Court, respectively, the Applicants did not specify in which way they challenged the decision of the Assembly, either the substance or the followed procedure. The Court further reasoned that the Applicants challenge more the nature of the decision of the Assembly and request interpretation more than the substance and the followed procedure. Reviewing the Referral in entirety, the Court emphasized that the Court is mindful of the doctrine of the separation of powers, as provided for in Article 4 of the Constitution and of the competences of the Assembly, which implies that it is up to the Assembly to take such decisions as it considers appropriate or necessary. For these reasons, Court concluded that the Referral, is inadmissible because it is incompatible *ratione materiae* with the Constitution.

Pristine, 19 March 2012
Ref. No.: RK 208/12

RESOLUTION ON INADMISSIBILITY

In

Case No. KO 05/12

Applicants

Visar Ymeri and twelve other deputies of the Assembly of the Republic of Kosovo

Concerning the constitutionality of the Decision of the Assembly of the Republic of Kosovo, No. 04-V-279, dated 20 January 2012.

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Enver Hasani, President
Kadri Kryeziu, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Ivan Čukalović, Judge
Gjyljeta Mushkolaj, Judge and
Iliriana Islami, Judge

Applicant

The Applicants are Visar Ymeri, Rexhep Selimi, Liburn Aliu, Albin Kurti, Albana Fetoshi, Glauk Konjufca, Albana Gashi, Florin Krasniqi, Alma Lama, Albulena Haxhiu, Afrim Kasolli, Emin Gërbeshi and Afrim Hoti, all of them deputies of the Assembly of the Republic of Kosovo.

Subject Matter

1. The Applicants challenge the constitutionality of the Decision of the Assembly of the Republic of Kosovo, No. 04-V-279, dated 20 January 2012. This Decision was published on the web site of the Assembly on the same date.

Legal Basis

2. Article 113.5 of the Constitution of Kosovo (hereinafter referred to as the "Constitution"); Article 38 of the Law on the Constitutional Court of the Republic of Kosovo (hereinafter referred to as the "Law"); and, Rule 36 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter referred to as the "Rules of Procedure").

Proceedings before the Court

3. On 26 January 2012 the Applicants submitted their Referral to the Constitutional Court (hereinafter referred to as the "Court").

4. On 31 January 2012 the President of the Court appointed Judge Snezhana Botusharova as Judge Rapporteur and a Review Panel of Judges Robert Carolan (Presiding), Altay Suroy and Ivan Čukalović.

5. On 31 January 2012 the Constitutional Court notified the President of the Assembly and the Government of the submitting of the Referral by the Applicants to the Court.

6. On 7 February 2012 the Court wrote to the Applicants seeking clarification of the Referral.

7. A copy of the Court's letter was furnished to the President of the Assembly and to the Government.

8. By letter dated 20 February 2012 received on 21 February 2012 the Applicants replied to the Court's letter. The Applicants' reply is set out more fully in paragraphs 18 to 22 below.

9. A copy of this reply was given to the President of the Assembly and the Government on 27 February 2012 and they were invited to respond within the period of one week if they so wished. No response was received within that time.

10. A report prepared by the Judge Rapporteur was considered by the Review Panel on 15 March 2012 which made a recommendation on inadmissibility of the Referral to the full Court. The full Court considered the Referral on the same date.

Summary of the Facts

11. On 20 January 2012 the Assembly considered a motion introduced by the Parliamentary Group of the Democratic Party of Kosovo (PDK) and it issued a Decision on that date. This Decision, *inter alia*, "welcomed the agreements" reached through the dialogue between the Government of the Republic of Kosovo and the Republic of Serbia and that the Assembly "supported their full implementation".

12. Of the Deputies present 59 voted in favour of the Motion, 41 were against the motion and 1 deputy abstained.

Arguments presented by the Applicant

13. In their Referral the Applicants state that the Decision of the Assembly refers to the agreements reached between the Government of the Republic of Kosovo and the Republic of Serbia, which, they maintain, are two states with legal subjectivity in international law.

14. They point out that the Law on International Agreements, No. 04/L-052, In Article 3.1.5 defines an international agreement as "- *an International Agreement respectively treaty concluded between the Republic of Kosovo and foreign states or international organizations in written form and governed by the International Law, whatever its particular designation and regardless of whether it is embodied in a single, two or more related instruments."* Consequently, they argue, that because the agreements mentioned in Paragraph 1 of the Decision of the Assembly of 20 January 2012, are concluded between two states pursuant to that law they are therefore international agreements.

15. The Applicants quote Article 18 of the Constitution, concerning the ratification of international agreements, in its entirety. They stated that "In this way, through 'the welcoming of the agreements reached' and through 'the supporting of their full implementation', the Assembly of the Republic of Kosovo has recognised and ratified these agreements as well it has undertaken the obligations that derive from these agreements".

16. They maintain that this "ratifying of the international agreements" was contrary to Article 18 of the Constitution.

17. On 7 February 2012 the Court wrote to the Applicants in the following terms:

18. What is the substance of the constitutional issue of the complaint, or of the alleged violation, that you maintain requires the Constitutional Court to review its substance or procedure.

19. Please state the basis, and furnish evidence to support the basis, on which you maintain that the subject matter of the

Referral is subject to the ratification processes set out in Article 18 of the Constitution of Kosovo.

20. In their reply the Applicants repeated the position that they took in the Referral and again referred to "welcoming the reaching of agreements" and "supporting the full implementation" of these agreements. They stated that the taking of the Decision of the Assembly "ratified" the international agreements. They took the view that the ratification implies the procedure contemplated by Article 18 of the Constitution should be applied.

21. They pointed out the different requirements of ratification under Article 18.1 and Article 18.2; one requiring a two thirds majority of the Deputies of the Assembly and the other requiring ratification by the President of the Republic of Kosovo, depending on the subject matter of the agreement.

22. Further, they elaborated on and analysed the character of the international agreements based on the Law on International Agreements, No 04. L-052 and the Vienna Convention on the Law of Treaties of 1969

23. The Applicants also repeated that the Republic of Kosovo and the Republic of Serbia are two countries with legal subjectivity in International Law. Therefore, they maintained that the agreements referred to in the Decision of the Assembly had the character of international agreements as foreseen by the Law on International Agreements and the Vienna Convention on Treaties of 1969.

24. In their response the Applicants requested that *"[T]he President, the Assembly and the Prime Minister should be instructed about their constitutional obligations, regarding the signing of international agreements (...)."*

Assessment of the Admissibility of the Referral

25. In order to determine whether a Referral is appropriate for consideration by the Constitutional Court an assessment must be made as to whether it is admissible or not.

26. The Applicants made their Referral pursuant to Article 113.5 of the Constitution which provides as follows:

    a. *"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."* [1]

27. The Referral was made by 13 Deputies of the Assembly of Kosovo, as set out in paragraph 1 above, which is more than the minimum required by Article 113.5 of the Constitution and therefore the requirement for an authorised party is satisfied.

28. The Decision of the Assembly which is contested by the Applicants was taken on 20 January 2012 and the Referral was made to the Court on 26 January 2012, within the constitutionally prescribed period of eight days. Therefore the Referral was made in a timely manner.

29. However, there are other matters that the Court will take into consideration in determining whether the Referral is admissible or not. In this regard attention should be paid to the wording of Article 113.5 which provides that it is the *"constitutionality of a law or decision adopted by the Assembly as regards its substance and the procedure followed"*, that are to be examined by the Court.

30. It is important also to point out the relevant provisions of the Law which govern the submitting of a Referral under Article 113.5 of the Constitution. In this regard Article 42 of the Law provides as follows:

31. ***Article 42***

32. ***Accuracy of the Referral***

[1] The Serbian version differs from the Albanian and English versions.

1. In a referral made pursuant to Article 113, Paragraph 5[2] of the Constitution the following information shall, inter alia, be submitted:

1.1. names and signatures of all deputies of the Assembly contesting the constitutionality of a law or decision adopted by the Assembly of the Republic of Kosovo;

1.2. provisions of the Constitution or other act or legislation relevant to this referral[3]; and

1.3. presentation of evidence that supports the contest.

33. The Court, it is recalled, specifically asked the Applicants to identify the substance of the constitutional issue that required the Court to examine either as to its substance or procedure. It also specifically requested the Applicants to furnish evidence to support the basis, on which they maintained that the subject matter of the Referral was subject to the ratification processes set out in Article 18 of the Constitution. This request to the Applicants was justified in particular by Article 42.1.3 of the Law.

34. The Court recalls that the Assembly of Kosovo in its Decision of 20 January 2012 *"welcome[d] the agreements reached through the dialogue between the Government of the Republic of Kosovo and the Republic of Serbia and support[ed] their full implementation."* The Decision also stated that *"the Government of Kosovo should decide on the respective reciprocal measures for the progress of the process of dialogue and the implementation of the reached conclusions."* and that *"the Government is obliged to report to the Assembly regarding the progress of the process of dialogue and reciprocity."*

35. The Assembly of Kosovo under Article 65 (1) of the Constitution [Competencies of the Assembly] adopts laws, resolutions and other general acts taken within its competence and adopted by the required quorum and majority as required under Article 69(3) and Article 80(1) of the Constitution.

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[2] The Serbian and Albanian versions differ from the English version.
[3] The Serbian version differs from the Albanian and English versions.

36. The Court notes that the Assembly of the Republic of Kosovo is entitled to decide the form of the acts that it adopts. In this case a Decision was adopted by the Assembly following a Motion proposed by members of one parliamentary group. The Applicants do not contest that the Decision was adopted without the required quorum under Article 69.3 or without a majority required under Article 80.1 of the Constitution. From their submissions it seems that the Applicants attack not the substance or procedure of the Decision of the Assembly but more its nature. They seem to imply that the Court, in this case, ought to alter the nature of the Decision, but they do not offer arguments, evidence or justification as to how the Court may do this. The Applicants maintain that the Decision of the Assembly contains international agreements and that therefore this was a ratification that required the application of Article 18 of the Constitution. At the Assembly it was not proposed or discussed that the motion before it contained international agreements nor that the Decision passed required ratification under Article 18.

37. There is no argumentation or evidence that what was at stake in the Decision taken by the Assembly comes under the ambit of Article 18. All the more, the Applicants have not elaborated on the differences between Article 18.1 and 18.2 and which should be applied. The mere mentioning of Article 18 in its entirety does not amount to a conclusion that it was required to be applied to the Decision of the Assembly.

38. The Court reiterates that its constitutional competence is to review the constitutionality of the contested Decision as to its substance and as to the procedure followed. The Applicants do not contest either the substance or procedure of the Decision taken. They contend that it should have adopted a ratification procedure under Article 18 of the Constitution.

39. The Court has to analyse the entirety of the Referral submitted by the Applicants and this entails taking into account the presentation of the original Referral and the reply submitted by the Applicants to the Court on 21 February 2012. In essence, the Applicants appear to wish the Court to construe the Decision of the Assembly, dated 20 January 2012, as an international agreement requiring ratification under Article 18 of the Constitution. The Court is mindful of the doctrine of the

separation of powers, as provided for in Article 4 of the Constitution and of the competences of the Assembly. The Court, therefore, considers that it is up to the Assembly to take such decisions as it considers appropriate or necessary. Consequently, the request of the Applicants that the Court consider the Decision of the Assembly as an international agreement requiring ratification is outside the scope of the jurisdiction of the Court under Article 113.5 of the Constitution.

40. Bearing all these matters in mind the Court concludes that the Referral, therefore, is inadmissible because it is incompatible *ratione materiae* with the Constitution.

FOR THESE REASONS

The Constitutional Court therefore, pursuant to Article 113.5 of the Constitution, Articles 20 of the Law and Rule 36 of the Rules

DECIDES

I. Unanimously, to reject the Referral as inadmissible;

II. By majority, to reject the Referral as inadmissible because it is incompatible *ratione materiae* with the Constitution*;*

III. This Decision is to be notified to the Applicants, the President of the Assembly of Kosovo and the Government of Kosovo;

IV. This Decision shall be published in the Official Gazette in accordance with Article 20(4) of the Law; and

V. This Decision is effective immediately.

Judge Rapporteur **President of the Constitutional Court**

Snezhana Botusharova Prof. Dr. Enver Hasani

KI 132/11 dated 05 April 2012 - Constitutional review of the Judgment of the District Court of Prishtina Ac. No. 601/02 dated 15 September 2004

Case KI 132/11, decision dated 20 March 2012
Keywords: individual Referral, right to work, out of time, ratione temporis.

The Applicant filed the Referral pursuant to Article 113.7 of the Constitution of Kosovo, challenging the Judgment of the District Court in Prishtina Ac. no. 601/02 of 15 September 2004 by which it was upheld the Judgment of the Municipal Court in Prishtina C. no. 123/2001 of 18 September 2002 and it was rejected Applicant's request to be returned to a permanent labor relationship with Kosovo Energy Corporation (hereinafter: KEK) where the Applicant was permanently employed before the outbreak of armed conflict. The Applicant considers that these Judgments have violated her right to work and the right to labor relationship.
The Applicant challenges the Judgment of the District Court in Prishtina Ac. no. 601/02 of 15 September 2004. The Court concluded that the Referral related to events prior to 15 June 2008, respectively the date when the Constitution of the Republic of Kosovo entered into force. Based on this, the Referral has been submitted out of time limit and it is therefore *ratione temporis* incompatible with the provisions of the Constitution and the Law. For this reason, the Court decided that the Referral is inadmissible in accordance with rule 36 (3h) of the Rules of Procedure.

Pristine, 20 March 2012
Ref. No.: RK214/12

RESOLUTION ON INADMISSIBILITY

in

Case No. KI-132/11

The Applicant

Sabile Sopjani

Constitutional review of the Judgment of the District Court of Prishtina
Ac. No. 601/02 dated 15 September 2004

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Enver Hasani, President
Kadri Kryeziu, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Ivan Čukalović, Judge
Gjyljeta Mushkolaj, Judge and
Iliriana Islami, Judge**.**

The Applicant

1. The Applicant is Sabile Sopjani from Prishtina.

Challenged decision

2. Challenged decision is the Judgment of the District Court of Prishtina, Ac. No. 601/02 dated 15 September 2004, upholding the Judgment of the Municipal Court of Prishtina, C. No. 123/2001 dated 18 September 2002, and rejecting the Applicant's request to be reinstated to permanent employment relationship with the Kosovo Energy Corporation (hereinafter: KEC), where the Applicant had a permanent employment before the war broke out in Kosovo.

Subject matter

3. The Applicant challenges the Judgment of the District Court of Prishtina, Ac. No. 601/02 dated 15 September 2004, without specifically mentioning articles of the Constitution which were violated, although it can be concluded from the Referral that the subject matter is the labor relationship dispute between the Applicant and KEC.

Legal Basis

4. The Referral is based on Articles 113.7 and 21.4 of the Constitution, Articles 20, 22.7 and 22.8 of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo of 16 December 2008 (hereinafter: the "Law") and Rule 56.2 of the Rules of Procedure.

Proceedings before the Constitutional Court

5. On 17 October 2011, the Applicant filed the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the "Court").

6. On 27 January 2012, the Constitutional Court notified the Applicant and Municipal and District Court of Prishtina that a procedure on review of constitutionality of the decisions has been initiated in case No. KI 132/11.

7. On 20 March 2012, after having considered the Report of Judge Ivan Čukalović, the Review Panel, composed of judges Almiro Rodrigues (Presiding), Kadri Kryeziu and Snezhana Botusharova, made a recommendation to the full Court on the inadmissibility of the Referral.

Summary of facts

8. The Applicant entered into a permanent employment relationship with KEC, in the working place of a security clerk. The Applicant was employed until 1 April 1999 when she and her family were expelled from Prishtina and, as refugees, deported to Holland.

9. The Applicant and her family returned to Kosovo on 17 January 2001, whilst on 2 February 2001 she filed the request to return to her working place.

10. By Decision Number 26, dated 29 January 2001, KEC director rejected the Applicant's request to be reinstated to her working place as ungrounded, with justification that the final deadline for the expelled workers was 1 June 2000, as per KEC Interim Employment Rules.

11. On 1 March 2001, by Decision No. 835, Executive Board of KEC confirmed the director's decision No. 46 dated 29 January 2001.

12. The Applicant filed a claim suit against these KEC Decisions with the Municipal Court of Prishtina. In the claim the Applicant asked for annulment of the KEC Decisions and reinstatement to her working place, while she tried to justify her absence with illness and inability to come to the working place.

13. On 18 September 2002, by Judgment C. No. 123/2001, the Municipal Court of Prishtina rejected the Applicant's requests as ungrounded and evaluated the evidence on illness as unconvincing.

14. On 15 September 2004, by Judgment Ac. No. 601/2002, the District Court of Prishtina upheld the Judgment of the District Court of Prishtina, C. No. 123/2001 dated 18 September 2002 in its entirety.

Applicant's Allegations

15. The Applicant challenges the Judgment of the District Court of Prishtina, Ac. No. 601/02 dated 15 September 2004, stating:

> a. *"Through this claim I am addressing to you since the right to employment as basic human right was violated to me. Having emphasizing that I showed myself to the respondent, but I was told that I was late to be returned to work, by not having into consideration the circumstances that it was war and I was in Netherlands as refugee, and due to myself*

and my child bad health condition I could not return, also there is the other reason that I could not return willingly, but only through Dutch authorities, but it is surprising that there are many other employees at the respondents' who have returned quite long time after I have returned and they still have been returned to work by respondent".

Assessment of the Admissibility of the Referral

16. In order to be able to adjudicate the Applicant's Referral, the Court needs first to examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution and further specified in the Law and the Rules of Procedure.

17. As to the submissions of the Applicant, the Constitutional Court concludes that the Applicant is challenging the Judgment of the District Court of Prishtina Ac. No. 601/02 dated 15 September 2004. This means that the Referral relates to events prior to 15 June 2008, which is the date of the entry into force of the Constitution of the Republic of Kosovo. Based on the foresaid the Referral is out of time, and, therefore, incompatible *"ratione temporis"* with the provisions of the Constitution and the Law (see, *mutatis mutandis*, Jasiūnienė v. Lithuania, Application No. 415101/98, ECtHR Judgments of 6 March and 6 June 2003).

18. Hence, the Referral is inadmissible according to Rule 36.3 (h) of the Rules of Procedure, which sets out the following: *"A Referral may also be deemed inadmissible in any of the following cases h) the Referral is incompatible ratione temporis with the Constitution"*.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 20 of the Law and Rule 36.3 (h) of the Rules of Procedure, on 20 March 2012, unanimously,

DECIDES

I. TO REJECT the Referral as Inadmissible;

II. This Decision shall be notified to the parties and published in the Official Gazette, in accordance with Article 20.4 of the Law;

III. This Decision is effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Ivan Čukalović	Prof. Dr. Enver Hasani

KI 131/11 dated 21 April 2012- Constitutional review of the Judgment of the Supreme Court of Kosovo Rev.No. 197/2010 dated 22 August 2011

Case KI 131/11, decision dated 20 March 2012
Keywords: individual Referral, right to work, right to property, right to fair and impartial trial, protection of property, judicial protection of rights, interim measure.

The Applicants filed the Referral pursuant to Article 113.7 of the Constitution of Kosovo, challenging the Judgment of the Supreme Court of Kosovo rev. no. 197/2010 of 22 August 2011, alleging that by the Judgment of the Supreme Court Article 31, 46 and 54 (right to fair and impartial trial, protection of property, judicial protection of rights) of the Constitution as well as Articles 6 and 13 ECHR (Right to fair trial and right to an effective remedy) have been violated. The Applicants also request the imposition of the interim measure in order for their rights to be protected.
Deciding about the Referral of Applicants Qazim Gashi, Fadil Gashi and Agim Gashi, the Court concluded that the Applicants have not substantiated the allegations nor have they submitted any *prima facie* evidence which would point to violation of their constitutional rights. Further, the Applicants have been provided numerous opportunities to present their case and challenge the interpretation of the law, which they consider as being incorrect, before the Municipal Court, the District Court and the Supreme Court. After having examined the proceedings in their entirety, the Constitutional Court did not find that the pertinent proceedings were in any way unfair or arbitrary, consequently the Constitutional Court declared the Referral manifestly ill-founded in accordance with Rule 36 (2b) of the Rules of Procedure.
In deciding about the Referral of Applicant Ali Kelmendi, the Court has concluded that by the decision of the Supreme Court the case has been remanded to the first instance court for retrial and the proceedings in the retrial is still pending. Therefore, the Applicant has not exhausted all legal remedies provided by law and the Court declared the Referral inadmissible for consideration pursuant to Article 113.7 and Rule 36 (1a).

Pristine, 20 March 2012
Ref. No.: RK210/12

RESOLUTION ON INADMISSIBILITY

in

Case No. KI 131/11

Applicants

Qazim Gashi, Fadil Gashi, Agim Gashi and Ali Kelmendi

Constitutional review of the Judgment of the Supreme Court of Kosovo Rev.No. 197/2010 dated 22 August 2011

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Enver Hasani, President
Kadri Kryeziu, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Ivan Čukalović, Judge
Gjyljeta Mushkolaj, Judge and
Iliriana Islami, Judge

Applicant

1. The Applicants are Qazim Gashi, Fadil Gashi, Agim Gashi, from Hajvalija, and Ali Kelmendi from Mramor, all of them from Municipality of Prishtina. They are represented before the Constitutional Court of Kosovo by Shefki Sylaj and Visar Vehapi, lawyers from Prishtina.

Challenged decision

2. The challenged decision is the Judgment of the Supreme Court of Kosovo Rev. no. 197/2010 dated 22 August 2011, by which it was upheld the Judgment of the District Court in Prishtina Ac. No. 1137/2009 dated 25 May 2010 and the Applicants were ordered to return the immovable property which they currently hold in possession to the third parties which in the court proceedings proved their ownership over the disputed immovable property.

Subject matter

3. The Applicant challenges the Judgment of the Supreme Court of Kosovo Rev. no. 197/2010 dated 22 August 2011, alleging that this Decision violated Articles 31, 46 and 54 of the Constitution of Republic of Kosovo and Articles 6 and 13 of the European Convention on Human Rights (hereinafter: ECHR).

4. Pending a final settlement of this legal property dispute between the Applicants and the third parties regarding the ownership right over the immovable property, the Applicants request from the Constitutional Court the following:

5. "We request security measure –interim measure, we request that the situation on the ground in cadastral plot 528, possession list 933, cadastral zone Çaglavica not to be changed. "

Legal basis

6. The Referral is based on Articles 113.7 and 21.4 of the Constitution, Articles 20, 22.7 and 22.8 of the Law no. 03/L-121 on the Constitutional Court of Republic of Kosovo of 16 December 2008 (hereinafter: the Law) and Rule 56 (2) of Rules of Procedure.

Proceedings before the Court

7. On 13 October 2011, the Applicant filed the Referral with Constitutional Court of Republic of Kosovo (hereinafter: the Court).

8. The Applicants also request from the Constitutional Court to impose an interim measure preventing the change of the situation in the cadastral plot 528, possession list 933, cadastral zone Çaglavica.

9. On 27 January 2012, the Constitutional Court notified the Applicant, the Municipal Court in Prishtina, the District Court in Prishtina and the Supreme Court of Kosovo that a proceeding of constitutional review of their decisions has been initiated under no. KI-131-11.

10. On 20 March 2012, after considering the report of Judge Robert Carolan, the Review Panel composed of Judges Almiro Rodrigues (Presiding), Kadri Kryeziu and Enver Hasani recommended to the full Court to reject the Referral as inadmissible in its entirety.

11. At the same time, the Review Panel proposed to the full Court to reject the Applicant's request for interim measures with the reasoning that the Applicant has not submitted any convincing evidence that would justify the imposition of interim measures as being necessary for avoiding any irreparable damage or any proof that such measure is in the public interest.

Summary of the facts

12. On 10 December 2003, I. Th. and N. H. from Prishtina filed a lawsuit with the Municipal Court due to obstruction of property against the Applicants and some other third parties who are not Applicants here, requesting that the Applicants vacate and enable them peaceful enjoyment of immovable property recorded as cadastral plot no. 528, in the cadastral zone Çaglavica, type of land pasture third class, with area 6.34,97 ha.

13. Municipal Court in Prishtina by Judgment C. No. 2140/3, of 7 September 2004 rejected the claim of the plaintiffs I. Th. and N. H. and ruled in favor of the Applicants.

14. Against the above mentioned Judgment the plaintiffs I. Th. and N. H. filed an appeal on 27 December 2004.

15. On 14 March 2007, the Applicants proposed to the Municipal Court in Prishtina to impose an interim measure against the plaintiffs I. Th. and N. H. and the Municipal Court in Prishtina never decided on the interim measure and in doing so, according to Applicants' allegations it *„...prejudged the settlement of the case in favor of the opposing party ...“*

16. The District Court in Prishtina deciding upon the plaintiff's appeal by Judgment Ac. no. 119/2005 of 3 April 2007 annulled the Judgment of the Municipal Court in Prishtina C. No. 2140/3 of 7 September 2004 and remanded the case for retrial.

17. On 17 October 2007, the Applicants filed a counterclaim against the plaintiffs I. T. and N. H. and requested that "*their ownership over the cadastral plot no. 528, possession list no. 933, cadastral zone Çaglavica with area 6.34.97 ha be confirmed by virtue of prescription.”*

18. The Municipal Court in Prishtina by Judgment C. No. 713/07 of 29 April 2009 partially approved the claim of the plaintiffs I. Th. and N. H., both from Prishtina, and ordered the Applicants to hand over to the plaintiffs parts of the immovable property as indicated in the enacting clause of the Judgment, at the same time the Applicants' counterclaim is rejected as inadmissible in the part which relates to the request for confirmation of the right of ownership over the cadastral plot no. 528 at the place called Hajvalija, type of land pasture third class, cadastral area Çaglavica, with area of 6.34.97 ha.

19. Against the Judgment of the Municipal Court in Prishtina C. no. 713/07 of 29 April 2009 the Applicants filed an appeal on 31 July 2009 with the proposal that the District Court in Prishtina annul the Judgment of the Municipal Court in Prishtina C. no. 713/07 of 29 April 2009 and remand the matter to the first instance court for retrial or to alter the said Judgment and to approve the claim of the Applicants as per the counterclaim.

20. The District Court in Prishtina by Judgment Ac. no. 1137/2009, dated 25 May 2010, rejected the appeal of the Applicants and partially changed the Judgment of the Municipal Court in Prishtina C. no. 713/07 dated 29 April 2009 and ordered the Applicants to hand over parts of the immovable property as indicated in the enacting clause of the Judgment. At the same time the Applicants' counterclaim was rejected as inadmissible in the part relating to the request for confirmation of the right of ownership over the cadastral plot no. 528 at place called Hajvalija, type of land pasture third class, cadastral zone Çaglavica, with area of 6.34.97 ha.

21. Against the Judgment of the District Court in Prishtina Ac. no. 1137/2009, dated 25 May 2010, the Applicants filed a revision within the legal time limit and at the same time the Public Prosecution of Kosovo filed a request for protection of legality, both requesting from the Supreme Court of Kosovo to quash the said Judgments as unlawful.

22. The Supreme Court of Kosovo by Judgment Rev. br. 197/2010 dated 22 August 2011 rejected as unfounded the Applicants' revision and the request for protection of legality filed by State Prosecutor of Kosovo against the Judgment of the District Court in Prishtina Ac. No. 1137/2009 dated 25 May 2010, in **part I under 1, 3 and 4** and in parts **II and III**, in relation to the Applicants Qazim Gashi, Fadil Gashi and Selim Gashi.

23. The revision of respondents – counterclaimants and the request of State Prosecutor of Kosovo for protection of legality are partially approved as grounded and the Judgment of District Court in Prishtina Ac. No. 1137/2009 of 25 May 2010 and Judgment of Municipal Court in Prishtina C. No. 713/2007 of 29 April 2009 are quashed in part I under 2 of the enacting clause of Judgment only in relation to the Applicant Ali Kelmendi and this part of the case is remanded to the first instance court for retrial.

Applicant's allegations

24. The Applicant challenges the Judgment of the Supreme Court of Kosovo Rev. no. 197/2010 of 22 October 2011, alleging the following violations:

25. *"The respondents (Applicants) – counterclaimants have proposed interim measure on 14/03/2007 and the Municipal Court in Prishtina never decided on the interim measure and in doing so the court prejudged the settlement of the case in favor of plaintiffs, which is a continuous violation of Articles 31, 46 and 54 of the Constitution of Republic of Kosovo and consequently a violation of Articles 6 and 13 of ECHR (European Convention on Human Rights) and all their beneficial effect."*

26. *"Municipal Court in Prishtina by Judgment C. no. 713/07 has made essential violations of the provisions of Contested Procedure, Article 182 paragraph 1 and 2 item n. paragraph 2 of LCP because the enacting clause of the Judgment is in contradiction with the reasoning of the Judgment and the case file documents."*

27. *"The above mentioned Judgment contains violation of the nature of Article 182.2 item n because the Judgment has shortcomings as a result of which it cannot be reviewed as the enacting clause of the Judgment is incomprehensible and in contradiction with itself and the reasons of the Judgment. The Judgment also does not have any reason for the decisive facts, whereas the reasons it contains are unclear and contradictory."*

28. *"The essential violation of the provisions of contested procedure consists in the fact that the said Judgment has such shortcomings that it is legally unsustainable. Essential violation of the contested procedure lies in the fact that the challenged Judgment with regard to the counterclaim of the respondents-counterclaimants contains no reasoning. The respondent's counterclaim in one part in the enacting clause III is rejected, whereas in the enacting clause under IV partially is rejected as inadmissible."*

29. *"Since a Court may reject a counterclaim as inadmissible only after the preliminary review of the claim and no later*

than the preparatory session and namely if the requirements of the abovementioned Article have been met, in the present case during the preliminary proceeding the counterclaim could not have been rejected by Judgment not even by a Resolution as inadmissible because none of the requirements of Article 391 of LCP has been met."

30. *"The same essential violation has been made also by the District Court in Prishtina as second instance court when it rejected the appeal of the respondents-counterclaimants by Judgment Ac. No. 1137/2010/."*

31. *"The District Court in Prishtina made essential violations of the provisions of the contested procedure when it accepted as evidence the report of examination on the scene conducted by the Municipal Court in Prishtina by which it was ascertained that IAC "Kosovo Export" has been cultivating the disputed cadastral plot because in that proceeding the respondents-counterclaimants had not been party to proceedings and were not able to challenge this property. Therefore that report from a different proceeding cannot be taken as evidence, if the parties to proceedings were not given opportunity to challenge it – oppose it and that witnesses heard by the District Court in Prishtina confirmed that the said cadastral plot was used in good faith by the respondents – counterclaimants since 1956."*

32. *"The District Court in Prishtina acting as first instance Court has erroneously applied the substantive law when it rejected the claim of the respondents/counterclaimants as unfounded because the plaintiffs have won the right of ownership over the cadastral plot no. 528 on the basis of positive prescription, therefore Article 28 of the Law on basic property relations as an applicable law and Article 40 of the Law on ownership and other real rights in Kosovo."*

33. *"The same procedural and substantive violations of the abovementioned provisions were made by the Supreme Court of Kosovo when it estimated the period of statute of limitations and it did not take into consideration that the respondents-counterclaimants on the basis of a internal contract were continuously and are in possession of the*

contested immovable property because they have their residence premises and other accompanying premises built on it since 1950s."

34. *"Committing drastic violations of the procedural and substantive provisions resulted in violation of Articles 31, 46 and 54 of the Constitution of Republic of Kosovo and in violation of the ECHR."*

35. The Applicant challenges the Judgment of the Supreme Court of Kosovo Rev. no. 197/2010 of 22 October 2011, requesting from the Constitutional Court of Kosovo the following:

36. "We request security measure –interim measure, we request that the situation on the ground in cadastral plot 528, possession list 933, cadastral zone Çaglavica not to be changed. "

37. "We request that the Judgment of the Supreme Court of Kosovo Rev. no. 197/2010/ dated 22/08/2011, be declared null and void, the Judgment of the District Court in Prishtina Ac. no. 1137/2009 dated 25/05/2010/ and the Judgment of the Municipal Court in Prishtina C. no. 713/07 dated 29/04/2009/ be quashed and the case be remanded for retrial."

Assessment of admissibility of Referral in relation to the Applicants Qazim Gashi, Fadil Gashi i Agim Gashi

38. The Applicants claim that Articles 31, 46 and 54 (Right to Fair and Impartial Trial, Protection of Property and Judicial Protection of Rights) of the Constitution and Articles 6 and 13 of the ECHR (Right to a fair trial and Right to an effective remedy) are the basis of their Referral.

39. The admissibility requirements are laid down in the Constitution, and further specified in the Law on Constitutional Court and the Rules of Procedure.

40. Article 48 of the Law on Constitutional Court of Republic of Kosovo provides:

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

42. Under the Constitution the Constitutional Court is not a court of appeal, when reviewing the decisions taken by ordinary courts. It is the role of the latter to interpret and apply the pertinent rules of both procedural and substantive law (see, *mutatis mutandis*, Garcia Ruiz v. Spain [GC), no. 30544/96, § 28, European Court on Human Rights [ECHRJ1999-1).

43. The Applicants have not substantiated their allegations nor have they provided any *prima facie* evidence which would point out a violation of their constitutional rights (see, Vanek vs. Slovak Republic, ECHR Court on admissibility, Application no. 53363/99 of 31 May 2005). The Applicants do not state in what manner Articles 31, 46 and 54 of the Constitution and Articles 6 and 13 of the ECHR support their Referral, as it is stipulated in Article 113.7 of the Constitution and Article 48 of the Law.

44. The Applicants allege that their rights have been violated as a result of the erroneous determination of facts and application of law by ordinary courts without clearly stating in what manner those decisions violated their constitutional rights.

45. In the present case, the Applicants have been provided numerous opportunities to present their case and challenge the interpretation of the law, which they consider to be as incorrect, before the Municipal Court, the District Court and the Supreme Court. After having examined the proceedings in their entirety, the Constitutional Court should not find that the pertinent proceedings were in any way unfair or arbitrary (see *mutatis mutandis*, Shub v. Lithuania, ECtHR Decision as to the Admissibility of Application no. 17064/06 of 30 June 2009).

46. It follows the Referral in the part that relates to the Applicants Qazim Gashi, Fadil Gashi and Agim Gashi is manifestly ill-founded in accordance with Rule 36 (2b) of the Rules of

Procedure which provides that *"The Court shall reject a Referral as being manifestly ill-founded when it is satisfied that: b) when the presented facts do not in any way justify the allegation of a violation of the constitutional rights".*

Assessment of the admissibility of Referral in relation to the Applicant Ali Kelmendi

47. In order to be able to adjudicate the Applicants' Referral, the Court needs first to examine whether the Applicant has fulfilled all admissibility requirements laid down in the Constitution. In this respect, the Court refers to Article 113.7 of the Constitution which stipulates the following:

48. *"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."*

49. The Court wishes to emphasize that the rationale for the exhaustion rule, as interpreted by the European Court of Human of Rights (see Article 53 of the Constitution), is to afford the authorities concerned, including the courts, the opportunity to prevent or put right the alleged violation of the Constitution. The rule is based on the assumption that the Kosovo legal order will provide an effective remedy for the violation of constitutional rights. (see *mutatis mutandis*, ECHR, Selmouni v. France, no. 25803/94, decision of 28 July 1999). However, it is not necessary for the constitutional rights to be explicitly raised in the proceedings concerned. As long as the issue was raised implicitly or in substance, the exhaustion of remedies is satisfied (see, mutatis mutandis, ECHR, Azinas v. Cyprus, no. 56679/00, decision of28 April 2004).

50. This Court applied the same reasoning when it rendered Decision of 27. January 2010 on inadmissibility on the basis of non-exhaustion of legal remedies in case AAB-RIINVEST University L.L.C., Prishtina against the Government of

Republic of Kosovo, case no. KI. 41/09 and the Decision of 23 March 2010 in the case Mimoza Kusari-Lila against the Central Election Commission, case no. KI 73/09.

51. Having in mind that based on the documentation submitted to the Constitutional Court by the Applicants the Supreme Court of Kosovo by Judgment Rev. no. 197/2010 of 22 August 2011 partially approved as grounded the revision of the respondents-counterclaimants and the request of State Prosecutor of Kosovo for protection of legality and that the Judgment of the District Court in Ac. no. 1137/2009 of 25 May 2010 and Judgment of Municipal Court in Prishtina C. no. 713/2007 of 29 April 2009 in part **I under item 2** of the enacting clause of the Judgment and this part of the case is remanded to the first-instance court for re-trial, and the re-trial proceeding is still pending. Therefore, the Applicant has not exhausted all legal remedies provided by law in order to be able to file a Referral with the Constitutional Court.

52. Therefore the Referral in the part that relates to the Applicant Ali Kelmendi is inadmissible for consideration pursuant to Article 113.7 and Rule 36. (1a) of the Rules of Procedure which stipulates that "*1. The Court may only deal with Referrals if: a) all effective remedies that are available under the law against the Judgment or decision challenged have been exhausted…".*

FOR THESE REASONS

The Constitutional Court of Kosovo, pursuant to Article 113.7 of the Constitution, Articles 20 and 47 (2) of the Law and Rule 36 (1a) and 36 (2b) of the Rules of Procedure, in its session held on 20 March 2012, unanimously

DECIDES

I. TO REJECT the Referral as Inadmissible in its entirety;

II. TO REJECT the request for imposition of interim measures.

III. This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20 (4) of the Law.

IV. This Decision is effective immediately.

Judge Rapporteur **President of the Constitutional Court**

Robert Carolan Prof. Dr. Enver Hasani

KI 139/11 dated 21 April 2012- Constitutional Review of the Notification of the Kosovo Judicial Council on the reappointment of judges and prosecutors, No. 01/118-658, dated 27 October 2010

Case KI 139/11, decision dated 20 March 2012
Keywords: Kosovo Judicial Council, individual Referral, non-exhaustion of legal remedies, right to legal remedies, appointment and dismissal of judges

The Applicant his Referral submitted based on Article 113.7 of the Constitution of Kosovo, claiming that his constitutional rights have been violated by the notification informing him that his mandate as a judge with the Municipal Court of Minor Offence in Prishtina ceases on 27 October 2010. The Applicant alleges that that his rights as guaranteed by Articles 5 [Languages], 32 [Right to Legal Remedies], 104 [Appointment and Removal of Judges] and 108 [Kosovo Judicial Council] of the Constitution of the Republic of Kosovo have been violated.
The Court concluded that the Applicant's Referral is inadmissible based on Article 113.7 of the Constitution in conjunction with Article 47.2 of the Law, because the Applicant has not exhausted all legal remedies provided by the Law. The Court justified its decision stating that the Applicant has not taken any steps to solve his request as it is provided by respective legal provisions. Due to the reasons mentioned above, the Court decided to reject the Applicant's Referral as inadmissible.

Pristine, 20 March 2012
Ref.No.:RK209/12

RESOLUTION ON INADMISSIBILITY

in

Case No. KI. 139/11

Applicant

Ali Latifi

Constitutional Review of the Notification of the Kosovo Judicial Council on the reappointment of judges and prosecutors, No. 01/118-658, dated 27 October 2010

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

Composed of:

Enver Hasani, President
Kadri Kryeziu, Deputy-President
Robert Carolan Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Ivan Cukalovic, Judge
Gjyljeta Mushkolaj, Judge and
Iliriana Islami, Judge

Applicant

1. The applicant is Mr. Ali Latifi, residing in Pristina.

Challenged decision

2. The Applicant challenges the Notification of the Kosovo Judicial Council (hereinafter: "KJC"), No. 01/118-658, dated 27 October 2010, for his dismissal from the post of the judge at the Municipal Court of Minor Offences in Pristina.

Subject matter

3. The Applicant submitted a Referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the "Court") on 26 October 2011 claiming that his rights as guaranteed by Articles 5 [Languages], 32 [Right to Legal Remedies], 104 [Appointment and Removal of Judges] and 108 [Kosovo Judicial Council] of the Constitution of the Republic of Kosovo (hereinafter: the "Constitution") have been violated.

Legal basis

4. Article 113.7 of the Constitution, Article 20 of the Law, and Rule 56 (2) of the Rules of Procedure.

Proceedings before the Court

5. On 26 October 2011, the Applicant submitted a Referral with the Court.

6. On 23 January 2012, the Referral was communicated to the Supreme Court of Kosovo.

7. On 12 January 2012, the President, with Decision No. GJR. 139/11, appointed Judge Robert Carolan as Judge Rapporteur. On the same date the President, with Decision, No. KSH. 139/11, appointed the Review Panel composed of Judges Altay Suroy (Presiding), Gjyljeta Mushkolaj and Iliriana Islami.

8. On 28 January 2012, the Court requested the Applicant to submit the final Supreme Court decision in his case.

9. On 31 January 2012, the Applicant replied to the request. However, he did not submit the final decision in his case.

10. On 20 March 2012 the Review Panel considered the Report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

11. The Applicant is a former judge of the Municipal Court of Minor Offences in Pristina, who received a notification from KJC, No. 01/118-658, dated 27 October 2010, informing him that his mandate as a judge with the Municipal Court of Minor Offences in Pristina ceases on 27 October 2010.

12. The notification of KJC refers to the results of the reappointment process of judges and prosecutors during the third phase, based on Article 2.11, Article 2.16 and 14.2 of Administrative Direction No. 2008/02 Implementing UNMIK Regulation No. 2006/25 on a Regulatory Framework for the Justice System in Kosovo and Article 150 of the Constitution.

13. On 1 November 2010, the Applicant filed an appeal to KJC, expressing his dissatisfaction with Decision No. 01/118-658.

14. On 2 February 2011, the Applicant submitted an appeal with the Supreme Court against the dismissal without a decision, while on 22 February 2011 he submitted complementing documents to the appeal.

15. On 22 February 2011, the President of the Supreme Court replied to the Applicant's motion, where the Applicant was advised to initiate Administrative Conflict Procedure with the Supreme Court.

16. On 26 April 2011, the Applicant filed a suit for administrative conflict with the Supreme Court, where he outlined the alleged violations done by KJC, during the procedure of re-appointment.

17. On 27 July 2011, the Applicant submitted a motion with the Supreme Court requesting an urgent treatment of his suit submitted on 26 April 2011.

Applicant's allegations

18. The Applicant claims that the KJC notification contains no reasons as to why he is dismissed from his position of judge.

Hence, allegedly, Article 108 [Kosovo Judicial Council] of the Constitution has been violated.

19. Further, the Applicant complains that the Supreme Court, allegedly, has violated Articles 5 [Languages], 32 [Right to Legal Remedies] and 104 [Appointment and Removal of Judges] of the Constitution by not replying to his complaint of 2 February 2011 and 22 February 2011.

20. In addition, the Applicant alleges that KJC has violated Article 108 [Kosovo Judicial Council] of the Constitution, because the examination process is not foreseen by law.

Preliminary assessment of admissibility of the Referral

21. The Applicant complains that the KJC, through Notification, No. 01/118-658, dated 27 October 2010, for his dismissal from the post of the judge at the Municipal Court of Minor Offences in Pristina has violated his Constitutional rights as guaranteed by the Constitution.

22. However, in order for a Referral to be admissible, the Applicant must first show that he/she has fulfilled all admissibility requirements laid down in the Constitution, the Law and the Rules of Procedure.

23. As to the present Referral, the Constitutional Court notes that, on 27 October 2010, the KJC notified the Applicant, through its Notification No. 01/118-658, that his mandate as a judge with the Municipal Court for Minor Offences in Pristina ceased on 27 October 2010.

24. The KJC apparently based the issuance of this Notification on Article 150 of the Constitution and on Articles 2.11, 2.16, and 14.2 of Administrative Direction No. 2008/02 Implementing UNMIK Regulation No. 2006/25 on a Regulatory Framework for the Justice System in Kosovo, without mentioning other reasons for the dismissal of the Applicant.

25. However, the Court emphasizes that it can only decide on the admissibility of a Referral, if the Applicant shows that he/she has exhausted all effective remedies available under applicable law.

26. The rationale for the exhaustion rule is to afford the authorities concerned, including the courts, the opportunity to prevent or put right the alleged violation of the Constitution. The rule is based on the assumption that the legal order of Kosovo will provide an effective remedy for the violation of constitutional rights. This is an important aspect of the subsidiary character of the Constitution (see Resolution on Inadmissibility: Badivuku vs. Kosovo Judicial Council, KI 114/10, 18 May 2011 and see *mutatis mutandis*, ECHR, Selmouni vs. France, no. 25803/94, Decision of 28 July 1999).

27. In the present case, the Court finds that the Applicant has not submitted any *prima facie* evidence and facts indicating that he has exhausted such all effective remedies under Kosovo law in order for the Court to proceed with his allegation about the constitutionality of Notification No. 01/118-658 of 27 October 2010.

28. It follows that the Referral is inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 47.2 of the Law, and Rule 56 (2) of the Rules of Procedure, on 20 March 2012, unanimously

DECIDES

I. TO REJECT the Referral as Inadmissible;

II. This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20 (4) of the Law;

III. This Decision is effective immediately.

Judge Rapporteur **President of the Constitutional Court**

Robert Carolan Prof. Dr. Enver Hasani

KI 147/11 dated 21 April 2012- Constitutional Review of the Decision of the High Court for Minor Offence in Pristina, GJL. no. 1288/2011, dated 28 October 2011.

Case KI 147/11, decision dated 20 March 2012
Keywords: administrative procedure, discrimination, equality before the law, individual referral, right to legal remedies, violation of individual rights and freedoms, manifestly ill-founded, non-exhaustion

The applicant filed a referral pursuant to Article 113.7 of the Constitution of Kosovo asserting that her rights under Articles 24 [Equality Before the Law], 32 [Right to Legal Remedies] was infringed by the decision of the High Court for Minor Offences, which upheld the decision of the Minor Offences Court in Prizren as to the fine but changed the decision as to the period where the Applicant did not have the right to enter to one year.
The Court held that the Referral was inadmissible because the Applicant failed to submit evidence that the relevant proceedings were in any way unfair or tainted by arbitrariness. Hence, the Court held that the Referral was manifestly ill-founded pursuant to Rule 36 (1.c) of the Rules of Procedure. Furthermore, as to the administrative proceedings the Court notes that the Applicant initiated an administrative conflict procedure with the Supreme Court against the Decision of the Appeals Committee dated 8 August 2011. However, the Supreme Court has not yet rendered a decision in this matter. It follows that the Referral is inadmissible for non-exhaustion.

Pristine, 20 March 2012
Ref. No.: RK215/12

RESOLUTION ON INADMISSIBILITY

in

Case no. KI 147/11

Applicant

Maria Strugari

Constitutional Review of the Decision of the High Court for Minor Offence in Pristina, GJL. no. 1288/2011, dated 28 October 2011.

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Enver Hasani, President
Kadri Kryeziu, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Ivan Čukalović, Judge
Gjyljeta Mushkolaj, Judge and
Iliriana Islami, Judge

Applicant

1. The Applicant is Ms. Maria Strugari, represented by Mr. Armend Krasniqi, a practicing lawyer in Pristina.

Challenged court decision

2. The Applicant challenges the decisions of the High Court for Minor Offences in Pristina, GJL. no. 1288/2011 of 28 October 2011, which was served on the Applicant on 10 November 2011.

Subject matter

3. The Applicant alleges that the High Court decision shows that she was discriminated against, contrary to Article 24 [Equality Before the Law] of the Constitution of the Republic of Kosovo (hereinafter: the "Constitution") and that she was never given the opportunity to prove the factual situation before the relevant authorities, amounting to a violation of Article 32 [Right to Legal Remedies] of the Constitution.

4. Furthermore, the Applicant requests the Constitutional Court of the Republic of Kosovo (hereinafter: the "Court") to impose interim measures, postponing the deportation order, for the reason that it *"is necessary. On the other hand, with imposition of temporary measure, none of the parties would suffer damages that are big and irreparable."*

Legal basis

5. Article 113.7 of the Constitution, Articles 22 and 27 of the Law on the Constitutional Court of the Republic of Kosovo of 15 January 2009, (No. 03/L-121), (hereinafter: the "Law") and Rules 54, 55 and 56 (2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the "Rules of Procedure").

Proceedings before the Court

6. On 11 November 2011, the Applicant submitted the Referral to this Court.

7. On 14 November 2011, this Court requested additional clarification by the Applicant on the following issues:

"...

a. Evidence on work permit of Ms. Maria Strugari with duration until 2012;
b. Evidence on permission for stay of Ms. Maria Strugari with duration until 2012;
c. Employment Contract of Ms. Maria Strugari;
d. Whether the employment contract of Ms. Maria Strugari has been deposited with other institutions;
e. Have you requested to impose interim measure with the Municipal Minor Offence Court in Prizren and with the High Court of Minor Offences in Pristina; and
f. Have you requested to impose interim measure with the Supreme Court pursuant to Article 22 of the Law No. 03/L-202 on Administrative Conflicts.
g. Justify accurately the allegations for violations of constitutional rights to detriment of your client.

..."

8. On 14 November 2011, this Court communicated the Referral with the Ministry of Internal Affairs (hereinafter: "MIA").

9. On 16 November 2011, the Applicant replied, stating that:

"...

a. [...] The applicant has been extended with a Work Permit for another year until 22.06.2012.
b. She does not possess a Permit of Stay, [...]. However, since she has been extended the Work Permit for a period of one year from 22.06.2011 until 22.06.2012, she has applied for the extension of temporary Permit of Stay in RKS, for a period of time equivalent to the validity period of Work Permit, but her request has been rejected by the MIA, from the both instances, the first and second instance. Upon the submission of the appeal to the decision of the first instance, the second instance has not reviewed and examined the evidences provided by the appellant, but has a priori decided to reject the appeal as unfounded. Therefore against this Verdict the appellant has submitted the law-suit for

the initiation of Administrative contest in the Supreme Court of Kosovo- RKS, wherein the subject is being examined.

c. Following, we send the Work Contract of the applicant.
d. Please see the appeals submitted by the applicant wherein can be obviously seen that we have sent to the Second Instance of MIA, the Copy of the Work Contract.
e. We have not requested interim measure with the Court for Minor Offenses in Prizren [...].

..."

10. On 13 January 2012, the President, with Decision No. GJR. 147/11, appointed Judge Robert Carolan as Judge Rapporteur. On the same date, the President, with Decision No.KSH. 147/11, appointed the Review Panel composed of Judges Altay Suroy (Presiding), Gjyljeta Mushkolaj and Iliriana Islami.

11. On 2 February 2012, this Court communicated the Referral with the Review Commission for Permanent and Temporary Residence Permit (hereinafter: the "Commission") and Appeals Committee of the Review Commission (hereinafter: the "Appeals Committee").

12. On 2 February 2012, this Court communicated the Referral with the Department of Migration and Foreigners of MIA (hereinafter: "DMF"), Municipal Court for Minor Offence in Prizren and the High Court for Minor Offence in Pristina.

13. On 2 February 2012, this Court communicated the Referral with the Department of Citizenship and Asylum in MIA and requested information whether they have decided on the Applicant's complaint of 15 September 2011, and it replied on 15 February 2012, stating that a complaint does not stop the Deportation Order and that the Appeals Committee approved the deportation order on 21 September 2011.

14. On 20 March 2012, the Review Panel considered the Report of the Judge Rapporteur and made a recommendation to the Court on the Inadmissibility of the Referral.

Summary of facts

15. The Applicant, Maria Strugari, a Moldavian citizen, came to Kosovo in 2001 to work in a restaurant in Prizren. She was issued a Foreigners Identification Card by MIA and a Temporary Residence Permit valid until 22 June 2011. The Applicant also received an Initial Work Permit from the Ministry of Labour and Welfare, which would expire on 22 June 2011 but was extended until 22 June 2012.

16. On 21 June 2011, the Applicant filed a request with the DMF to extend the temporary residence permit.

17. On 26 July 2011, the Commission rejected the Applicant's request reasoning that based on evidence submitted by the Applicant, she does not fulfill the requirements foreseen by Article 36 para. 3 and Article 38 para. 1 subpara. 1.1 of the Law No. 03/L-126 on Foreigners.

18. On 29 July 2011, the Applicant submitted an appeal with the Appeals Committee.

19. On 8 August 2011, the Appeals Committee, dealing with the Applicant's appeal against the decision of the Review Commission of 26 July 2011, rejected her appeal, stating that the Review Commission had rendered rightful decisions based on the foreseen legal procedure, because the Applicant had failed to act in accordance with the legal provisions of the Law of Foreigners,

Article 7, of the Law of Foreigners provides:

A foreigner shall adhere to the laws and regulations, including subsidiary legal acts, and to the decisions of state bodies during his/her stay and movement in the Republic of Kosovo.

Article 36 para. 3, of the Law of Foreigners provides:

Request for an extension for a temporary stay shall be submitted to the competent body at least thirty (30) days prior to the expiration of his/her temporary stay.

Article 38 para. 1, subpara. 1.1, of the Law of Foreigners provides:

The foreigner may be permitted temporary stay if he/she: possesses sufficient means for living;

The Appeals Committee, therefore, upheld the decision of the Review Committee to reject the request to extend the permit for temporary residence in Kosovo. The decision further indicated that the Applicant might initiate a judicial procedure before the Supreme Court within 30 days from the reception of the decision by the Applicant.

20. On 9 September 2011, General Police Directorate of MIA issued an Expulsion Order to the Applicant, in accordance with the Law on Foreigners, Article 46(1)(3), providing that the competent body may revoke the stay of a foreigner in Kosovo " [...] who is granted a temporary stay, [...], if he/she stays in Kosovo contrary to the purpose for which the temporary stay is issued, and Article 55(2) and (3), providing that [...] the time required to prepare for his/her departure [...] shall [...] be [...] no [...] longer than thirty (30) days and [...]" An appeal against an order to leave shall not suspend the execution of that order. The Expulsion Order further indicated that the Applicant have the right to file a complaint with the Department of Citizenship and Asylum in MIA within 8 days from the reception of the decision by the Applicant.

21. On 15 September 2011, the Applicant filed a complaint with the Department of Citizenship and Asylum in MIA.

22. On 20 September 2011, the Applicant initiated an administrative conflict procedure before the Supreme Court, which so far has not yet rendered a decision in the matter.

23. On 21 September 2011, the Appeals Committee approved the deportation order (Decision No. 140/2011).

24. On 27 September 2011, DMF filed a claim with the Municipal Court for Minor Offences in Prizren to initiate minor offences proceedings against the Applicant.

25. On 27 September 2011, the Applicant appeared before the Minor Offences Court in Prizren and requested the Court to reject the initiation of the proceeding as inadmissible for the reason that it was premature, since her appeal against the decision of the Appeals Committee was still pending before the Supreme Court. However, the Minor Offences Court declared the Applicant guilty of staying in Kosovo, while her residence permit had expired on 22 June 2011, fined her with a fine of 50 Euros and ordered her immediate deportation from the territory of Kosovo without a right to re-enter for a period of 3 years. According to Article 55(3) of the Law, an appeal against an order to leave shall not suspend the execution of the order (Decision No. 176/2011-01). The Applicant appealed against this decision to the High Court of Minor Offences.

26. On 28 September 2011, the High Court on Minor Offences approved partially the appeal of the Applicant. The High Court upheld the decision of the Minor Offences Court in Prizren as to the fine but changed the decision as to the period where the Applicant did not have the right to enter to one year. The High Court ruled that it had reviewed the allegations set out in the appeals, the challenged decisions and the statement of the Applicant deposited in the main hearing in the first instance court, in which she admitted to having committed the minor offence, but argued that the decision was premature. The High Court further reasoned that, based on other facts from the case file, also the factual situation was certainly ascertained as per the ruling of the appealed decision of the Municipal Court. The High Court concluded, that the first instance court did not violate the minor offence procedure provisions, respectively, nor did it erroneously apply the substantive law. The High Court also informed the Applicant that no appeal was allowed against its decision.

Applicant's allegations

27. The Applicant alleges that the Commission, Appeals Committee, DMF, Minor Offences Court in Prizren and the High Court for Minor Offences assessed wrongfully the factual situation.

28. Further, the Applicant alleges that the Minor Offences Court in Prizren and the High Court for Minor Offences have not reviewed how the Expulsion Order was issued but only concluded that it has not been respected by the Applicant.

Assessment of the admissibility of the Referral

29. The Court notes that the Applicant complains about two issues:

    1. The administrative proceedings before the Review Commission and the Appeals Committee; and,

    2. The proceedings before the Municipal Minor Offences Court and the High Court for Minor Offences.

30. In this respect, in order to be able to adjudicate the Applicant's Referral, the Court needs first to examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution as further specified in the Law and the Rules of Procedure.

31. These requirements are essentially: referring the matter to the Court in a legal manner (Article 113 (1) of the Constitution); having exhausted all legal remedies provided by law (Article 113 (7) of the Constitution); filing the referral within a certain deadline (Articles 49 and 56 of the Law); clarifying what rights and freedoms have been violated; indicating what concrete act(s) of a public authority is (are) subject to challenge (Article 48 of the Law); justifying the Referral; and, attaching the necessary supporting information and documents (Article 22 of the Law), including other elements of information.

1. As to the administrative proceedings

32. In order to be able to consider the Applicant's complaint about the administrative proceedings before the Review Commission and the Appeals Committee and her allegations that she has been denied the right to a legal remedy as guaranteed by Article 32 of the Constitution, the Court considers that it is necessary to first examine whether the Applicant has exhausted all legal remedies available to her under applicable law.

33. In this connection, the Court refers to Article 113.7 of the Constitution which provides as follows:

"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".

34. This means that, as to the administrative proceedings before the Review Commission and the Appeals Committee, the Applicant should show to this Court to that she has exhausted all available remedies, including an appeal to the Administrative Chamber of the Supreme Court.

35. In this respect, the Court notes that the Applicant initiated an administrative conflict procedure with the Supreme Court against the Decision of the Appeals Committee dated 8 August 2011. However, the Supreme Court has not yet rendered a decision in this matter.

36. It follows that the Applicant has not complied with the above exhaustion rule, the rationale of which is to afford the authorities concerned, including the courts, the opportunity to prevent or remedy the alleged violation of the Constitution. The rule is based on the assumption that the Kosovo legal order will provide an effective remedy for the violation of constitutional rights (see: Resolution on Inadmissibility: AAB-RIINVEST University L.L.C., Pristina vs. Government of the Republic of Kosovo, of 27 January 2010 and, mutatis mutandis, ECHR, Selmouni v. France, no. 25803/94, decision of 28 July 1999).

2. As to the proceedings before the Municipal Court for Minor Offences and the High Court for Minor Offences

37. As to the complaint that the decisions of the Municipal Court of Minor Offence and of the High Court for Minor Offence violated the Applicant's rights guaranteed by:

a. Article 24 [Equality Before the Law] of the Constitution since the court, allegedly, only dealt with the technical matters and declared her guilty for not implementing the Expulsion Order, whereas it did not review at all the alleged "arbitrary manner for the issuance of that decision"; and,

b. Article 32 [Right to Legal Remedies] of the Constitution, since the Applicant was, allegedly, denied her right to a legal remedy at the administrative level, and did not have the possibility to prove to the Commission that the assessment of the factual situation was conducted in an entirely incorrect manner leading to the request for residence permit being rejected and the issuance of the expulsion order,

the Court emphasizes that, under the Constitution, it is not to act as a court of fourth instance, when considering the decisions taken by ordinary courts. It is the role of ordinary courts to interpret and apply the pertinent rules of both procedural and substantive law (see, *mutatis mutandis,* Garcia v. Spain [GC], no. 30544/96, para. 28, European Court of Human Rights [ECHR] 1999-I).

38. The Court can only consider whether the evidence has been presented in such a manner, and whether the proceedings in general, viewed in their entirety, have been conducted in such a way that the Applicant has had a fair trial (see among other authorities, Report of the Eur. Commission of Human Rights in the case Edwards v. United Kingdom, App. No. 13071/87, adopted on 10 July 1991).

39. In the present case, the Applicant merely disputes whether the Municipal Court for Minor Offences and the High Court for Minor Offences correctly applied the applicable law and disagree with the courts' factual findings with respect to her case.

40. As a matter of fact, the Applicant did not substantiate a claim on constitutional grounds and did not provide evidence that her rights and freedoms have been violated by that public authority. Therefore, the Constitutional Court cannot conclude that the relevant proceedings were in any way unfair or tainted by arbitrariness (see *mutatis mutandis*, Shub v. Lithuania, ECHR Decision on Admissibility of Application No. 17064/06 of 30 June 2009).

41. Taking into account the above considerations, it follows that the Referral as a whole must be rejected as manifestly ill-founded with respect to the proceedings before the municipal court and in part for failure to exhaust all legal remedies with respect to her pending administrative proceedings.

Assessment of the Request for Interim Measures

42. As to the Applicant's request to the Court for interim measures, the Court refer to Article 27 of the Law and, in particular, Rule 54 (1) of the Rules of Procedure, stipulating that, at any time when a Referral is pending before the Court and the merits of the Referral have not been adjudicated by the Court, a party may request interim measures. However, taking into account that the Applicant has not requested to impose interim measure with the Municipal Minor Offence Court in Prizren and with the High Court of Minor Offences in Pristina; and with the Supreme Court pursuant to Article 22 of the Law No. 03/L-202 on Administrative Conflicts and that the Referral was found inadmissible, the Applicant is not entitled under Rule 54 (1) of the Rules of Procedure to request interim measures.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 47 of the Law, Rule 36 (1.c), Rule 54 (1) and Rule 56 (2) of the Rules of Procedure, on 20 March 2012, by majority

DECIDES

I. TO REJECT the Referral as Inadmissible;

II. TO REJECT the Request for Interim Measures;

III. This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20 (4) of the Law;

IV. This Decision is effective immediately.

Judge Rapporteur **President of the Constitutional Court**

Robert Carolan Prof. Dr. Enver Hasani

KI 106/11, KI 110/11, KI 115/11 and KI 116/11 dated 24 April 2012- Constitutional Review of the Decisions of the District Court of Peja, PN. No. 81/11 and PN. No. 83/11, dated 1 July 2011.

Case KI 106/11, KI 110/11, KI 115/11 and KI 116/11, decision dated 20 March 2012
Keywords: criminal case, general principles of the judicial system, interpretation of human rights provisions, individual referral, right to fair and impartial trial, right to legal remedies, violation of individual rights and freedoms, manifestly ill-founded, not authorized party

The applicants filed a referral pursuant to Article 113.7 of the Constitution of Kosovo asserting that their rights under Articles 31 [Right to Fair and Impartial Trial], 32 [Right to Legal Remedies], 53 [Interpretation of Human Rights Provisions] and 102 [General Principles of the Judicial System], of the Constitution and Article 6 [Right to a fair trial] in conjunction with Article 13 [Right to an effective remedy] of the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols, was infringed by the decisions of the District Court in Peja, which concluded that an appeal against the court ruling on the confirmation of the indictment would only be allowed, if the indictment was dismissed, pursuant to Article 317(2) of the PCCP.
The Court joined the Referrals pursuant to Rule 37 (1) of the Rules of Procedure. Further, the Court held that the Referral was inadmissible because the Applicants failed to submit evidence that the relevant proceedings were in any way unfair or tainted by arbitrariness. Hence, the Court held that the Referral was manifestly ill-founded pursuant to Rule 36 (1.c) of the Rules of Procedure. Furthermore, as to the question of compatibility of laws, i.e. the PCCP, with the Constitution, the Court notes that only authorized parties under Article 113.2 of the Constitution are entitled to submit this question. Therefore, the Applicants are not an authorized party under Article 113.2 of the Constitution. However, the Applicants could raise the issue of compatibility of laws with the Constitution before the regular courts who is authorized under Article 113.8 of the Constitution to cease the Constitutional Court.

Pristine, 20 March 2012
Ref. No.: RK213 /12

RESOLUTION ON INADMISSIBILITY

in

Cases No. KI 106/11, KI 110/11, KI 115/11 and KI 116/11

Applicants

Neki Myha and Nijazi Xharavina

Constitutional Review of the Decisions of the District Court of Peja, PN. No. 81/11 and PN. No. 83/11, dated 1 July 2011.

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Enver Hasani, President
Kadri Kryeziu, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Ivan Čukalović, Judge
Gjyljeta Mushkolaj, Judge and
Iliriana Islami, Judge

Applicants

1. The Applicants are Mr. Neki Myha, represented by Mr. Avdi Rizvanolli, a practicing lawyer in Pristina, and Mr. Nijazi Xharavina, represented by Mr. Teki Bokshi, a practicing lawyer in Gjakova.

Challenged decisions

2. The Applicant, Mr. Neki Myha, challenge the Decisions of the District Court of Peja, PN. no. 81/11 and Pn. no. 83/11, both of them dated 1 July 2011, which were served on him on 14 July 2011.

3. The Applicant, Mr. Nijazi Xharavina, also challenge the Decisions of the District Court of Peja, PN. no. 81/11 and Pn. no. 83/11, both of them dated 1 July 2011, which were served on him on 14 July 2011.

Subject matter

4. The subject matter of the Referral is the assessment by the Constitutional Court of the Republic of Kosovo (hereinafter: the "Court") of the constitutionality of the Decisions of the District Court in Peja, by which, allegedly, the rights of both of the Applicants as guaranteed by the Constitution of the Republic of Kosovo (hereinafter: the "Constitution"), Articles 31 [Right to Fair and Impartial Trial], 32 [Right to Legal Remedies], 53 [Interpretation of Human Rights Provisions] and 102 [General Principles of the Judicial System], and the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols (hereinafter: "ECHR"), Article 6 [Right to a fair trial] in conjunction with Article 13 [Right to an effective remedy] have been violated.

Legal basis

5. Article 113.7 of the Constitution, Article 22 of the Law on the Constitutional Court of the Republic of Kosovo of 15 January 2009, (No. 03/L-121), (hereinafter: the "Law") and Rule 56 (2) of the Rules of Procedure of the Constitutional Court of

the Republic of Kosovo (hereinafter: the "Rules of Procedure").

Proceedings before the Court

6. On 8 August 2011, the Applicant, Mr. Neki Myha, submitted a Referral to the Court, which was registered under Case No. KI 106/11.

7. On 10 August 2011, the Applicant, Mr. Nijazi Xharavina, submitted a Referral to the Court, which was registered under Case No. KI 110/11.

8. On 17 August 2011, the first Applicant submitted a further Referral to the Court, which was registered under Case No. KI 115/11.

9. On the same day, the second Applicant also submitted a further Referral to the Court, which was registered under Case No. KI 116/11.

10. The Referrals submitted by the Applicant, Mr. Neki Myha, Case No. KI 106/11 and KI 115/11 relates to the same subject matter and directed against the same act of the public authority, however, the Applicant insisted that the case should be registered separately.

11. The Referrals submitted by the Applicant, Mr. Nijazi Xharavina, Case No. KI 110/11 and KI 116/11 relates also to the same subject matter and directed against the same act of the public authority, however, also in this case the Applicant insisted that the case should be registered separately.

12. On 23 August 2011, the President, by Decision No. GJR. KI 106/11, KI 110/11, KI 115/11 and KI 116/11 appointed Judge

Snezhana Botusharova as Judge and, by Decision No. KSH. KI 106/11, KI 110/11, KI 115/11 and KI 116/11, appointed the Review Panel composed of Judges Altay Suroy (Presiding), Almiro Rodrigues and Iliriana Islami.

13. On 23 August 2011, the President, by Order No. KI 106/11, KI 110/11, KI 115/11 and KI 116/11 ordered the joinder of the Referrals, Case No. KI106/11, KI 110/11, KI 115/11 and KI 116/11, pursuant to Rule 37 (1) of the Rules of Procedure, which provides:

14. "The Secretariat shall provide notice to the President and the Judge Rapporteur that the referral may be related in subject matter to another referral before the Court and directed against the same act of a public authority. The President, upon the recommendation of the Judge Rapporteur may order the joinder of those separate referrals."

15. On 26 October 2011, the Court notified the Applicants about the joinder of their Referrals.

16. On 26 October 2011, the Court communicated the Referral to the District Court of Peja and to the Municipal Public Prosecutor of Peja.

17. On 20 March 2012, the Review Panel considered the Report of the Judge Rapporteur and made a recommendation to the Court on the Inadmissibility of the Referral.

Summary of facts

18. On 3 March 2011, the Municipal Court of Gjakova, by Decision P. no. 108/10, confirmed the indictment filed by the Municipal Public Prosecutor of Peja against the Applicants for

having committed the criminal act of Article 339 (2) in conjunction with Article 343(1) and Article 23 of the Provisional Criminal Code of Kosovo (hereinafter: "PCCK"). The Municipal Court ascertained that there were sufficient grounds to confirm the indictment and to ascertain the culpability or innocence of the accused at the main trial. The legal advice contained in the decisions was that no appeal was allowed against these rulings.

19. On 3 March 2011, the Municipal Court of Gjakova, by Decision P. no. 53/2010, confirmed the indictment filed by the Municipal Public Prosecutor of Peja against Mr. G.Z. for having committed the criminal act of Articles 332 (3.1), 334 (1) and 344 (1) of Provisional Criminal Code of Kosovo (hereinafter: "PCCK") and the Applicants for having committed the criminal act of Article 339 (2) in conjunction with Article 343 (1) and Article 23 of PCCK. The Municipal Court ascertained that there were sufficient grounds to confirm the indictment and to ascertain the culpability or innocence of the accused at the main trial. The legal advice contained in the decisions was that no appeal was allowed against these rulings.

20. On 28 March 2011, the Applicants appealed to the three-judge Panel of the Municipal Court of Gjakova (hereinafter: the "Panel") against the ruling of the Municipal Court, P. no. 53/2010.

21. On 30 March 2011, the Panel rejected the Applicants' appeal as inadmissible (Decision P. no. 53/10). The Panel concluded that an appeal against the court ruling on the confirmation of the indictment would only be allowed, if the indictment was dismissed, pursuant to Article 317(2) of the Provisional Code of Criminal Procedure (hereinafter: "PCCP"), providing that *"The ruling of the judge to dismiss the indictment can be*

appealed by the prosecutor and the injured party to the three-judge panel". The Applicants, however, appealed against this decision to the District Court of Peja.

22. On 4 April 2011, the first Applicant appealed against Decision, P. no. 108/10 of 3 March 2011 of the Municipal Court of Gjakova to the Panel of that court, while the second Applicant did so on 8 April 2011.

23. On 2 June 2011, by Decision P. no. 108/2010, the Panel rejected the Applicants' appeal as inadmissible and concluded that an appeal against a court ruling on the confirmation of the indictment would only be allowed, if the indictment was dismissed, pursuant to Article 317(2) of the PCCP.

24. On 8 June 2011, the Applicants appealed the decision of 2 June 2011 to the Panel.

25. On 13 June 2011, the Panel rejected the Applicants' appeal as inadmissible (Decision P. no. 108/10), stating that *"The ruling of the judge to dismiss the indictment can be appealed by the prosecutor and the injured party to the three-judge panel"*. Thereupon the Applicants appealed against this decision to the District Court of Peja.

26. On 1 July 2011, by Decision Pn. No. 81/11, the District Court of Peja rejected the Applicants' appeal as unfounded and concluded that an appeal against the court ruling on the confirmation of the indictment would only be allowed, if the indictment was dismissed, pursuant to Article 317(2) of the PCCP.

27. On 1 July 2011, by Decision Pn. No. 83/11, the District Court of Peja rejected the Applicants' appeal against the decision of the Municipal Court in Peja, P. no. 53/10 of 30 March 2011 as

unfounded and concluded that an appeal against the court ruling on the confirmation of the indictment would only be allowed, if the indictment was dismissed, pursuant to Article 317(2) of the PCCP.

Applicant's allegations

28. The Applicants allege that:

29. their right to appeal and their right to access to a court have been violated for the reason that they could not appeal the ruling of the judge on the confirmation of the indictment of 3 March 2011;

30. the principle of equality of arms between the parties in the proceedings has equally been violated also due to the fact that they could not appeal the ruling of the judge on the confirmation of the indictment while the prosecutor has the possibility pursuant to Article 317 (2) of PCCP to appeal if the judge dismiss the confirmation of indictment.

31. the Municipal Court and the District Court had wrongly applied and interpreted Article 317(2), because, according to their opinion, there exist a right to appeal under the PCCP.

Assessment of the admissibility of the Referral

32. The Applicants allege that their rights guaranteed by Articles 31 [Right to Fair and Impartial Trial], 32 [Right to Legal Remedies], 53 [Interpretation of Human Rights Provisions] and 102 [General Principles of the Judicial System] of the Constitution and Article 6 [Right to a fair trial] ECHR in conjunction with Article 13 [Right to an effective remedy] ECHR have been violated.

33. As to the Applicants' complaints, the Court first observes that, in order to be able to adjudicate their complaints, it is necessary to first examine whether they have fulfilled the admissibility requirements laid down in the Constitution as further specified in the Law and the Rules of Procedure.

34. In this respect, the Court emphasizes that, under the Constitution, it is not to act as a court of fourth instance, when considering the decisions taken by ordinary courts. It is the role of ordinary courts to interpret and apply the pertinent rules of both procedural and substantive law (see, *mutatis mutandis,* Garcia v. Spain [GC], no. 30544/96, para. 28, European Court of Human Rights [ECHR] 1999-I).

35. The Court can only consider whether the evidence has been presented in such a manner, and whether the proceedings in general, viewed in their entirety, have been conducted in such a way that the Applicants has had a fair trial (see among other authorities, Report of the Eur. Commission of Human Rights in the case Edwards v. United Kingdom, App. No. 13071/87, adopted on 10 July 1991).

36. In the present case, the Applicants allege that there is a violation of their rights as guaranteed by the Constitution since they are not allowed to appeal a decision of a judge confirming the indictment.

37. In this respect, the Court refers to Article 102.5 of the Constitution, which provides: *"The right to appeal a judicial decision is guaranteed unless otherwise provided by law."*. Article 317 (2) of the PCCP does not provide a right to the Applicants to appeal the confirmation of indictment. Notwithstanding, this the Panel of the Municipal Court and the District Court took into consideration the complaint of the Applicants but ruled that no appeal is possible against the

confirmation of indictment pursuant to Article 317 (2) of PCCP, which provides:

38. *"The ruling of the judge to dismiss the indictment can be appealed by the prosecutor and the injured party to the three-judge panel."*

39. Furthermore, the Court notes that the confirmation of indictment do not prejudice the adjudication of the matter during the main trial pursuant to Article 317 (1) of PCCP, which provides:

40. *"All rulings rendered by the judge in connection with the confirmation of the indictment shall be supported by reasoning but in such a way as not to prejudice the adjudication of the matters which will be considered in the main trial."*

41. Having examined the proceedings before these courts as a whole, the Constitutional Court does not find that the relevant proceedings were in any way unfair or tainted by arbitrariness (see *mutatis mutandis*, Shub v. Lithuania, ECHR Decision on Admissibility of Application No. 17064/06 of 30 June 2009).

42. It follows that the Referral is manifestly ill-founded pursuant to Rule 36 (1.c) of the Rules of Procedure which provides: *"The Court may only deal with Referrals if: c) the Referral is not manifestly ill-founded."*

43. If this Court takes into consideration that the Applicants raise the question of compatibility of laws, i.e. the PCCP, with the Constitution, the Court notes that only authorized parties under Article 113.2 of the Constitution are entitled to submit this question. Therefore, the Applicants are not an authorized party under Article 113.2 of the Constitution. However, the

Applicants could raise the issue of compatibility of laws with the Constitution before the regular courts who is authorized under Article 113.8 of the Constitution to cease the Constitutional Court.

44. Accordingly, the Referrals must be rejected as inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.2 of the Constitution, Rule 36 (1.c) and Rule 56 (2) of the Rules of Procedure, on 20 March 2012, unanimously

DECIDES

I. TO REJECT the Referral as Inadmissible;

II. This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20 (4) of the Law;

III. This Decision is effective immediately.

Judge Rapporteur **President of the Constitutional Court**

Snezhana Botusharova Prof. Dr. Enver Hasani

Kl 46/11 dated 29 March 2012- Constitutional review of non-execution of the Judgment of the Municipal Court in Prishtina, CI.nr. 33/2006, dated 5 July 2006.

Case KI 46/11, decision dated 12 February 2007
Keywords: individual referral, right to work, manifestly illfounded, non exhaustion of legal remedies, resolution of inadmissibility

The Applicant of the referral has complained that by non execution of the Municipal Court Judgment CI. No. 33/2006 of 5 July 2006, his fundamental rights and freedoms guaranteed by the Constitution and had precisely mentioned constitutional provisions from Article 21 to Article 56 of the Constitution. Furthermore, he stated that his "right to wage" was violated. The Court notes that none of the articles of Kosovo's Constitution guarantees "right to wage", the Court also considers that with act of a public authority whose execution is requested by the applicant could not violate all of fundamental rights and freedoms provided by the Constitution from Articles 21 to 56 because they are different in their content for their legal nature and all of them in no way could be related to the applicant's case, therefore on these grounds considers that the referral is manifestly illfounded.
The Constitutional Court considers that the application should be declared inadmissible as manifestly illfounded also due to non-exhaustion of legal remedies.

Pristine, 23 March 2012
Ref. No.: RK 211/12

RESOLUTION ON INADMISSIBILITY

in

Case No. Kl 46/11

Applicant

Behram Kaçiu

Constitutional review of non-execution of the Judgment of the Municipal Court in Prishtina, CI.nr. 33/2006, of 5 July 2006.

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Enver Hasani, President
Kadri Kryeziu, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Ivan Čukalović, Judge
Gjyljeta Mushkolaj, Judge, and
Iliriana Islami, Judge

Applicant

1. The Applicant is Mr. Behram Kaçiu, from Lupç i Poshtëm village, Podujeva municipality.

Challenged decision

2. The challenged decision is the Judgment of the Municipal Court in Prishtina CI nr. 33/2006, of 12 February 2007.

Subject matter

3. The subject matter of the case submitted with the Constitutional Court of the Republic of Kosovo is the non-execution of the Judgment of the Municipal Court in Prishtina, CI. nr. 33/2006, of 5 April 2011, which the party claims to have received on 11 April 2006.

Legal basis

4. Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter referred to as the "Constitution"), Article 47 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo of 15 January 2009 (hereinafter referred to as the "Law"), and Rule 56.2 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter referred to as the "Rules of Procedure").

Proceedings before the Court

5. On 7 April 2011, Behram Kaçiu submitted a Referral with the Constitutional Court claiming he has a final decision of the Municipal Court - Judgment CI. Nr. 33/2006, of 5 July 2006, according to which, on behalf of compensation for unpaid salaries, he should have been paid the amount of 2,197.65 Euros, which has not been executed by the debtor KNI "Ramiz Sadiku" [Construction Industrial Company], nor by the Kosovo Privatization Agency, which was administering this construction company.

6. On 19 April 2011, the President of the Constitutional Court appointed Judge Kadri Kryeziu as Judge Rapporteur and the Review Panel composed of Judges: Robert Carolan (Presiding), Almiro Rodrigues (member) and Ivan Čukalović (member).

7. On 7 June 2011, the Constitutional Court notified the Municipal Court on the registration of the Referral and requested its possible comments on the case.

8. On 15 June 2011, the Constitutional Court received a written reply from the Municipal Court in Prishtina stressing that this Court has allowed the execution of the Judgment CI nr. 307/2006, of 12 February 2007, but following the complaint of

Kosovo Privatization Agency, it cancelled all execution activities, sending also copies of relevant resolutions.

9. On 19 May 2011, after having considered the Report of the Judge Rapporteur, Kadri Kryeziu, the Review Panel, composed of Judges: Robert Carolan (Presiding), Almiro Rodrigues (member) and Ivan Čukalović (member), recommended to the full Court to reject the Referral as inadmissible.

Summary of the facts

10. On 5 July 2006, the Municipal Court in Prishtina issued Judgment – **on the basis of admission** CI. nr. 33/2006, **approving** the lawsuit of the plaintiff, Mr. Behram Kaçiu, from Lupç i Poshtëm of Podujeva.

11. The Court had obliged KNI "Ramiz Sadiku" from Prishtina to pay to Mr. Kaçiu the total amount of 2,197.65 Euros on behalf of unpaid salaries for the months of June and July 2003 and for the months April-December 2005.

12. Since the Judgment has been issued on the basis of admission of the parties, its legal advice says that *"this judgment cannot be appealed and that parties have waived the right to appeal, the Judgment therefore becomes final on the day it is issued"*.

13. Seeing that the final judgment was not being executed, on 16 April 2009, Mr. Behram Kaçiu submitted a request with the Municipal Court in Prishtina for the execution of Judgment CI. nr. 33/2006, of 5 July 2006, and on the basis of this request, the Municipal Court opened a new case file and registered it under E. nr. 343/09.

14. On 4 March 2011, Mr. Behram Kaçiu corrected his proposal for execution, dated 16 April 2009, at the Municipal Court in Prishtina, requesting to have the clerical error, which was made in two places of the proposal, corrected, where the amount of 2,197.65 Euros should be written instead of the total value of 1,271.75 Euros.

15. On 13 April 2011, considering that the proposal for the execution of the final Judgment is being unreasonably prolonged, Mr. Kaçiu made another urgency in written, requesting the expedition of proceedings at the Municipal Court.

16. On 7 June 2011, the Constitutional Court requested a written reply from the Municipal Court in Prishtina concerning the current status of case E.nr. 343/09.

17. On 13 June 2011, the Municipal Court in Prishtina sent submission Ag. su 172/11 to the Constitutional Court, explaining the progress of this case.

18. On 14 February 2011, the Municipal Court in Prishtina allowed the execution of the proposal for execution made by Mr. Behram Kaçiu.

19. On 21 April 2011, deciding pursuant to the objection of Kosovo Privatization Agency, the Municipal Court in Prishtina issued a RESOLUTION concerning case E.nr. 343/09 APPROVING the objection of Kosovo Privatization Agency and SUSPENDING the execution procedure approved by this Court concerning case E.nr. 343/09, of 14 February 2011. The legal advice of this resolution says that an appeal against this complaint can be logged to the District Court in Prishtina within seven (7) days from the date of its reception.

20. From the service note that the Municipal Court in Prishtina sent to the Constitutional Court, it can be concluded that this resolution has been sent to Mr. Behram Kaçiu by mail.

21. The Constitutional Court is not aware if Mr. Behram Kaçiu has filed an appeal against this resolution.

Applicant's allegations

22. The Applicant claimed his fundamental human rights have been violated, such as the right to salary, and he based the Referral on alleged violations of Articles 21-56 of the Constitution. He requested from the Constitutional Court the execution of the

Judgment of the Municipal Court in Prishtina, CI. nr. 307/2006, of 12 February 2007.

Assessment of the admissibility of the Referral

23. In order to be able to adjudicate the Applicant's Referral, the Court needs first to examine whether the Applicant has fulfilled all admissibility requirements laid down in the Constitution, the Law and the Rules of Procedure.

24. In this relation, the Court refers to Article 113.7 of the Constitution, which states that:

> *"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."*

25. The Court also takes into account:

> Rule 36 of the Rules of Procedure of the Constitutional Court, which stipulates:
>
> *"(1) The Court may only deal with Referrals if:*
>
> *a) all effective remedies that are available under the law against the Judgment or decision challenged have been exhausted."*

As regards Applicant's allegations on human rights violation

26. The Applicant complained that due to the non-execution of the Municipal Court Judgment CI. nr. 33/2006, of 5 July 2006, his fundamental rights and freedoms guaranteed by the Constitution have been violated and he had precisely stressed the constitutional provisions from Article 21 to Article 56 of the

Constitution. Furthermore, he stressed that **"his right to salary has been violated"**.

27. The Court wishes to emphasize that Kosovo's Constitution does not guarantee in any of its Articles "the right to salary", but it has provided in Article 49:

> **Article 49 [Right to Work and Exercise Profession]**
>
> *1. The right to work is guaranteed.*
>
> *2. Every person is free to choose his/her profession and occupation.*

28. The Court also considers that through the act of the public authority, whose execution the Applicant is requesting, there could not have been a violation of all fundamental rights and freedoms provided by the Constitution starting from Articles 21-56, because they differ in their substance and legal nature, and all of them are in no way linked to Applicant's case, so, based on this, it considers that the Referral is **manifestly ill-founded**.

Allegations concerning the prolongation of proceedings at the Municipal Court in Prishtina

29. The Applicant stresses in his allegation that no procedural action has been undertaken for a long time by the Municipal Court in Prishtina to review his request for the execution of the final Judgment, and in fact, the Municipal Court in Prishtina had issued Judgment E.nr. 343/09, allowing the execution, on 14 February 2011, meaning two months before its Applicant addressed to the Constitutional Court and he has not at all mentioned this fact in his Referral submitted with the Constitutional Court.

30. The Court also notes that the Applicant has also contributed to the prolongation of proceedings, because, according to his allegation, he had received the Municipal Court Judgment, CI.nr. 33/2006, on 11 July 2006, whereas he filed the proposal for execution on 16 April 2009, almost three years after having

received the Judgment, whose execution he requests, so the Court considers that the Referral is **manifestly ill-founded**.

31. Moreover, the Court notes that from the documents submitted with the Referral by the Applicant, as well as from the documents sent by the Municipal Court in their reply concerning this Referral, the Constitutional Court concludes that the issue of non-execution of the final Judgment of the Municipal Court, CI.nr. 33/2006, of 5 July 2006, is still under execution proceedings and that the Applicant has the possibility to further exhaust legal remedies to realize his alleged right.

32. In fact, the Law on Executive Procedure (Law **No. 03/L-008**) under Article 12, paragraphs 12.5 and 12.5, precisely stipulates that:

> *"12.4 Against the issued decision regarding the objection might be filed an appeal within time-frame of 7 days from the day of delivery of decision.*
>
> *12.5 For the filed appeal is competent to decide the court of second instances."*

33. Based on the factual situation, I consider that after the Judgment of the Municipal Court, of 21 April 2011, in conformity with this legal provision, and also based on the legal advice provided in that Judgment, Mr. Behram Kaçiu, can lodge an appeal with the District Court in Prishtina, meaning he should also exhaust this effective legal remedy.

34. In this direction, the court emphasizes that the legal requirement of exhaustion "of all legal remedies provided by law" is absolutely necessary as an essential requirement to submit a Referral with the Constitutional Court, and in addition to being a legal requirement provided by the Constitution and the Law on the Constitutional Court, it is also provided by Rule 36, par item (a) of the Rules of Procedure of the Constitutional Court as an essential legal requirement.

35. The Court wishes to emphasize that the rationale for the exhaustion rule is to afford the authorities concerned, including the courts, the opportunity to prevent or put right the alleged violation of the Constitution. The rule is based on the assumption that the Kosovo legal order will provide an effective remedy for the violation of constitutional rights (see, *mutatis mutandis*, ECHR, Selmouni v. France, no. 25803/94, Decision of 28 July 1999).

36. The Court had applied such a rationale while examining previous Referrals in the Cases: KI 55/10, Hamide Osaj, Request for Constitutional Review of Supreme Court of Kosovo Judgment, Pkl. nr. 43/2010, of 4 June 2010; Case No. KI 20/10 Muhamet Bucaliu against the Decision of the State Prosecutor KMLC.nr. 09/10, of 24 February 2010 (Decision of Constitutional Court, of 15 October 2010).

37. In these circumstances, the Constitutional Court considers that the Referral should be declared inadmissible as manifestly ill-founded and because of non-exhaustion of legal remedies available, so:

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution of the Republic of Kosovo, Articles 47.2 and 49 of the Law on the Constitutional Court, and Rules 36.1 (a) and 36.2 (b) of the Rules of Procedure, in the session held on 8 July 2011, unanimously:

DECIDES

I. TO REJECT the Referral as inadmissible.

II. This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20-4 of the Law on the Constitutional Court.

III. This Decision is effective immediately

Judge Rapporteur **President of the Constitutional Court**

Mr. sc. Kadri Kryeziu Prof. Dr. Enver Hasani

KI 98/10 dated 17 April 2012 - Constitutional Review of Decisions 01 no. 06/837, dated 16 April 2009, and Npi-01/132, dated 30 April 2009, of the Municipal Assembly of the Municipality of Shtime

Case KO 98/10, Resolution on Inadmissibility dated 13 May 2011
Keywords: non-authorized party, prohibition of discrimination, right to privacy, right to respect for private and family life, violations of individual rights and freedoms

The applicant filed a Referral pursuant to Article 113.7 of the Constitution challenging the decisions of the Municipal Assembly of the Municipality of Shtime, 01 no.06/837 of 16 April 2009 and Npi-01/132 of 30 April 2009, as being taken in violation of Articles 36 [Right to Privacy] of the Constitution as well as Article 8.1 [Right to respect for private and family life] and Article 14 [Prohibition of discrimination] of ECHR, because the Municipality of Shtime annulled the right of Ms. Ristić to use the flat and gave it to an illegal holder.
On the issue of the admissibility of the Referral, the Court held that the Referral was inadmissible since the matter was not referred to the Court in a legal manner by an authorized party pursuant to Article 113.1 of the Constitution.

Pristine, 04.April 2012
Ref. No.:RK 216/12

RESOLUTION ON INADMISSIBILITY

in

Case no. KI 98/10

Applicant

Ombudsperson of the Republic of Kosovo

Constitutional Review of Decisions 01 no. 06/837, dated 16 April 2009, and Npi-01/132, dated 30 April 2009, of the Municipal Assembly of the Municipality of Shtime

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Enver Hasani, President
Kadri Kryeziu, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Gjyljeta Mushkolaj, Judge and
Iliriana Islami, Judge

Applicant

1. The Applicant is the Ombudsperson of the Republic of Kosovo (hereinafter: the "Ombudsperson"), submitting the Referral, pursuant to Article 113.2.2 of the Constitution in the case of Ms. Lelica Ristić, residing in Jagodina, Republic of Serbia.

Challenged decision

2. The Applicant challenges the decisions of the Municipal Assembly of the Municipality of Shtime, 01 no.06/837 of 16 April 2009 and Npi-01/132 of 30 April 2009.

Subject matter

3. The Applicant claims that Article 36 [Right to Privacy] guaranteed by the Constitution of the Republic of Kosovo (hereinafter: the "Constitution"), as well as Article 8.1 [Right to

respect for private and family life] and Article 14 [Prohibition of discrimination] of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: ECHR) have been violated.

Legal basis

4. Article 113.2 (2) of the Constitution, Article 22 of the Law on the Constitutional Court of the Republic of Kosovo (hereinafter: the "Law") and Rule 56 (2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the "Rules of Procedure").

Proceedings before the Court

5. On 7 October 2010, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the "Court").

6. On 16 December 2010, the President, by Order No.GJR. 98/10, appointed Judge Kadri Kryeziu as Judge Rapporteur. On the same date, the President, by Order No.KSH. 98/10, appointed the Review Panel composed of Judges Almiro Rodrigues (Presiding), Gjyljeta Mushkolaj and Iliriana Islami.

7. On 17 January 2011, the Referral was communicated to the Municipal Assembly of the Municipality of Shtime (hereinafter: the "Municipal Assembly").

8. On 13 May 2011, the Review Panel considered the Report of the Judge Rapporteur and the majority made a recommendation to the Court on the inadmissibility of the Referral.

Summary of the facts

9. On 30 December 1996, the Municipal Assembly took Decision No. 01 no.360/659 allocating, for an indefinite period of time, the use of a flat to Ms. Ristić, as employee of the Municipal Administration. The allocation of the flat was done by the Board for the housing of employees in need of the Municipal

Administration of Shtime, and confirmed by Decisions, No. 01, 06-605/1, dated 7 October 1996, and No. 360/620, dated 11 October 1996.

10. In June 1999, Ms. Ristić left Kosovo, due to the security and political situation, and moved to Jagodina, Serbia.

11. On 7 July 2008, Ms. Ristić, escorted by members of the Kosovo Police (hereinafter: the "KP") and officials of the Liaison Office for the Ferizaj courts, visited the flat concerned and confirmed that a few persons had illegally occupied it.

12. On 27 July 2008, Ms. Ristić, again escorted by the officials of the Liaison Office, reported to the KP station in Shtime and filed a complaint together with a copy of Decision 01, no.360/659, dated 30 December 1996, as evidence of her right to use the flat.
13. On 10 June 2009, Ms. Ristić filed a complaint with the Ombudperson against the Municipal Assembly and the Kosovo Police, since they had not enabled her to move to the contested flat, which was being illegally occupied by a third party.

14. On 18 September 2009, the Applicant acted on the complaint of Ms. Ristić and addressed a communication to the Chief of the Police Station in Shtime, asking for information regarding the flat.

15. On 22 October 2009, the Applicant got a reply from the Chief of the Police Station, who informed that the Municipal Assembly, by Decision 01-No.06/837 of 16 April 2009, had unanimously decided to annul Decision No.01.no.06/605/1 of the Municipal Assembly, dated 7 October 1996 concerning the allocation of "commercial-residential" flats in Shtime to former employees of Municipal Administration for an indefinite period of time.

16. According to the Chief of Police, since the Municipal Assembly had annulled the right of use of the contested flat, the flat had been allocated to the illegal holder. Ms. Ristić as well as other holders of the right of use of such flats, were not informed of the decision issued by the Municipal Assembly to annul that right.

17. Furthermore, the legal consequences of Decision 01 No. 06/837 of 16 April 2009 were only applied to Ms. Ristić, since other occupants in the building concerned kept their right of residence.

18. After the reply of the Chief of Police, Ms Ristić submitted all the necessary documentation to the Applicant, confirming that she is the holder of the right of occupancy of the contested flat. She also filed a complaint with the Liaison Office for the Ferizaj courts, which, together with officers of the Police station in Shtime, had evicted the person who was illegally staying in the flat.

19. On 26 February 2010, Ms. Ristić submitted a request to the Prime Minister's Office, respectively, to the Office for Community Matters, asking for *restitutio in integrum* (return to the previous state), attaching a copy of Decision no.360/659, dated 30 December 1996 on the right of using the above-mentioned flat. She, however, never received any reply.

20. On the same day, the Applicant wrote to the Mayor of Shtime Municipality, requesting him to present an explanation regarding the legal basis of Decision Npi. 01/132, issued by the Municipal Assembly on 30 April 2009 and by which Ms Ristić's and other tenants' right to occupy the relevant flats in Shtime Municipality had been annulled.

21. On 16 March 2010, the Applicant received an official response from the Mayor, stating that the legal basis for the decision issued by the Municipal Assembly, annulling the occupancy right of Ms. Ristic, was the concession contract, concluded between the Municipal Assembly and the construction company GP-"Gradevinar" from Kraljevo, Republic of Serbia. According to the Mayor, the Municipal Assembly had acted in compliance with Article 5 (b) and Article 12(2)(d) of Law nr.30/L-040 on Local Governance.

Applicant's allegations concerning Ms. Ristić's case

22. The Applicant claims that Decision nr.01/132 of the Municipal Assembly of Shtime denied to Ms. Ristić the right to use the flat concerned, constituting a violation of Article 36 of the Constitution.

23. Furthermore, the Applicant alleges that Article 36 of the Constitution, in conjunction with Articles 8 [Right to family life] and 14 [Prohibition of Discrimination] ECHR have been violated.

24. In addition, the Applicant claims that, according to the case-law of the European Court on Human Rights (hereinafter: the "ECtHR"), the contested flat in this case could be considered as "home", in the sense of Article 8 ECHR (*see: Gilloë vs United Kingdom, Judgment of 24 November 1986*). Also in the case of Larkos vs Cyprus, Judgment no.2951/95, ECHR 1999-I, the European Court on Human Rights (hereinafter; "ECtHR) has made reference to Article 14 ECHR in conjunction with Article 8 ECHR, providing that the tenant's right to reside in a specific place includes the right to a home and not the right to property.

26. In this case, the Applicant claims that there was a violation of Article 14, in conjunction with Article 8 ECHR, since the Municipal Assembly did not act rightly, since it issued the decisions on annulling the occupancy right of Ms. Ristić, while other tenants retained the right to use their flats. The flat that has been used by Ms. Ristić, was given to an illegal occupant. Due to this fact, the Applicant refers to the decision of the ECtHR, the case of Larkos vs Cyprus, Judgment no. 2951/95, ECHR 1999-I, where the ECommissionHR and the ECtHR shared the opinion that there was a violation of Article 14 ECHR, in connection with Article 8 ECHR. Therefore, the Applicant considers that there was no reasonable and objective justification that Ms. Ristić was denied the right retained by the other tenants.

27. Furthermore, the Applicant refers to Article 2.1 of UNMIK Regulation 2000/60 on Residential Property Claims of 31 October 2000, this Regulation, stating that: "*Any property right which was validly acquired according to the law applicable at the time of its acquisition remains valid notwithstanding the change in the applicable law in Kosovo, except where the present regulation provides otherwise*. The Applicant also refers to Article 6 scope (b) of the Regulation, reading as follows:

"…….

b) Notwithstanding the provisions of any other law, no occupancy right to a socially owned apartment may be terminated without:

(i) The consent of the occupancy right holder or the Housing and Property Directorate; or

(ii) An order of the Commission, as provided for in the present regulation.

…"

28. Moreover, the Applicant refers to the applicable Law on Housing Relations read in conjunction with UNMIK Regulation 2000/60 on Residential Property Claims, Rules of Procedure, evidences of the Housing and Property Directorate as well as the Commission on Housing Relations, stating that, in this particular case, the Municipal Assembly's decisions were not based on applicable law, under which every legal and political entity would be under the obligation to apply the rule of law and good governance in Kosovo.

29. The Applicant concludes that the Municipal Assembly in Shtime, after the issuance of Decision 01 no. 06/837, dated 16 April 2009, and Decision Npi-01/132, dated 30 April 2009, did not respect the Constitution and applicable laws as well as the ECHR. Additionally, the Applicant considers the action of the Municipality of Shtime annulling the right of Ms. Ristić to use the flat and giving it to an illegal holder, a violation of the principles of good governance.

Assessment of the admissibility of the Referral

30. Regarding the Applicant's claims that the rights provided by Article 36 [Right to Privacy] of the Constitution and 8.1 [Right to respect for private and family life] and Article 14 [Prohibition of discrimination] ECHR are violated in the present case, the Court first must review whether the Applicant of the Referral has met all requirements of admissibility stipulated by the Constitution, the Law and the Rules.

31. The Court notes that pursuant to Article 135.4 of the Constitution, "The Ombudsperson may refer matters to the Constitutional Court in accordance with the provisions of this Constitution." Article 113.2 further specifies when the Ombudsperson is authorized to make a referral to the Court.

32. In this connection, the Constitutional Court notes that the Applicant has submitted the Referral in relation to the case of Ms. Ristić, against Decisions 01 nr.06/837 of 16 April 2009 and Npi-01/132 of 30 April 2009 taken by the Municipal Assembly of Shtime, based on Article 113.2.2 of the Constitution, providing:

"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: the compatibility with the Constitution of municipal statutes."

33. In this respect, the Court concludes that the above mentioned Decisions of the Municipal Assembly do not constitute "municipal statutes" in the sense of Article 113.2.2 of the Constitution, which are normative acts, regulating the competences and organization of the municipality as well as the interaction between the municipality and the citizens in accordance with the Constitution and the Law, while the Decisions taken by the Municipal Assembly in the Applicant's case are, unlike statutes, decisions taken in the particular case of an individual or a legal person.

34. Furthermore, the Court considers that the Applicant, for the purpose of bringing a constitutional complaint in order to pursue/represent individual interests before this Court, is not an authorized party under the Constitution. The Applicant, as an independent institution (Ombudsperson), pursuant to Article 133 [Office of Ombudsperson] of the Constitution, is only a party, authorized to submit a request for abstract control to this Court, pursuant to Article 113.2.2 of the Constitution.

35. In these circumstances, the Court concludes that the Referral by the Applicant challenging the contested Decisions of the Municipal Assembly of Shtime cannot be adjudicated, since the

matter was not referred to the Court in a legal manner by an authorized party pursuant to Article 113.1 of the Constitution.

36. However, since an individual can bring a Referral before the Court, pursuant to Article 113.7, providing:

"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",

there does not seem to be any reason, why Ms Ristić could not have submitted a Referral to this Court in her own name.

37. Consequently, the Applicant's Referral is inadmissible, pursuant to Article 113.1 of the Constitution and Rule 36.3.c of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 20 of the Law on the Constitutional Court, and Rule 56 (2) of the Rules of Procedure, on 13 May 2011, by majority vote

DECIDES

I. TO REJECT the Referral as inadmissible;

II. This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20 (4) of the Law on the Constitutional Court; and

III. This Decision is effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Kadri Kryeziu	Prof. Dr. Enver Hasani

KI 112/10 dated 17 April 2012 - Constitutional Review of the Decrees of the Acting President of the Republic of Kosovo, dated 22 October 2010

Case KI 112/10, Resolution on Inadmissibility dated 9 June 2011
Keywords: individual referral, manifestly ill-founded, prohibition of torture, violation of individual rights and freedoms

The applicant, Mr. Nikollë Kabashi, filed a Referral pursuant to Article 113.7 of the Constitution of Kosovo challenging the Decision of the Supreme Court, Pzd. no. 135/2010, of 21 January, as being taken in violation of his rights guaranteed by Article 3 [Prohibition of Torture] of the European Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocols Nos. 11 and 14, because the selection of the judges who were appointed at the Municipal Court of Gjakova had not been done based on the rules set out by the IJPC (Independent Judicial and Prosecutorial Commission).
On the issue of the admissibility of the Referral, the Court held, that the Referral was inadmissible because the Applicant failed to submit evidence that the relevant proceedings were in any way unfair or tainted by arbitrariness. Hence, the Court held that the Referral was manifestly ill-founded pursuant to Rule 36 (1.c) of the Rules of Procedure.

Pristine, 04 April 2012
Ref. No.: RK 217/12

RESOLUTION ON INADMISSIBILITY

in

Case No. KI 112/10

Applicant

Nikollë Kabashi

Constitutional Review of the Decrees of the Acting President of the Republic of Kosovo, dated 22 October 2010

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Enver Hasani, President
Kadri Kryeziu, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Ivan Čukalović, Judge
Gjyljeta Mushkolaj, Judge and
Iliriana Islami, Judge

Applicant

1. The applicant is Mr. Nikollë Kabashi residing in Gjakova.

Challenged decision

2. The Applicant challenges the Decrees of the Acting President of the Republic of Kosovo, of 25 October 2010, made upon the proposal of the Kosovo Judicial Council on the appointment and nomination of the judges at the Municipality of Gjakova.

Subject matter

3. The Applicant requests an assessment of the constitutionality of the Decrees of the Acting President of Kosovo, made upon the proposal of the Kosovo Judicial Council, as being, allegedly, in violation of Article 3 [Prohibition of Torture] of the European Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocols Nos. 11 and 14 (hereinafter: "ECHR").

4. Furthermore, the Applicant requests the Constitutional Court to impose an interim measure, suspending the execution of the Decrees.

Legal basis

5. Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the "Constitution"), Article 22 of the Law on the Constitutional Court of the Republic of Kosovo of 15 January 2009, (No. 03/L-121) (hereinafter: the "Law") and Rule 56 (2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the "Rules of Procedure").

Proceedings before the Court

6. On 8 November 2010, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the "Court").

7. On 16 November 2010, the President, by Order of No.GJR. 112/10, appointed Judge Ivan Čukalović as Judge Rapporteur. On the same date, the President, by Order No.KSH. 112/10, appointed the Review Panel composed of Judges Robert Carolan (Presiding), Altay Suroy and Almiro Rodrigues.

8. On 20 January 2011, the Referral was communicated to the Kosovo Judicial Council. On the same date, the Referral was also communicated to the Acting President of Kosovo.

9. On 16 May 2011, the Kosovo Judicial Council replied that the Applicant was not recommended by the Independent Judicial and Prosecutorial Commission to be appointed to the position as a judge in the Municipality of Gjakova because the Applicant had fewer points then the rest of the candidates recommended by Independent Judicial and Prosecutorial Commission.

10. On 9 June 2011, the Review Panel considered the Report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

Summary of the facts

11. In 2009, the Independent Judicial and Prosecutorial Commission (hereinafter: the "IJPC") announced the competition for the selection of the judges and prosecutors of Kosovo.

12. On 1 April 2009, the Applicant applied for the position of a judge to the IJPC.

13. In 2010, the IJPC notified the Applicant that he had not been recommended for any of the positions that he had applied for in phase three of the selection, because other candidates had been more successful (AJP 87907).

14. On 3 November 2010, the Applicant filed a request with the IJPC Review Panel for reconsideration of the decision based on Article 6.1 of Administrative Direction No. 2008/2 Implementing UNMIK Regulation No. 2006/25 on a Regulatory Framework for the Justice System in Kosovo (hereinafter: AD No. 2008/2).

15. On 28 January 2011, the IJPC Review Panel rendered a decision rejecting the request of the Applicant as unfounded. Furthermore, the IJPC Review Panel found that the Applicant has obtained fewer points than the other candidates.

Applicant's allegations

16. The Applicant alleges that the selection of the judges who were appointed at the Municipal Court of Gjakova had not been done based on the rules set out by the IJPC. These rules, according to which candidates are not selected for appointment as judges, are the following:

17. "...

a. "Candidates who did not participate in the competition;
b. Appointment of those candidates who have worked in the justice authorities under Milosevic Regime, during 1990-1999;
c. Appointment of candidates with suspicious record;
d. Appointment of candidates who are in the verge of pensioning;
e. Humiliation of candidates, members of families of martyrs by not selecting them; and
f. Discrimination of candidates, etc."

18. ..."

19. Furthermore, the Applicant alleges that he had passed all the three phases of the selection.

Assessment of admissibility of the Referral

20. The Applicant complains that the Decrees of the Acting President of Kosovo of 25 October 2010 made upon the proposal of the Kosovo Judicial Council violate Article 3 ECHR.

21. In order to be able to adjudicate the Applicants' complaint, the Court needs first to examine whether the Applicant has fulfilled all admissibility requirements laid down in the Constitution as further specified in the Law and the Rules of Procedure.

22. In this connection, the Court notes that the Kosovo Judicial Council is responsible for recruiting and proposing candidates

for appointment to judicial office after the candidates have fulfilled the selection criteria provided by law in accordance with Article 108 of the Constitution.

23. The President of the Republic of Kosovo, pursuant to Articles 104.1 and 86 (16), appoints judges upon the proposal of the Kosovo Judicial Council.

24. In this respect, the Court finds that, the Applicant has not substantiated in any manner his complaints made under Article 3 ECHR or under his rights and freedoms guaranteed by the Constitution as required by Article 113.7 of the Constitution and Article 48 of the Law (see Vanek v. Slovak Republic, ECHR Decision as to the Admissibility of Application no. 53363/99 of 31 May 2005).

25. It follows that the Referral is manifestly ill-founded pursuant to Rule 36 (1.c) of the Rules of Procedure which provides: "The Court may only deal with Referrals if: c) the Referral is not manifestly ill-founded."

Assessment of the request for interim measure

26. The Applicant requests the suspension of the Decrees because they "are entirely unlawful and anti-constitutional, and simultaneously in serious violation of the law", since they allowed for the nomination of:

27. "...

a. corrupt candidates;
b. candidates suspected of the commission of criminal offences;
c. incompetent, inexperienced people;
d. candidates who had collaborated with the Milosevic regime.

28. ..."

29. As a result:

30. "...

a. no candidates from martyrs' families had been nominated;
b. the Decrees had been a denigration and serious insult to the martyrs' families;
c. and were an insult to the efforts and results of the fight of the Kosovo people for freedom and independence;
d. the Decrees also qualified martyrs' families as "undesirable"; and
e. disrespected the procedures of other domestic and international authorities.

31. ..."

32. As to the Applicant's request, the Court refers to Article 27.1 of the Law:

33. *"The Constitutional Court ex-officio or upon the referral of a party may temporarily decide upon interim measures in a case that is a subject of a proceeding, if such measures are necessary to avoid any risk of irreparable damages, or if such an interim measure is in the public interest."*

34. and, in particular, Rule 54 (1) of the Rules of Procedure, stipulating that, at any time when a Referral is pending before the Court and the merits of the Referral have not been adjudicated by the Court, a party may request interim measures. However, taking into account that the Referral was found inadmissible, the Applicant is not entitled under Rule 54 (1) of the Rules of Procedure to request interim measures.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution and Article 47.2 of the Law on the Constitutional Court,

and Rule 56 (2) of the Rules of Procedure, on 9 June 2011, unanimously,

DECIDES

I. TO REJECT the Referral as Inadmissible;

II. TO REJECT the Request for interim measure;

III. This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20 (4) of the Law on the Constitutional Court;

IV. This Decision is effective immediately.

Judge Rapporteur **President of the Constitutional Court**

Ivan Čukalović Prof. Dr. Enver Hasani

KI 86/11 dated 17 April 2012- Request for constitutional review of Judgment of the Supreme Court of Kosovo, Rev. nr. 20/09, dated 1.3.2011.

Case KI 86/11, Decision of the Supreme Court of Kosovo dated 1 March 2011
Keywords; individual referral, forth instance, Resolution on inadmissibility.

The applicant alleges that the Judgments of the Municipal Court in Suhareka, District Court in Prizren and the Supreme Court of Kosovo have violated his right guaranteed by the Constitution provided by Article 21 paragraph 1,2,3 and 4, Article 31 paragraph 1 and 2 and in particular Article 46 (Protection of Property).
The Constitutional Court in this case has stated that the determination of correct and complete factual situation is a complete jurisdiction of regular Courts, and the Constitutional Court's role is only to ensure compliance with the rights guaranteed by the Constitution and other legal instruments and therefore can not act as a "fourth instance court."
The Constitutional Court considers that there is nothing in the referral indicating that regular Courts during the examination of the case, lacked impartiality or that the trial was unfair.
The Court finds that the referral is inadmissible.

Pristine, 05 April 2012
Ref. No.: RK218 /12

RESOLUTION ON INADMISSIBILITY

in

Case No. KI 86/11

Applicant
Milaim Berisha

Request for constitutional review of:
Judgment of the Supreme Court of Kosovo, Rev. nr. 20/09, dated 1.3.2011.

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Enver Hasani, President
Kadri Kryeziu, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Ivan Čukalović, Judge
Gjyljeta Mushkolaj, Judge and
Iliriana Islami, Judge

Applicant

1. The Applicant is Mr. Milaim Berisha from Suhareka, residing at Mulla Nura St, no number, in Suhareka, duly represented by Mr. Avdullah Robaj, a lawyer from Prishtina

Challenged decisions

2. The final Decision challenged at the Constitutional Court by the applicant is Judgment of the Supreme Court of Kosovo, Rev. nr. 20/09, dated 1.3.2011, which the party claims to have received on 11 March 2011, the applicant also has requested constitutional review of the Judgment of the Municipal Court in Suhareka, C. nr. 65/08, dated 18.07.2008, and Judgment of the District Court in Prizren, Ac. nr. 379/08, dated 01.12.2008,

Subject matter

3. The subject matter of the referral that was submitted to the Constitutional Court of the Republic of Kosovo on 28 June 2011 is the constitutional review of the Judgment of the Municipal Court in Suhareka, C. nr. 65/08, dated 18.07.2008, of the Judgment of the District Court in Prizren, Ac. nr. 379/08, dated 01.12.2008, and of the Judgment of the Supreme Court of Kosovo, Rev. nr. 20/09,date 1.3.2011. which, according to the Applicant, have violated his rights guaranteed by the Constitution of Kosovo and his property has been alienated by being unlawfully transferred to another person, and he requested the Constitutional Court to annul the said judgments.

Legal basis

4. Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter referred to as the "Constitution"), Article 47 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo of 16 December 2009, which entered into force on 15 January 2010 (hereinafter referred to as the "Law"), and Section 29 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter referred to as the "Rules of Procedure").

Proceedings before the Constitutional Court

5. On 28 June 2011, the Constitutional Court received the Referral of Mr. Milaim Berisha from Suhareka, submitted by

his representative, Mr. Avdullah Robaj, a lawyer from Prishtina, and registered it under no. KI 86/11.

6. On 17 August 2011, by Decision GJ.R 86/11, the President of the Court appointed Judge Kadri Kryeziu as Judge Rapporteur.On the same date, the President of the Constitutional Court, by Decision KSH. 86/11, appointed the Review Panel consisting of Judges Altay Suroy (Presiding), Snezhana Botusharova and Ivan Čukalović.

7. On 5 August 2011, the Constitutional Court notified the Supreme Court of Kosovo, the District Court in Prizren, the Municipal Court in Prizren, and Applicant's representative, the lawyer Mr. Avdullah Robaj, regarding the registration of the case.

8 On 11 August 2011, the Constitutional Court received a reply from the District Court in Prizren, which submitted copies of the three Resolutions the Applicant is challenging before the Constitutional Court.

9. On 12 September 2011, the Constitutional Court received an additional document from the District Court in Prizren – the Decision of the municipality of Suhareka, nr. 360-483/91, dated 23.01.1992, which was part of the case file before this Court.

10. On 25 november 2012, the Review Panel considered the Report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral

Summary of facts

11. The Applicant, Mr. Milaim Berisha, was in employment relationship with IGK "Ballkan", seated in Suhareka, from 1972 to 14.09.1990, where he was performing the duties of the inspection foreman.

12. On 13 October 1998, IGK "Ballkan" announced a competition for the allocation of 76 apartments in "Ballkani"

neighborhood, in Suhareka, built with the contribution of its workers, IGK "Ballkan".

13. On 1 August 1989, pursuant to Decision no. 5842 of IGK "Ballkan", Mr. Milaim Berisha acquired the right to use the apartment in the area of 73.95 m², since he was ranked ninth in the list of employees eligible for the apartments allocated by their employer.

14. From the documents of the case file submitted with the Constitutional Court, it cannot be determined if Mr. Milaim Berisha had concluded a contract on the use of the apartment, whereas, according to his personal claim, he had been using this apartment until 29.01.1992.

15. On 27.09.1990, the imposed employment authority (temporary measures of that time), through Decision nr. 6112/9, had terminated Mr. Milaim Berisha's employment relationship since, according to the Decision, he had committed a grave violation of duties. From the documents of the case file, it doesn't result that Mr. Berisha has filed any appeal against this decision.

16. On 23.01.992, the Secretariat for Urbanism and housing and municipal issues of Suhareka municipality issued Resolution nr. 360-483/91 ordering Mr. Milaim Berisha to vacate the apartment he is living in and remove all the furniture within 10 days from the reception of this decision.

17. It is said in the reasoning part of this resolution that it had been issued at the request of IGK "Ballkan" and considering the fact that the Court of Associated Labor in Gjakova, through Decision nr. 203, dated 12.10.1989, had annulled the decision of workers' council nr. 5836, dated 3.07.1989, and the decision of the Commission for the allocation of apartments of IGK "Ballkan", dated 10.07.1989.

18. In 1993, the apartment that Mr. Milaim Berisha was ordered to leave had been privatized by Mr. Jovanović Zoran from Suhareka, and, according to the sales contract, certified at the Municipal Court in Suhareka ov. br. 1976/93, he had also won the right of ownership over the apartment.

19. On 16.11.2006, according to the lawyer Avdullah Robaj, Mr. Milaim Berisha's representative, the UNMIK's Directorate on Housing Issues – known as UN - HABITAT – through Decision HPCC/78/2006, had recognized Mr. Milaim Berisha the right of ownership over the disputed apartment, but he had not presented this decision to the Constitutional Court as evidence and it is not at all in the documents of the case file submitted with the Referral.

20. On 28.07.2007, Mr. Zoran Jovanović authorized Mr. Agim Demiri, a Bachelor of Law from Suhareka, to conclude on his behalf, in the capacity of the owner of the apartment, a sales contract with Mrs. Valbonë Baralija from the village of Bukosh, Suhareka municipality, in the capacity of the buyer, for the apartment located in Suhareka in Fidanishte neighborhood, apartment no. 8, building block 3, second floor, with an area of 73.95m^2.

21. On 30.08.2007, this contract concluded and signed between contracting parties Mr. Agim Demiri, as the representative of Mr. Zoran Jovanović and Mrs. Valbonë Baraliu, was certified at the Municipal Court in Suhareka, and the compensation tax in relation to the transfer of the real estate property in the amount of 200.00 Euros had been paid to the Directorate for Economy and Finance of Suhareka municipality.

22. On 8 October 2007, UNMIK's Directorate on Housing Issues in Prishtina sent a letter to the President of the Municipal Court in Suhareka and to the President of the District Court in Prizren notifying them that Mr. Milaim Berisha's complaint concerning a housing dispute, in which Mr. Zoran Jovanović is the opposing party, is under procedure, and that these courts are prohibited to certify any contract concluded in relation to this real estate, except if the parties to the dispute, Mr. Milaim Berisha and Mr. Zoran Jovanović, would agree to such a contract.

23. This Directorate sent this request to both courts on 8 October 2007, but in fact, a sales contract between Mr. Zoran Jovanović, represented by Mr. Agim Demiri, in the capacity of the seller, and Mrs. Valbonë Baraliu, in the capacity of the

buyer of the disputed apartment, had already been concluded and certified at the Municipal Court in Suhareka on 30 August 2007, and according to the documents submitted with the Constitutional Court, this contract was never annulled.

24. On 18.07.2008, acting pursuant to Mr. Valbonë Baraliu's statement of claim, the Municipal Court in Suhareka issued Judgment C. nr. 65/2008, APPROVING Mr. Baraliu's statement of claim and COMPELLING Mr. Milaim Berisha to deliver the real estate – the apartment located in Fidanishte neighborhood in Suhareka, to Mrs. Valbonë Baraliu, who is the owner of this apartment pursuant to the sales contract confirmed at the Municipal Court in Suhareka under VR. nr. 2871/07, dated 30.08.2007.

25. On 01.12.2008, the District Court in Prizren rejected as ungrounded the complaint of Mr. Milaim Berisha's authorized person and left in force the Judgment of the Municipal Court in Suhareka C. nr. 65/08.

26. On 1.3.2011, the Supreme Court of Kosovo **rejected** as ungrounded respondent's Revision against the Judgment of the District Court in Prizren, Ac. nr. 379/2008, dated 1.12.2008, and it had finally determined Mrs. Valbonë Baraliu as the lawful owner of the real estate – the disputed apartment.

27. Finally, unsatisfied with Judgments of competent courts, Mr. Milaim Berisha submitted a referral with the Constitutional Court on 28.06.2001, requesting the Court to annul all Judgments and declare them unconstitutional and unlawful

Applicant's allegations

28. The Applicant claims that the abovementioned judgments of the Municipal Court in Suhareka, of the District Court in Prizren and of the Supreme Court of Kosovo have violated his rights guaranteed by Article 21, paragraphs 1, 2, 3 and 4, Article 31,

29. The Applicant claimed that the Municipal Court in Suhareka, while confirming the sales contract between contracting parties Mr. Jovanović Zoran, in the capacity of the seller, and Mrs. Valbonë Baraliu, in the capacity of the buyer, on 30.8.2007, in fact carried out an unlawful juridical task because it legitimized Mr. Jovanović as the owner of the apartment, which was the subject matter of this contract, even though its real owner was Mr. Milaim Berisha, who had the right of using this apartment since 1989. The Municipal Court in Suhareka, approving the lawsuit of the plaintiff Valbonë Baraliu, obliging Mr. Berisha, as the respondent, to return the apartment to her possession, and the District Court and Supreme Court, rejecting Mr. Berisha's complaint, respectively revision, repeated the wrong decision of the Municipal Court depriving him the enjoyment of the right to the disputed apartment

Assessment of the admissibility of the Referral

30. In order to be able to adjudicate the Applicant's Referral, the Court needs first to examine whether the Applicant has fulfilled all admissibility requirements laid down in the Constitution, in the Law on the Constitutional Court, and in the Rules of Procedure of the Constitutional Court.

31. In this relation, the Court refers to Article 113.7 of the Constitution, which stipulates that:

"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."*

32. The Court also takes into account:

Rule 36 of the Rules of Procedure of the Constitutional Court, which stipulates:

"(1) The Court may only deal with Referrals if:

c) the Referral is not manifestly ill-founded.

33. The Constitutional Court is not a fact verifying Court, the Constitutional Court wishes to reiterate that the correct and complete determination of the factual situation is a full jurisdiction of regular courts and in this case of administrative authorities as well, and that the role of the Constitutional Court is solely to ensure compliance with the rights guaranteed by the Constitution and other legal instruments and cannot, therefore, act as a "fourth instance court" (see, *mutatis mutandis, i.a.,* Akdivar v. Turkey, 16 September 1996, R. J. D, 1996-IV, para. 65).

34. From facts submitted with the referral, it appears that the applicant has used all legal remedies available, and in fact, none of the regular courts has given him any right on his claims, the Court, therefore, considers that there is nothing in the Referral which indicates that courts hearing the case lacked impartiality or that proceedings were otherwise unfair.

35. In this regard, the Applicant has not substantiated his claim, explaining how and why a violation has been committed, or furnished evidence to prove that a right guaranteed by the Constitution has been violated.

36. Moreover, the Referral does not indicate that the Supreme Court acted in an arbitrary or unfair manner. It is not within the province of the Constitutional Court to substitute its own assessment of the facts for that of the regular courts and, as a general rule, it is for these courts to assess the evidence before them. The Constitutional Court's task is to ascertain whether the regular court's proceedings were fair in their entirety, including the way in which evidence was taken (see Judgment ECHR App. No 13071/87 Edwards v. United Kingdom, para 34, of 10 July 1991).

37. The mere fact that applicants are dissatisfied with the outcome of the case cannot of itself raise an arguable claim of

a breach of Article 31 of the Constitution (see *mutatis mutandis* Judgment ECHR Appl. No. 5503/02, Mezotur-Tiszazugi Tarsulat vs. Hungary, Judgment of 26 July 2005).

38. In these circumstances, the Applicant has not "sufficiently substantiated his claim nor the violation of Article 46 of the Constitution (The Right to Property), because facts presented by him do not show in any way that regular courts of the three instances had denied him rights guaranteed by the Constitution ,then cannot be considered that applicant have fulfilled the abovementioned established admissibility requirements and therefore the Referral is inadmissible

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 20 of the Law, Rule 36 of the Rules of Procedure, on 25 November 2011,

DECIDES

I. TO REJECT the Referral as Inadmissible;

II. This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20 (4) of the Law; and

III. This Decision is effective immediately.

Judge Rapporteur **President of the Constitutional Court**

Kadri Kryeziu Prof. Dr. Enver Hasani

KI 103/10 dated 19 April 2012 - Constitutional Review of the judgment of the Supreme Court, Rev. no. 406/2008, dated 3 September 2010.

Case KI 103/10, judgment dated 20 March 2012
Keywords: equality before the law, individual referral, right to fair and impartial trial, violation of individual rights and freedoms

The applicant, Mr. Shaban Mustafa, filed a Referral pursuant to Article 113.7 of the Constitution of Kosovo challenging the judgment of the Supreme Court, Rev. no. 406/2008, as being taken in violation of his rights guaranteed by Articles 3.2 [Equality Before the Law], 24.1 [Equality Before the Law] and 31 [Right to Fair and Impartial Trial] of the Constitution and Article 6 of ECHR. The Applicant complains, in particular, that the Supreme Court rendered a judgment without the Applicant having been notified and summoned to take part in the proceedings in the same way as the public prosecutor. The Office of the Chief State Prosecutor replied that they supported the Judgment of the Supreme Court and that the Applicant's rights as guaranteed by the Constitution had not been violated.
On the issue of the admissibility of the Referral, the Court held, based upon the plain language of Article 113.7, that the referral was admissible because in the present Referral Mr. Shaban Mustafa, owner of the "Beni Dona" Company, contests the constitutionality of Judgment Rev. no. 406/2008 of the Supreme Court, dated 3 September 2010, directed against the Company. Therefore, the Applicant must be considered as an authorized party, entitled to refer this case to the Court and to have exhausted all legal remedies as provided by law, pursuant to Article 21.4 and Article 113.7 of the Constitution. As to the requirement of Article 49 of the Law that the Applicant must have submitted the Referral within a period of four (4) months, the Court determines from the submissions of the Applicant that the Company was served with the above Judgment of the Supreme Court on 6 October 2010, while the Applicant submitted the Referral to the Court on 12 October 2010, i.e. within the four months time limit as provided by Article 49 of the Law. Further, the Applicant has set out in detail what rights under the Constitution and the ECHR have allegedly been violated and by what public authority. Hence, the Court also finds that the Applicant has fulfilled the requirement of Article 48 of the Law.

On the merits of the Referral, the Court held that the Applicant could not have exercised his right to a fair trial without being present at these proceedings before the Supreme Court. Therefore, by not notifying the Applicant of the request for protection of legality lodged by the Public Prosecutor and by not inviting him as a party to the proceedings before the Supreme Court, the Supreme Court, in its Judgment of 3 September 2010, infringed the Applicants' right to a fair trial under Article 31 of the Constitution and Article 6 (1) ECHR. In reaching its decision, the Court also relied on the decisions of the European Court of Human Rights addressing the same or similar issue. The Court declared null and void the Judgment of the Supreme Court of Kosovo and remanded the Judgment to the Supreme Court for reconsideration in conformity with the judgment of this Court.

Pristine, 12 April 2012
Ref. No.: AGJ.193 /12

JUDGMENT

in

Case No. KI 103/10

Applicant

Shaban Mustafa

Constitutional Review of the judgment of the Supreme Court, Rev. no. 406/2008, dated 3 September 2010.

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Enver Hasani, President
Kadri Kryeziu, Deputy-President
Robert Carolan, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Ivan Čukalović, Judge
Gjyljeta Mushkolaj, Judge and
Iliriana Islami, Judge

The Applicant

1. The Applicant is Mr. Shaban Mustafa, owner of the Company "Beni Dona", represented by Mr. Hasan Përvetica, an attorney from Podujeva.

Challenged decision

2. The Applicant challenges the judgment of the Supreme Court, Rev. no. 406/2008 of 3 September 2010, which was served on the Applicant on 6 October 2010.

Subject matter

3. The Applicant submitted a Referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the "Court") on

12 October 2010, requesting it to review the constitutionality of the judgment of the Supreme Court, Rev. no. 406/2008.

4. The Applicant claims that the challenged decision has violated his rights guaranteed by Articles 3.2 [Equality Before the Law], 24.1 [Equality Before the Law] and 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo (hereinafter: the "Constitution") and Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: "ECHR").

5. The Applicant complains, in particular, that the Supreme Court rendered a judgment without the Applicant having been notified and summoned to take part in the proceedings in the same way as the public prosecutor.

Legal basis

6. The Referral is based on Articles 113.7 and 21.4 of the Constitution, Article 22 of the Law on the Constitutional Court of the Republic of Kosovo of 15 January 2009, (No. 03/L-121) (hereinafter: the "Law") and Rule 56 (1) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the "Rules of Procedure").

Proceedings before the Constitutional Court

7. On 12 October 2010, the Applicant submitted the Referral to the Court.

8. On 16 December 2010, the President, by Decision No. GJR. 103/10, appointed Judge Robert Carolan as Judge Rapporteur. On the same date the President, by Decision, No. KSH. 103/10, appointed the Review Panel composed of Judges Snezhana Botusharova (Presiding), Ivan Čukalovič and Kadri Kryeziu.

9. On 19 January 2011, the Court communicated the Referral to the Supreme Court.

10. On 22 September 2011, the Court communicated the Referral to the Office of the Chief State Public Prosecutor in Pristina and asked it to submit its comments with respect to the Referral.

11. On 24 January 2012, the Office of the Chief State Prosecutor replied that they supported the Judgment of the Supreme Court, Rev. no. 406/2008, dated 3 September 2010, and that the Applicant's rights as guaranteed by the Constitution had not been violated.

12. On 7 March 2012, the Review Panel considered the Report of the Judge Rapporteur and made a recommendation to the Court on the admissibility of the Referral.

Summary of facts

13. On 16 September 1996, the "Beni Dona" Company owned by the Applicant, entered into a contract with the Municipality of Podujeva for the lease of the premises of the former Hotel "Llab" in Podujeva for a period of 10 years on the condition that the "Beni Dona" Company would rehabilitate it at its own costs for the amount of 342.760,00 Deutsche Marks. After the expiration of the lease contract, the Municipality of Podujeva would decide on the extension or termination of the lease contract to the effect that, if the Municipality decided to terminate the lease contract, it would have to return the amount spent on the rehabilitation of the Hotel to the "Beni Dona" Company.

14. From 2002 to 2005, upon the request of the Municipality of Podujeva, the "Beni Dona" Company paid, in addition to the rehabilitation costs, also property taxes on the leased property. Since these charges were so high and not foreseen in the lease contract, the "Beni Dona" Company was not able to pay them and requested the Municipality of Podujeva to clarify what the obligations of the "Beni Dona" Company were and to solve the situation by either continuing the lease, thereby deducting from the amount due to the Company a sum of 550 Euros as rent for each month until the equalization of the total amount of rehabilitation costs, or by

returning the leased premises to the Municipality which would then pay to the Company the amount invested in the reconstruction of the Hotel, as provided in the Contract of 16 September 1996, which, converted into Euros, would be an amount of 171.380,00 Euros.

15. Since the Municipality of Podujeva did not respond to the Company's request, the Applicant filed a claim against the Municipality with the Municipal Court of Podujeva on 6 June 2007, requesting the court to rule that either the Municipality returns the investment in the amount of 171.380 Euros, or to continue the use by the Company of the leased premises for ten years by deducting from the invested amount a rent of 550 Euros/month, until the amount would be equalized.

16. On 9 November 2007, the Municipal Court of Podujeva, by Judgment C. no. 155/2007, admitted the claim of the Applicant, ordering the Municipality of Podujeva to either return the invested funds to the Company or to continue the lease contract for another ten years.

17. On 9 November 2007, the Municipality appealed to the District Court of Pristina against this Judgment.

18. On 28 May 2008, the District Court of Pristina, by Judgment Ac. no. 28/2008, rejected the appeal of the Municipality as ungrounded, maintaining that the enacting clause of the judgment of the Municipal Court was comprehensible and suitable for execution and that, in its reasoning, the court had provided complete and comprehensible reasons on all facts of decisive importance and, therefore, the reasoning provided was fully compatible with the content of the evidence examined.

19. Within the legal deadline, the Municipality of Podujeva filed a revision against the judgments of the Municipal and District Court with the Supreme Court. At the same time, the Public Prosecutor filed a request for protection of legality with the same court, proposing to quash the judgments of the lower instance courts on the basis of substantial violations of the contested procedure provisions and erroneous application of

material law, and to re-open the case at the first instance court.

20. On 3 September 2010, in the presence of the Public Prosecutor, the Supreme Court granted the request for protection of legality submitted by the Public Prosecutor as well as the revision filed by the Municipality of Podujeva, ruling that the Municipality of Podujeva was not now legally responsible for a lease contract between the Applicant and the former Municipal Assembly of Podujeva signed in 1996. The Court based its reasoning on UNMIK Regulation 1999/1 on the Authority of the Interim Administration in Kosovo (hereinafter: "UNMIK Regulation 1999/1") and UNMIK Regulation 2000/45 on Self-Government of Municipalities in Kosovo (hereinafter: "UNMIK Regulation 2000/45") to the effect that these UNMIK Regulations changed the legal status of the Municipality of Podujeva from that of a legal person in 1996, when the lease was signed, to a separate legal status. Further, the Supreme Court concluded that this change of legal status of the Municipality eliminated any legal obligations which it may have had, before the UNMIK Regulations were adopted. Therefore, the Supreme Court found that, based on this situation and the evidence examined, the lower instance courts, had erroneously applied the material law, when finding the claim of the Applicant grounded and concluded that the 1996 lease agreement between the Applicant and the Municipality of Podujeva was no longer legally binding upon that Municipality.

21. The Supreme Court, therefore, approved the request for protection of legality submitted by the Public Prosecutor and the revision filed by the Municipality of Podujeva, thereby amending both judgments of the lower instance courts and rejecting as ungrounded the claim suit of the Applicant.

Applicant's allegations

22. The Applicant alleges that the reasoning of the Supreme Court is erroneous, in that it concluded that the Company had entered into a contract with the former Municipality of Podujeva in 1996, which, after the war, was not succeeded by

the present Municipality of Podujeva and, therefore, that Municipality was not bound to assume the obligations of the 1996 contract. In his opinion, the Municipality of Podujeva was, indeed, not the political successor to the former Municipality, but had enjoyed the legal succession to that Municipality in terms of rights and obligations, since it had been established on the same premises and managed the same immoveable properties as before and, since it had admitted that it was the owner of the leased premises, it had to also accept the obligations connected to this facility.

23. In the Applicant's opinion, UNMIK Regulation No. 1999/1 did not declare the existing contracts between parties invalid, even where one of the parties was a municipality, since such contracts could not be considered as a "state act" governed by UNMIK Regulation No. 1999/1.

24. The Applicant further alleges that the Supreme Court decided on the revision of the Municipality of Podujeva and the request for protection of legality of the Public Prosecutor in a session held on 3 September 2010 only in the presence of the Public Prosecutor of Kosovo, without having invited the Applicant's representative.

25. In this connection, the Applicant claims that the Judgment of the Supreme Court was, therefore, handed down in violation of Articles 3.2 [Equality Before the Law], 24.1 [Equality Before the Law] and 31 [Right to Fair and Impartial Trial] of the Constitution and Article 6 of ECHR, because no representative of the "Beni Dona" Company was either notified or present at the proceedings before the Supreme Court. Hence, according to the Applicant, the parties to the proceedings were not treated equally.

Applicable legal provisions regarding the request for protection of legality

26. The request for protection of legality is regulated by the Law on Contested Procedure of 20 September 2008.

Relevant Articles of Law (No. 03/L-006) on Contested Procedure

27. Article 250:

28. *"The competent public prosecutor shall be notified of the proceedings in which the court shall decide on the request for protection of legality".*

29. Article 251:

30. *"When the court decides on the request for protection of legality, it shall be limited to only examining the violation mentioned by the public prosecutor in his request".*

Assessment of admissibility of the Referral

31. The Applicant complains that the Judgment of the Supreme Court violated Articles 3.2 [Equality Before the Law], 24.1 [Equality Before the Law] and 31 [Right to Fair and Impartial Trial] of the Constitution and Article 6 ECHR, because, unlike the Public Prosecutor, no representative of the "Beni Dona" Company had been invited to participate in the proceedings in which the Supreme Court had decided on the request for protection of legality. Hence, he, as the Company's representative had not been treated equally.

32. The Court first observes that, in order for the Referral to be admissible, the Applicant must first show that he has fulfilled all admissibility requirements laid down in the Constitution, the Law and the Rules of Procedure.

33. In this respect, the Court needs to determine whether the Applicant can be considered as an authorized party, pursuant to Article 113.7 of the Constitution, stating that: "*"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".* Furthermore, pursuant to Article 21.4 of

the Constitution "*Fundamental rights and freedoms set forth in the Constitution are also valid for legal persons to the extent applicable*". In the present Referral Mr. Shaban Mustafa, owner of the "Beni Dona" Company, contests the constitutionality of Judgment Rev. no. 406/2008 of the Supreme Court, dated 3 September 2010, directed against the Company. Therefore, the Applicant must be considered as an authorized party, entitled to refer this case to the Court and to have exhausted all legal remedies as provided by law, pursuant to Article 113.7 of the Constitution.

34. As to the requirement of Article 49 of the Law that the Applicant must have submitted the Referral within a period of four (4) months to be counted from the day upon which he has been served with the final court decision, the Court determines from the submissions of the Applicant that the Company was served with the above Judgment of the Supreme Court on 6 October 2010, while the Applicant submitted the Referral to the Court on 12 October 2010, i.e. within the four months time limit as provided by Article 49 of the Law.

35. Since the Applicant has set out in detail what rights under the Constitution and the ECHR have allegedly been violated and by what public authority, the Court also finds that the Applicant has fulfilled the requirement of Article 48 of the Law, stipulating that:

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

37. In these circumstances, the Court concludes that the Applicant must be considered to have fulfilled all admissibility requirements and that it now needs to examine the merits of the Referral.

Legal assessment of the Referral

38. In the present case, the Court notes that the Municipal Court in Podujeva, by Judgment C. no. 155/2007, admitted the Applicant's claim ordering the Municipality of Podujeva to either return the invested funds to the Company or to continue the lease contract concluded between them for another ten years. This judgment was appealed by the Municipality to the District Court of Pristina, which rejected the appeal on 28 May 2008. Against this Judgment, the Municipality of Podujeva filed a revision with the Supreme Court, while, at the same time, the Public Prosecutor submitted a request for protection of legality to the same court.

39. On 3 September 2010, the Supreme Court found, by Judgment Rev. no. 406/2008, that the Public Prosecutor's request for protection of legality as well as the revision of the Municipality of Podujeva were grounded and that the legal conclusion of the lower instance courts that the Municipality was bound to perform the obligations of a contract dating from 1996, signed between the Company and the Municipality Assembly of Podujeva, could not be accepted.

40. In this regard, the Court notes that, at the material time, the Public Prosecutor – without having been a party to the proceedings before the lower instance courts – exercised the power under Article 245(2) of Law No. 03/L-006 on Contested Procedure of Kosovo to submit a request for protection of legality concerning, inter alia, a decision of the second instance court, against which one of the parties had filed a revision, within a time limit of thirty days to be counted from the date on which the revision was delivered to that party.

41. The Court further notes that, according to the submissions of the Applicant, the Supreme Court's Judgment of 3 September 2010, was rendered in the presence of the Public Prosecutor, but without the Applicant having being notified and summoned to take part in the proceedings in the same way as the Public Prosecutor. Thus, in the Applicant's opinion, the Supreme Court had not treated him equally and had, therefore, violated his right to a fair trial, as guaranteed by Article 31 of the Constitution and Article 6 of ECHR.

42. Article 31 [Right to Fair and Impartial Trial] of the Constitution provides, inter alia,:

> 1. *Everyone shall be guaranteed equal protection of rights in the proceedings before courts, other state authorities and holders of public powers.*
>
> 2. *Everyone is entitled to a fair and impartial public hearing as to the determination of one's rights and obligations or as to any criminal charges within a reasonable time by an independent and impartial tribunal established by law.*

43. […]"

44. Article 6 (1) [Right to Fair Trial] ECHR provides:

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

46. […]".

47. The Court reiterates that, pursuant to Article 53 of the Constitution "*Human rights and fundamental freedoms guaranteed by this Constitution shall be interpreted consistent with the court decisions of the European Court of Human Rights*".

48. As to the Applicant's complaint that he had not been notified and summoned to participate in the proceedings before the Supreme Court, the Court refers to the approach of ECtHR in

similar cases. For instance, in the Grozdanoski Case (see Grozdanoski v. The Former Yugoslav Republic of Macedonia, no. 21510/03, of 31 May 2007), the ECtHR concluded that, in civil proceedings, the principle of equality of arms implies that each party must be afforded a reasonable opportunity to present his or her case - including evidence – under conditions that do not place him/her at a substantial disadvantage vis-à-vis his/her opponent. According to the ECtHR, the concept of a fair trial, of which equality of arms is one aspect, implies the right for the parties to have knowledge of and to comment on all evidence adduced or observations filed.

49. Moreover, in the Grozdanoski case, the public prosecutor had filed a request for the protection of legality, but the Applicant had never been notified about this. The public prosecutor's request led to the Supreme Court's decision which was to the applicant's significant disadvantage. The ECtHR considered that procedural failure to not notify the applicant had prevented the applicant from effectively participating in the proceedings before the Supreme Court of Macedonia.

50. The ECtHR was also of the opinion that Article 6 (1) ECHR is intended, above all, to secure the interests of the parties and those of the proper administration of justice, while respect for the right to a fair trial, guaranteed by Article 6 (1) ECHR, required that the applicant be given an opportunity to have knowledge of, and to comment upon the public prosecutor's request. Consequently, by failing to notify the applicant of the public prosecutor's request for protection of legality filed with the Supreme Court of Macedonia, the ECtHR found that there had been a violation of Article 6 (1) ECHR.

51. The Court further refers to the Gusak case, (See Gusak v. Russia, 7 June 2011, Application no. 28956/05, para 27.), where the ECtHR considered that *"a litigant should be summoned to a court hearing in such a way as not only to have knowledge of the date and the place of the hearing, but also to have enough time to prepare his case and to attend the court hearing*."

52. In the Court's view, public prosecutors, when acting outside the criminal law field, should enjoy the same rights and obligations as any other party in the proceedings and should not enjoy a privileged position, which violates the principle of equality of arms as part of the right to a fair trial, guaranteed by Article 31 of the Constitution and Article 6 ECHR.

53. The Court also refers to its own case law, in particular, to Case KI 108/10, Fadil Selmanaj - Constitutional Review of Judgment of the Supreme Court of Kosovo, A. no. 170/2009 of 25 September 2009, where it ruled that *"the Applicant should have been summoned to the court proceedings in such a way as not only to have knowledge of its existence, but also to present arguments and evidence during the course of the proceedings."*

54. As to the present case, the Applicant could not have exercised his right to a fair trial without being present at these proceedings before the Supreme Court. Therefore, by not notifying the Applicant of the request for protection of legality lodged by the Public Prosecutor and by not inviting him as a party to the proceedings before the Supreme Court, the Supreme Court, in its Judgment of 3 September 2010, infringed the Applicants' right to a fair trial under Article 31 of the Constitution and Article 6 (1) ECHR.

55. As to the other issues raised in the Referral, the Court observes that the Applicant can raise such issues in the proceedings before the Supreme Court.

FOR THESE REASONS, THE COURT UNANIMOUSLY

I. Declares the Referral Admissible;

II. Holds that there has been a breach of Article 31 [Right to Fair and Impartial Trial] of the Constitution, in conjunction with Article 6 (1) [Right to Fair Trial] of the European Convention on Human Rights and Fundamental Freedoms;

III. Declares null and void the Judgment of the Supreme Court of Kosovo, Rev. no. 406/2008 of 3 September 2010;

IV. Remands that Judgment to the Supreme Court for reconsideration in conformity with the judgment of this Court;

V. Remains seized of the matter pending compliance with that Order;

VI. Orders this Judgment to be notified to the Parties and, in accordance with Article 20.4 of the Law, be published in the Official Gazette;

VII. Declares that this Judgment is effective immediately.

Judge Rapporteur **President of the Constitutional Court**

Robert Carolan Prof. Dr. Enver Hasani

KI 77/11 dated 24 April 2012- Constitutional review of the Judgment of the Supreme Court of Kosovo, Rev. nr. 330/2008, dated 06.01.2011

Case KI 77/11, decision dated 6 January 2011
Keywords: individual referral, European Convention of Human Rights (Article 7), Universal Declaration of Human Rights (Article 7), manifestly illfounded, Resolution on inadmissibility.

The Applicant claimed that the Judgment of the Supreme Court, Rev. no. 330/2008, of 06.01.2011, has denied him the right to work, which had been recognized by the Judgment of Municipal Court in Prizren, C. No. 112/06, of 08.05.2007, and by the Judgment of the District Court in Prizren, AC. No. 296/07, of 02.06.2008.

The Applicant claims that the judgment of the Supreme Court of Kosovo has violated his rights guaranteed by the Constitution: Article 24.1 (Equality Before the Law), Article 31.2 (Right to Fair and Impartial Trial); Article 102.3 (Courts shall adjudicate based on the Constitution and the law); Article 49 (Right to Work and Exercise Profession), and the violation of the Universal Declaration of Human Rights Article 7 (Equality before the law without any discrimination). According to the Applicant, Article 7 of the European Convention on Human Rights and the International Convention on Elimination of All Forms of Racial Discrimination (Articles 2. 1, 5 and 6) have also been violated.

Constitutional Court finds no evidence that the Supreme Court did not adjudicate a "Fair and Impartial Trial" bringing the decision as on the revision of the abovementioned and does not find that with that decision the rights guaranteed by the Constitution have been violated.

Based on these circumstances, the Constitutional Court finds no violation of the European Convention of Human Rights (Article 7) or of the Universal Declaration of Human Rights (Article 7), directly applicable in the juridical system of Kosovo, that Mr. Mazreku claims to have been violated.

In these circumstances, the Applicant has not "sufficiently substantiated his claim", so, pursuant to Rule 36, paragraph 2, item c and d, I propose to the Review Panel to reject the Referral as manifestly illfounded.

Pristine, 18 April 2011
Ref. no.: RK 150/11

RESOLUTION ON INADMISSIBILITY

in

Case No. KI 77/11

Applicant

Mustafa Mazreku

Constitutional review of the Judgment of the Supreme Court of Kosovo, Rev. nr. 330/2008, dated 06.01.2011.

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Enver Hasani, President
Kadri Kryeziu, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Ivan Čukalović, Judge
Gjyljeta Mushkolaj, Judge and
Iliriana Islami, Judge

Applicant

1. The Applicant is Mr. Mustafa Mazreku, from Mamusha, residing at 8 Selver Maçkaj St., Prizren, represented by Mr. Masar Pirana, a lawyer from Prizren.

Challenged decision

2. The challenged decision of the public authority that has allegedly violated rights guaranteed by the Constitution is the Judgment of the Supreme Court of Kosovo, Rev. no. 330/2008, dated 06.01.2011**.**

Subject matter

3. The subject matter of the case that was submitted with the Constitutional Court of the Republic of Kosovo on 08 June 2011 is the constitutional review of the Judgment of the Supreme Court of Kosovo, Rev. no. 330/2008, dated 06 January 2011, which the applicant, according to his personal statement, received on 22.02.2011.

Legal basis

4. Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter referred to as the "Constitution"), Article 47 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo of 16 December 2009, which entered into force on 15 January 2010 (hereinafter referred to as the "Law"), and Section 29 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter referred to as the "Rules of Procedure").

Proceedings before the Constitutional Court

5. On 08.06.2011, the Constitutional Court received the Referral of Mr. Mustafa Mazreku and registered it under no. KI 77/11.

6. On 17 August 2011, the President of the Constitutional Court, by Decision GJ.R 77/11, appointed Judge Dr. Iliriana Islami as Judge Rapporteur.

7. On the same date, the President of the Constitutional Court appointed the Review Panel consisting of Robert Carolan (Presiding), and judges Almiro Rodrigues and Prof. Dr. Enver Hasani as panel members.

8. On 24 June 2011, the Constitutional Court notified both the Supreme Court of Kosovo and the Applicant on the registration of the case, but it received no comment within the time limit by them.

Summary of the facts

9. On 1 October 1987, Mr. Mustafa Mazreku established employment relationship for an indefinite period of time with "Fadil Hisari" Primary School in Prizren in the post of **cashier** and this was done pursuant to the Resolution on "Joining of Resources and Work", No. 256, of 01 October 1987, and he has been continuously working at the same post till after the war and the establishment of the International Administration of the United Nations in Kosovo (UNMIK).

10. On 7 August 2000, UNMIK issued "Directions of the Department of Education and Science" – Employment Contracts for the period of 1/9/00 to 31.12.00 and determined conditions under which education staff could obtain employment contracts, conditions for provisional contracts for teachers and conditions of payment for those that will be working, but who do not have employment contracts for the period mentioned in this Direction.

11. According to Mr. Mustafa Mazreku's claim, pursuant to this Direction, he has not been given the employment contract even though according to the payroll he had received the advance payment in the amount of 450 DEM for the 9th, 10th and 11th month of 2000.

12. Also, according to his claim, even though he had not received the employment contract, he had not received the reward of 800 DEM for those that had remained without employment contracts and jobless. Meanwhile, when all employees of this school received the difference of he salary for the months of

September, October, November and December 2000, he had received neither the difference nor the full salary for the month of December 2000. However, despite this, Mr. Mazreku continued to go to work even without an employment contract and without personal income.

13. On 29 January 2002, seeing that the situation he was facing would not be resolved, Mr. Mazreku filed a lawsuit with the Municipal Court in Prizren requesting the resolution of the employment dispute.

14. On 8 May 2007, the Municipal Court in Prizren issued Judgment C. no. 112/06, **approving** the lawsuit of the plaintiff, Mr. Mustafë Mazreku, as grounded and **obliging** the Municipality of Prizren – Department of Education and Science, to reinstate the plaintiff to the post of the cashier at "Fadil Hisari" Primary School with all the rights he had had until 1 October 2001.

15. On 02 June 2008, deciding pursuant to the appeal of the Municipality of Prizren – Municipal Department, the Judgment of the District Court in Prizren, AC. no. 296/2007, rejected this appeal as ungrounded and left the challenged Judgment of the Municipal Court, C. no. 112/06, in force.

16. Since the final Judgment of the District Court in Prizren was not being implemented, Mr. Mustafa Mazreku filed a request with the Municipal Court in Prizren for the execution of this Judgment and this Court through Resolution E. no. 1063/08, approved this request and did its execution on 10.102008, reinstating Mr. Mustafë Mazreku to his post.

17. In fact, even though the Municipal Court had executed its decision, Mr. Mazreku had only physically gone to work because he had not been given any work contract, but he was only promised to be offered the post of the librarian, since there is no post for cashier neither at "Fadil Hisari" Primary School nor at any other school since the financial resources are not being managed by schools but by the Municipal Department for Education and Science. Mr. Mustafë Mazreku kept going to work at "Fadil Hisari" Primary School for five months continuously after being reinstated by the Municipal Court, but

without personal incomes, and after that, he decided not to go to work until his work dispute is not solved.

18. On 25 June 2008, the Legal Office of Prizren Municipality submitted a Revision with the Supreme Court of Kosovo challenging the Judgment of the Municipal Court in Prizren (C. no. 112/06, of 08.05.2006) and the Judgment of the District Court in Prizren (AC. no. 296/2007, of 02.06.2008) on accounts of essential violation of the provisions of the contested procedure and erroneous application of the substantive law.

19. On 08.07.2009, the Municipal Court in Prizren, as an execution court, issued Resolution, E. no. 1063/08, fining the Director of the Department for Education and Science of Prizren Municipality in the capacity of the responsible person with 50 Euros and the Department for Education and Science, in the capacity of the legal person, with 200 Euros, because of effective non-implementation of the executable decision.

20. On 6 January 2001, the Supreme Court of Kosovo, deciding pursuant to the Revision of the Legal Office of Prizren Municipality, issued Judgment, Rev 330/2008, approving the submitted Revision and amending the Judgment of the Municipal Court in Prizren, C. no. 112/06, of 08.05.2006, and the Judgment of the District Court in Prizren, AC. no. 296/2007, of 02.06.2008, so that the lawsuit of Mr. Mustafa Mazreku is REFUSED. Mr. Mustafë Mazreku received this Judgment on 22.02.2011.

21. The Supreme Court stressed in the Judgment of its Revision that regular courts of lower instances had correctly determined the factual situation, but they had **erroneously applied the substantive law** since employment relationship in education institutions was a contractual relationship and concluded in time limits under UNMIK Directions, whereas, since Mr. Mazreku did not have an employment contract, he did not have a valid legal employment relationship, but only factual work at school.

22. As soon as he received the Supreme Court Judgment approving the Revision of Prizren Municipality, Mr. Mustafa Mazreku, through his legal representative, Mr. Masar Pirana, a lawyer

from Prizren, submitted a request for the protection of legality with the State Pros ecutor's Office in Prishtina.

23. On 31 March 2011, the State Prosecutor's Office, through the official document KMLC no. 23/2011, notified Mr. Mustafa Mazreku that pursuant to the provision of Article 245.3 in conjunction with Article 220 of the Law on Contested Procedure (hereinafter referred to as "LCP") that the request for the protection of legality is not allowed against the decision issued on the occasion of the Revision by the Supreme Court, therefore, even in this case, this referral cannot be referred.

The Applicant's allegations

24. The Applicant claimed that the Judgment of the Supreme Court, Rev. no. 330/2008, of 06.01.2011, has denied him the right to work, which had been recognized by the Judgment of Municipal Court in Prizren, C. no. 112/06, of 08.05.2007, and by the Judgment of the District Court in Prizren, AC. no. 296/07, of 02.06.2008.

25. The Applicant claims that the judgment of the Supreme Court of Kosovo has violated his rights guaranteed by the Constitution: Article 24.1 (Equality Before the Law), Article 31.2 (Right to Fair and Impartial Trial); Article 102.3 (Courts shall adjudicate based on the Constitution and the law); Article 49 (Right to Work and Exercise Profession), and the violation of the **Universal Declaration of Human Rights** Article 7 (Equality before the law without any discrimination). According to the Applicant, Article 7 of the European Convention on Human Rights and the **International Convention on Elimination of All Forms of Racial Discrimination** (Articles 2.1; 5 and 6) have also been violated.

Assessment of the admissibility of the Referral

26. In order to be able to adjudicate the Applicant's Referral, the Court needs first to examine whether the Applicant has fulfilled all admissibility requirements laid down in the Constitution.

27. In this relation, the Court refers to Article 113.7 of the Constitution, which stipulates that:

"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."*

The Court also takes into account:

Rule 36 of the Rules of Procedure of the Constitutional Court, which stipulates:

"(1) The Court may only deal with Referrals if:
c) the Referral is not manifestly ill-founded.

28. Referring to the alleged violation of the rights guaranteed by the Constitution of the Republic of Kosovo and other International Conventions and Instruments by the Applicant, in the capacity of the Judge Rapporteur I conclude

29. Article 102 [General Principles of the Judicial System], paragraph 3, of the Constitution, clearly stipulates that: **"Courts shall adjudicate based on the Constitution and the law"**.

30. Article 103 **[Organization and Jurisdiction of Courts],** paragraph 2 of the Constitution, clearly stipulates that "The Supreme Court of Kosovo is the highest judicial authority".

31. In this direction, the Constitutional Court does not find any fact that the Supreme Court, while deciding upon the request for Revision, for which it is authorized under Article 212 of LCP, to have violated Article 31.2 (the Right to Fair and Impartial Trial), Article 49 (the Right to Work and Exercise Profession), or Article 102.3 (Courts shall adjudicate based on the Constitution and the law) that the Applicant claims to have been violated.

32. In fact, besides expressing dissatisfaction for the Revision issued by the Supreme Court, the Applicant has not provided any other fact as to why the trial "was not fair and impartial", in what way he was treated as unequal, or what phase of the proceedings was unconstitutional.

33. The Constitutional Court is not a court of facts, and, on this occasion, it wishes to reiterate that the correct and complete determination of the factual situation is a full jurisdiction of regular courts and that its role (of the Constitutional Court) is solely to ensure compliance with the rights guaranteed by the Constitution and other legal instruments and cannot, therefore, act as a "fourth instance court" (see, *mutatis mutandis, i.a.,* Akdivar v. Turkey, 16 September 1996, R. J. D, 1996-IV, para. 65).

34. The mere fact that applicants are dissatisfied with the outcome of the case cannot serve to them as a right to raise an arguable claim of a breach of Article 31 of the Constitution (see *mutatis mutandis* Judgment ECHR Appl. No. 5503/02, Mezotur-Tiszazugi Tarsulat vs. Hungary, Judgment of 26 July 2005).

35. The Constitutional Court cannot ignore the fact that under UNMIK Directions, but later on under Article 2 of the Regulation 2001/36 on the Kosovo Civil Service, all employees, whose salary is paid from the Kosovo Consolidated Budget, had the status of the civil servant, including education staff.

36. This Regulation had provided for in Article 3.1 (c) "That employment in the Civil Service shall be governed by written contracts of employment; and in Article 3.3 Contracts of employment in the Civil Service shall be for a period of up to three (3) years, and may be extended.

37. These Directions, including this Regulation that was in force at that time, had undoubtedly defined the employment relationship as contractual and that all civil servants, without any exception, were subject to the system of employment contracts, so, the Constitutional Court notices that the Applicant, Mr. Mustafa Mazreku, together with his Referral filed with this Court, has not submitted any employment contract with "Fadil Hisari" school.

38. Under these circumstances, the Constitutional Court does not find any fact that the Supreme Court has not "adjudicated rightly and impartially" by rendering the decision as in the

abovementioned revision and it does not conclude that the said decision has violated rights guaranteed by the Constitution.

39. Based on these circumstances, the Constitutional Court finds no violation of the European Convention of Human Rights (Article 7) or of the Universal Declaration of Human Rights (Article 7), directly applicable in the juridical system of Kosovo, that Mr. Mazreku claims to have been violated.

40. In these circumstances, the Applicant has not "sufficiently substantiated his claim", so, pursuant to Rule 36, paragraph 2, item c and d, I propose to the Review Panel to reject the Referral as manifestly ill-founded, and

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 47 (2) of the Law, and Rule 56 (2) of the Rules of Procedure, on ... 2011, ...

DECIDES

I. TO REJECT the Referral as Inadmissible;

II. This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20 (4) of the Law; and

III. This Decision is effective immediately.

Judge Rapporteur **President of the Constitutional Court**

Dr.Iliriana Islami Prof. Dr. Enver Hasani

KI 01/10 dated 10 May 2012- Constitutional Review of the Decision of the District Court in Pristina Ac.nr.1224/09, dated 12 November 2009

Case KI 01/10, decision dated 20 April 2012.
Keywords: violation of constitutional rights and freedoms, individual referral, law on property and other real rights, non-exhaustion of legal remedies, obstruction of possession.

The applicant filed the referral pursuant to Article 113.7 of the Constitution of Kosovo, thereby claiming that his constitutional rights were violated by the judgment of the District Court, which annulled the decision of the Municipal Court on unobstructed enjoyment of property. The applicant claimed that the District Court had violated the rights and freedoms guaranteed by Articles 46 and 54 of the Constitution of Kosovo.

The Court found that the referral of applicant was inadmissible, pursuant to the Article 113.7 of the Constitution, in connection with Article 47.2 of the Law, due to the fact that the applicant had not exhausted all legal remedies available by law. The Court argued further by noting that the Applicant had not undertaken steps in resolving his claim as provided with the District Court Judgment. Due to the reasons provided above, the Court decided to find the referral of Applicant as inadmissible.

Pristine, 20 April 2012
Ref. No.: RK220/12

RESOLUTION ON INADMISSIBILITY

In

Case No. KI 01/10

Applicant

Gani Ibërdemaj

Constitutional Review of the Decision of the District Court in Pristina Ac.nr.1224/09, dated 12 November 2009

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Enver Hasani, President
Kadri Kryeziu, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Ivan Čukalović, Judge
Gjyljeta Mushkolaj, Judge and
Iliriana Islami, Judge

Applicant

1. The Applicant is Gani Ibërdemaj, of Pristina, represented by the Lawyer, Feriz Gervalla, also of Pristina.

Challenged Decision

2. The Applicant challenges Decision Ac.nr.1224/09 of the District Court of Pristine, dated of 12 November 2009 and served on him on 23 November 2009.

Subject Matter

3. The Applicant complains that his property rights granted in Article 46 [Protection of Property] and Article 54 [Judicial Protection of Rights] of the Constitution of the Republic of Kosovo (hereinafter referred to as: the Constitution) have been violated by the District Court of Pristina decision Ac.nr.1224/09 dated 12 November 2009.

Legal Basis

4. Article 113.7 of the Constitution, Article 47.2 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter referred to as the Law), and Rule 56 (2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter referred to as the Rules of Procedure).

Proceedings before the Court

5. On 6 January 2010 the Applicant filed a Referral with the Secretariat of the Constitutional Court. On 23 March 2010 the referral was communicated to the District Court of Pristina.

6. On 26 March 2010 the District Court replied stating that case files in civil case c.no.117/2008 were returned to the Municipal Court in Pristina

7. On 11 May 2010 the President of the Constitutional Court appointed Judge Almiro Rodrigues as Judge Rapporteur and a Review Panel composed of Judges Altay Suroy (Presiding), Kadri Kryeziu and Gjyljeta Mushkolaj.

8. On 14 December 2010 the Review Panel considered the report of the Judge Rapporteur and deliberated on the matter and made a recommendation to the full Court.

Summary of the Facts

9. On 15 June 2009 the Municipal Court in Pristina delivered decision C. nr 117/2008, by which the Municipal Court approved the claim-suit of the current Applicant, Gani Iberdemaj, finding that the respondents, Enver Aliaj and Mehmet Alijaj, obstructed the property of the Applicant and ordering the respondents to cease such obstruction now and in the future and to remove all obstacles claimed.

10. The legal representative of the respondents filed an appeal against this decision, proposing that the decision be reversed, the plaintiff's claim-suit be rejected as unfounded or quashed, and the matter be returned to the first instance court for retrial. The plaintiff filed a response to the respondent's appeal, proposing that the appeal be rejected as unfounded, and the Municipal Court decision be upheld.

11. On 12 November 2009, the District Court in Pristina delivered decision Ac.nr.1224/09 in which it decided to quash the decision of the Municipal Court in Pristina C .Nr 117/2008, dated 15 June 2009, and reject the Applicant's claim-suit as inadmissible.

12. The District Court in Pristina found that the Municipal Court erred because the issue in dispute is not one of obstruction of possession and does not fall in the Municipal Court's jurisdiction.

13. The District Court in Pristina concluded that "the plaintiff in the concrete situation does not enjoy judicial protection for obstruction of possession of the real estate which is a part of urban plan. All disputable issues in relation to the property right over the immovable property (. . .) will be settled in a contested procedure in line with the Law on Ownership and Other Real Rights."

Allegations of the Applicant

14. The Applicant alleges that the District Court decision is unlawful because it violates the contested procedure provisions

and wrongly concludes that the dispute is not one of constructive possession and within the jurisdiction of the Municipal Court.

15. The Applicant argues that urban construction land enjoys judicial protection from obstruction or disturbance of the last factual possession.

16. Finally, the Applicant concludes that the above mentioned judicial decision has violated "the fundamental right to protection of property provided for by Article 46 par 1 and 2 and Article 54 (judicial protection of the right to use the property) of the Constitution of the Republic of Kosovo".

Assessment of the Admissibility of the Referral

17. In adjudicating the Applicant's Referral, the Court needs first to examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution as further specified in the Law and the Rules of Procedure.

18. The Court refers to Article 113.7 of the Constitution in conjunction with Article 47.2 of the Law, which provides:

"113.7 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."

"47.2 The individuals may submit the referral in question only after he/she has exhausted all legal remedies provided by the law"

19. The Applicant has not shown that he has taken any steps to resolve his claim via the contested procedure in line with the Law on Ownership and Other Real Rights, as proscribed in the judgment of the District Court of Pristina.

20. The Court applied this same reasoning on the grounds of non-exhaustion of remedies when it issued a Resolution on Inadmissibility, on 27 January 2010, in Case No. KI41-09, AAB-

RIINVEST University L.L.C., Prishtina vs. Government of the Republic of Kosovo, and in its Decision of 23 March 2010, in Case No. KI73-09, Mimoza Kusari Lila vs. The Central Election Commission.

21. Previously the Court emphasized that the rationale for the exhaustion rule is to afford the authorities concerned, including the courts, the opportunity to prevent or put right the alleged violation of the Constitution. The rule is based on the assumption that the Kosovo legal order will provide an effective remedy for the violation of constitutional rights. (see, mutatis mutandis, ECHR, Selmouni v. France, no. 25803194, decision of 28 July 1999). However, it is not necessary for the constitutional rights to be explicitly raised in the proceedings concerned. As long as the issue was raised implicitly or in substance, the exhaustion of remedies is satisfied (see, mutatis mutandis, ECHR, Azinas v. Cyprus, no. 56679100, decision of 28 April 2004).

22. The Court therefore finds that the Applicant has not exhausted all legal remedies available to him provided by law.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 47.2 of Law, and Rule 56 (2) of the Rules of Procedure, by majority

DECIDES

I. TO REJECT the Referral as Inadmissible.

II. This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20.4 of the Law.

III. This Decision is effective immediately.

Judge Rapporteur **President of the Constitutional Court**

Almiro Rodrigues Prof. Dr. Enver Hasani

KI 32/11 dated 18 May 2012- Request for recognition of KLA veteran status

Case KI 32/11,
Keywords; Individual Referral, equality before law, general principles, fundamental rights and freedoms, premature, manifestly ill-founded.

The Applicant submitted the Referral based on Article 113.7 of the Constitution of the Republic of Kosovo, alleging that because the KLA did not recognize the status of the KLA veteran, the KLA organization violated Article 21 [General Principles] and 24 [Equality before the Law] provided by Chapter II [Fundamental Rights and Freedoms] of the Constitution. The Applicant further alleges violation of Article 1 of the European Convention on Human Rights, Article 29 of the Universal Declaration of Human Rights and Article 2 of the International Covenant on Civil and Political Rights.

On 13 December 2010, the Applicant submitted a petition before the Supreme Court of Kosovo in Prishtina due to the silence by the Central Organization of KLA Veterans.

The Applicant maintains that he is yet to receive a decision from the Supreme Court. Therefore, it appears that his Referral is premature.

Therefore, the Court concluded that the Referral is rejected as manifestly ill-founded and is admissible in compliance with Article 113.7 of the Constitution and Article 47 of the Law on Constitutional Court.

Pristine,20 April 2012
Ref. No.:RK219 /12

RESOLUTION ON INADMISSIBILITY
in

Case No. KI 32/11

Applicant

Lulzim Ramaj

Request for recognition of KLA veteran status

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Enver Hasani, President
Kadri Kryeziu, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Ivan Čukalović, Judge
Gjyljeta Mushkolaj, Judge and
Iliriana Islami, Judge.

Applicant

1. The Applicant is Lulzim Ramaj from Peja.

Applicant's complaints and allegations

2. The Applicant's complaint stems from the withholding of veteran status by the Kosovo Liberation Army (KLA) organization.

3. The Applicant alleges that the KLA organisation, by doing so, has violated Articles 21 [General Principles] and 24 [Equality before the Law] provided by Chapter II [Fundamental Rights and Freedoms] of the Constitution.

4. The Applicant further alleges violation of Article 1 of the European Convention on Human Rights, Article 29 of the

Universal Declaration of Human Rights and Article 2 of the International Covenant on Civil and Political Rights.

5. The Referral is based on Article 113 (7) of the Constitution, Articles 46, 47, 48 and 49 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter the "Law"), and Rule 56 (2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter the "Rules").

Proceedings before the Court

6. On 3 March 2011, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter "the Court") together with the necessary documentation.

7. On the same date, the Applicant submitted a "request for non publication" in "public media, written media and Official Gazette of R. of Kosovo".

8. On 18 April 2011, the President appointed Judge Almiro Rodrigues as Judge Rapporteur and a Review Panel composed of Judges Altay Suroy (Presiding), Snezhana Botusharova and Ivan Čukalovic.

9. On 18 January 2012, the Review Panel considered the Report of the Judge Rapporteur and, made a recommendation to the Court on the inadmissibility of the Referral.

Summary of the facts

10. On 17 September 2010, the Applicant submitted to the Peja branch of the KLA Veteran organization a request for recognition of the status of KLA veteran and also requested the issuance of the "KLA booklet".

11. On 12 October 2010, due to administrative silence by the Peja branch, based on Article 131 of Law on Administrative Procedure in Kosovo (Law no. 02/L-28), the Applicant filed an appeal to the Central Organization of KLA Veterans in Pristina.

12. On 13 December 2010, the Applicant submitted a petition before the Supreme Court of Kosovo in Pristina due to the fact that he did not receive a decision in respect of his appeal to the Central Organization of KLA Veterans.

13. On 28 December 2010 and on 29 January 2011, the Applicant submitted appeals to the Kosovo Judicial Inspectorate against inaction by the Supreme Court.

14. On 9 February 2011, the Applicant received a letter from the Office of Disciplinary Counsel of the Kosovo Judicial Council whereby he was informed that his submission related to the delay in deliberation by the Supreme Court of Kosovo and did not meet the time criterion to be considered.

15. On 9 February 2011, the Applicant made a further request to the Kosovo Judicial Council requesting the review of his appeals of 28 December 2010 and 29 January 2011.

16. The Applicant asserts that he has not received a response from the Kosovo Judicial Council in relation to his request of 9 February 2011.

17. The abovementioned "request for non publication" is not supported by any factual basis or justification.

Assessment of the admissibility of the Referral

18. The Court needs first to examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution and further specified in the Law on the Constitutional Court and the Rules of Procedure.

19. The Court recalls that the substance of the Applicant's Referral is the withholding of the recognition of KLA veteran status.

20. The Court notes that, in the period from 17 September 2010 to 9 February 2011, the Applicant submitted a number of requests to different state bodies and institutions reiterating his request.

Most notably, the Applicant submitted a petition to the Supreme Court on 13 December 2010 due to the silence by the Central Organization of KLA veterans.

21. The Applicant maintains that he is yet to receive a decision from the Supreme Court.

22. In this respect, the Court recalls that pursuant to Article 113 (7) of the Constitution "*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.*"

23. The Applicant's petition is still pending before the Supreme Court. Thus, it appears that his Referral is premature. That conclusion is consistent with the information given to the Applicant by the Kosovo Judicial Council on "his submission related to the delay in deliberation by the Supreme Court of Kosovo does not meet the time criterion to be considered as being delayed by the Court".

24. With regard to the Applicant's "request for non publication" it should be taken as a request for confidentiality. However, the Court notes that the request is submitted without any reasoning. Consequently, it is rejected as manifestly ungrounded.

FOR THESE REASONS

The Constitutional Court pursuant to Article 113(7) of the Constitution and Article 47 of the Law, unanimously:

DECIDES

I. TO REJECT the Referral as Inadmissible;

II. This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20 (4) of the Law; and

III. This Decision is effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Almiro Rodrigues	Prof. Dr. Enver Hasani

KI 104/10 dated 10 May 2012 - Constitutional Review of Decision GŽ No. 78/2010 of the District Court of Gjilan, dated 7 June 2010

Case KI 104/10, Decision dated 13 December 2011
Keywords; individual Referral, right to property, protection of property, res judicata, duality of court and administrative decisions, competence of court

The Applicant filed the Referral in accordance with Article 113.7 of the Constitution of Kosovo, challenging the Resolution of the District Court in Gjilan GŽ no. 78/2010 of 7 June 2010. The Applicant has alleged that the Judgments: P. posl. no. 36/2000 of the Municipal Court in Kamenica of 26 September 2000, GŽ no. 10/2001 of the District Court in Gjilan of 23 April 2001, rev. no. 141/2003 of the Supreme Court of Kosovo in Prishtina 30 December 2004 and the Decisions: P. posl. no. 36/2000 of the Municipal Court in Kamenica of 11 January 2010 and GŽ no. 10/2001 of the District Court in Gjilan of 7 June 2010 have violated his right to enjoy personal property and the right to legal certainty as there is a duality of judicial and administrative decisions.
The Applicant has requested from the Constitutional Court to confirm Decisions no. HPCC/D/194/2005/C of 18 June 2005 and no. HPCC/REC/66/2006 of 15 July 2006 rendered by HABITAT and by which it was ordered that the property at issue be returned in his possession. The Applicant has considered that the decisions of Habitat are final and binding and therefore should be recognized. He alleges that the abovementioned Judgments violated his right to enjoy the personal property and the right to legal certainty.
The Applicant has considered that Article 46 (Protection of Property) of the Constitution of Kosovo and Article 1 (Right to Property) of Protocol 1 of ECHR.
Deciding in the Referral of the Applicant Draža Arsić, the Constitutional Court after reviewing the proceedings in their entirety found that the Applicant's Referral is admissible. The Court is of the view that the Decision HPCC/REC/66/2006 of 15 July 2006 is final in accordance with Article 2 paragraph 7 of UNMIK/Regulation/1999/23, and consequently it cannot be subject of review by any other judicial or administrative authority in Kosovo. Since the HPCC Decision of 15 July 2006 became *res judicata* on 4

September 2006, the Applicant has enjoyed the right to possess the property, guaranteed by Article 46 of the Constitution and Article 1 of Protocol 1 of ECHR and the Court concluded that any interference of this right by any court or any administrative body would have to be considered as a violation of that right.

Based on all the foregoing, the Court held that there had been a violation of the Applicant's rights, that the decision HPCC/REC/66/2006 of 15 July 2006 had become *res judicata* on 4 September 2006 and therefore there had been a violation of the right to property, provided for by Article 1 Protocol 1 of the ECHR. The Court finally concludes that the courts as well as the administrative authorities concerned were held to take due account of the proceedings under UNMIK Regulation 1999/23 before the HPD and HPCC, in which the Applicant was involved, and to enforce their decisions.

Pristine, 23 April.2012
Ref. No.:AGJ221 /12

JUDGMENT

in

Case No. KI 104/10

Applicant

Arsić Draža

Constitutional Review of Decision GŽ No. 78/2010 of the District Court of Gjilan, dated 7 June 2010

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Enver Hasani, President
Kadri Kryeziu, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Ivan Čukalović, Judge
Gjyljeta Mushkolaj, Judge and
Iliriana Islami, Judge

The Applicant

1. The Applicant is Mr. Arsić Draža, engineer of profession, and residing in Kamenica.

Challenged decisions

2. The Applicant challenges Judgments P. Posl. No. 36/2000 of the Municipal Court of Kamenica of 26 September 2000, GZ No. 10/2001 of the District Court of Gjilan of 23 April 2001, Rev. No. 141/2003 of the Supreme Court of Kosovo in Prishtina of 30 December 2004 as well as the following Decisions P. Posl. No. 36/2000 of the Municipal Court of Kamenica of 11 January 2010 and GZ No. 10/2001 of the District Court of Gjilan of 7 June 2010.

Subject Matter

3. The Applicant claims that the above judgments violated "*his right to enjoy his personal property and his right to legal certainty due to the existence of duality of the judicial and administrative decisions*".

4. He also asks for confirmation of the joint decision of the Housing and Property Claims Commission HPD HPCC/REC/66/2006 of 15 July 2006.

Legal Basis

5. Article 113.7 of the Constitution, Article 20 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo dated 16 December 2008 (hereinafter referred to as: the "Law") and Rule 56(1) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter referred to as: the "Rules of Procedure").

Proceedings before the Constitutional Court

6. The Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter referred to as: the "Court") on 14 October 2010 and requested the use of the Serbian language in his communications with the Court.

7. By Order of the President (No. GJR 104/10 dated 16 December 2010) Judge Ivan Čukalović was appointed as Judge Rapporteur. On the same date, by Order of the President No. KSH 104/10, Judges Almiro Rodrigues (presiding), Gjyljeta Mushkolaj and Iliriana Islami were appointed as Members of the Review Panel.

8. On 19 January 2011, the Constitutional Court informed the Municipal Court of Kamenica that a request for review of constitutionality of the aforementioned decisions and resolutions had been submitted by the Applicant.

9. On 2 February 2011, the Municipal Court of Kamenica delivered the entire case file to the Court.

10. By letter dated 4 April 2011, the Constitutional Court requested the Applicant to provide additional information with regard to the factual situation.

11. On the same date, the Constitutional Court asked additional information from the Kosovo Property Agency (hereinafter : "KPA") regarding the factual situation and certain evidence, in order for the Court to be able to properly adjudicate the case.

12. On 14 April 2011, the KPA submitted its response together with supporting documentation. It confirmed to the Court that the claims, submitted by the Applicant and his wife (Claims DS00636/DS200053) to the Directorate of Housing and Property Claims (DHPC), were ruled upon on 18 June 2005. The KPA further stated that the HPCC, by Decision HPCC/REC/66/2006 of 15 July 2006, upheld its initial decision of 18 June 2005 and approved the possession of the property by the Applicant. The KPA also submitted that the Applicant, based on the final decision of the HPCC, requested repossession of the property and the eviction of the occupant of the property, which the KPA did on 31 October 2006, while the keys were handed to the Applicant on 20 November 2006. The KPA finally informed the Court, that the case was closed on 20 February 2007, since the property was repossessed by the Applicant and that it had signed a Memorandum with the Kosovo Cadastral Office (hereinafter: "KCA") on 13 July 2009, one of the Articles stating that: "*KPA will provide to the KCA electronic copies of final decisions of the Housing Property Claims Commission in order to update the cadastral data".*

13. On 20 April 2011, the Applicant submitted his response to the Court's request for further information, together with supporting documentation.

Summary of the facts

14. On 24 February 1992, the enterprise "KARAČEVO" (hereinafter: "KARACEVO") offered the Applicant and his family temporary shelter in its management building, which, some time later, was converted into living space for two more families.

15. On 11 December 1992, the Applicant entered into a contract with "KARAČEVO" on the use of apartment No. 115 in the management building.

16. On 20 April 1993, the Applicant concluded a contract with "KARAČEVO" for the purchase of the apartment. The contract was certified at the Municipal Court and registered under number 413/93 on the same day and had attached to it a receipt in the amount of 4.509.981 dinars, representing the purchase price, which the Applicant had paid for the apartment.

17. The Applicant and his family lived in the purchased apartment up to July 1999.

18. On 5 July 1999, "KARAČEVO" sent a notification to the Applicant and his family that they were illegally residing in the apartment and had usurped public property. They were ordered to move out of the apartment within five days from the day of receipt of the notification. The Applicant and his family did so, apparently out of fear, whilst a third person moved into the apartment after their departure.

19. On 15 November 1999, UNMIK Regulation 1999/23 on the Establishment of the Housing and Property Directorate (HPD) and Housing and Property Claims Commission (HPCC) came into force, providing, inter alia in its Section 1.2, that "[…] *as an exception to the jurisdiction of the local courts, the Directorate shall receive and register the following categories of claims concerning residential property, including associated property: Claims by natural persons whose ownership were the owners, possessors or occupancy right holders of residential property prior to 24 May 1999 and who do not now enjoy possession of the property, and where the property has not voluntarily been transferred. The Directorate shall refer these claims to the Housing and HPCC for resolution or, if appropriate, seek to mediate such disputes and, if successful, refer them to the HPCC for resolution.* […]".

20. UNMIK Regulation 1999/23 further provided in its Section 2.7, that: " *Final decisions of the Commission are binding and*

enforceable, and are not subject to review by any other judicial or administrative authority in Kosovo".

21. On 13 July 2000, "KARAČEVO" filed a lawsuit with the Municipal Court of Kamenica against the Applicant, requesting the annulment of the contracts on the use and purchase of the apartment, signed between them in 1993.

22. On 7 September 2000, the Norwegian Refugee Council in Kraljevo informed the Municipal Court in Kamenica, that, at the request of the Applicant, it had forwarded his claim regarding the ownership of the apartment to the HPD and HPCC. It further held that, according to UNMIK Regulation 1999/23, property rights fell exclusively within the jurisdiction of the HPCC, whose decisions were binding and effective immediately and could, therefore, not be contested by any judicial or administrative instance as provided by Section 2.7 of the UNMIK Regulation. The Council, thus, requested the Municipal Court to immediately suspend any further proceedings in relation to the lawsuit, because of a lack of jurisdiction.

23. On 14 September 2000, the Applicant's lawyer submitted a reply to the lawsuit of "KARAČEVO" to the Municipal Court of Kamenica, claiming the validity of the contested purchase of the apartment, in particular, for the reason that the ownership right, acquired by the Applicant in 1993, was similar to the one of other employees of "KARACEVO", who had acquired their ownership rights regardless of their nationality, and could not be derogated from.

24. On 26 September 2000, the Municipal Court of Kamenica ruled on the lawsuit of "KARAČEVO", stating that there was no legal basis for the contested contracts at the time and that they were illegal, because "KARACEVO" was not the permanent owner of the claimed building and, thus, could not have alienated the ownership over it.

25. On 23 November 2000, the Applicant's lawyer appealed against this judgment to the District Court of Gjilan, inter alia, claiming that the Municipal Court had decided on a claim which did not

fall within its jurisdiction, contrary to UNMIK Regulation/1999/23 of 15 November 1999, since only the HPD and HPCC were competent to deal with the dispute and not the courts.

26. On 1 February 2001, the Applicant filed a claim (No. DS200053) under UNMIK Regulation/1999/23 with the HPD.

27. The District Court of Gjilan, by Judgment GŽ No. 10/2001 dated 23 April 2001, rejected the Applicant's appeal as ungrounded and confirmed the judgment of the Municipal Court of Kamenica, by basing its decision on the ruling of that court. In its decision, the District Court did not go into the issue raised by the Applicant in his appeal, that the Municipal Court had decided on his claim, although, according to UNMIK Regulation 1999/23, it was not competent to do so, since he had filed a claim with the HPD.

28. On 26 June 2001, the Applicant's lawyer filed a request for revision with the Supreme Court, which, by decision of 18 June 2002, rejected the revision as being out of time.

29. On 24 May 2002, the Applicant's wife filed a similar claim (No. DS006436) under UNMIK Regulation 1999/23 with the HPD in Nis.

30. On 28 June 2002, the Applicant's lawyer filed an appeal against the decision of the Supreme Court that the revision was out of time with the same court, attaching, as evidence, the service receipt containing the date on which the District Court's decision was served upon him. As a consequence, the Supreme Court accepted the appeal for consideration.

31. On 18 June 2004, the HPCC, by Decision HPCC/D/194/2005/C, ordered that, in respect of the 61 claimants (who included the Applicant and his wife) mentioned in the Order that:

1.The claimant or the property right holder, as the case may be, be given possession of the claimed property;

2. The respondent and any other person occupying the property vacate the same within 30 days of the delivery of this order; and

3. Should the respondent or any other person occupying the property fail to complay with the order within the time stated, they will be evicted from the property.

32. In the reasoning part of the Order, the HPCC held that it was satisfied that, inter alia, the claimant in each case had shown prima facie, on the basis of the evidence presented, that the claimant or the property right holder, as the case might be, had a property right in respect of the claimed property; that, where the respondent had presented a reply to the claim, the reply did not constitute a valid objection; and that the claimant in each case or the property right holder, as the case might be, was in uncontested possession of the property prior to 24 March 1999.

33. The HPCC further found that, as to claims DS200053/DS006436 [of the Applicant and his wife], the Respondents ["KARACEVO" and others] had not presented any valid defense to the Claimants' [the Applicant and his wife] claims, but had initiated a court proceeding to annul purchase contracts concluded between the Claimant [the Applicant] and the allocation holder ["KARACEVO"].

34. On 30 December 2004, the Supreme Court rejected the Applicant's request for revision in the case concerning the annulment of the purchase contract, initiated by "KARACEVO" on 13 July 2000, as ungrounded, stating that the District Court had correctly assessed the facts established by the Municipal Court and had sufficiently justified its decision. In its decision, the Supreme Court did not refer to the Applicant's argument that the District Court had ignored his submission that the Municipal Court had decided on a claim which, pursuant to UNMIK Regulation 1999/23 of 15 December 1999, did not fall within its jurisdiction, since only the HPD and HPCC were competent in the matter. It also did not mention the HPCC Order of 18 June 2004, referred to by the Applicant.

35. On 18 July 2005, the Registrar of the HPCC issued a Certified Decision confirming the HPCC decision regarding Claims DS200053/DS006436 of the Applicant and his wife, dated 18 June 2004.

36. By Decision No. HPCC/REC/66/2006 of 15 July 2006, the HPCC rejected the Reconsideration Request regarding Claims DS200053/DS006436, submitted by the occupant of the apartment, stating that:

"In Claims DS200053/DS006436 the Requesting Party [the occupant]*, who is an interesting party that did not participate in the initial claim, alleges that the claimed property was not residential. However, he does acknowledge that it was converted for residential use in 1991. As the evidence shows that the claimed property was legally converted into residential property, the case falls under the Commission's jurisdiction and, as the category C Claimant in first instance procedure proved a property right at least in the form of lawful possession over the claimed property, the reconsideration request stands to be rejected."*

37. On 4 September 2006, the individual decision of HPCC on Claims DS200053/DS006436 of the Applicant and his wife were certified by the HPCC's Registrar.

38. On 1 November 2006, UN-HABITAT (which was running the management of HPD and HPCC until mid 2002 before handing it over to UNMIK) handed the keys of the apartment, together with the Protocol for the hand-over, to the Applicant, who is apparently living there with his family ever since.

39. By letter of 7 May 2008, HPCC certified to the Applicant that its Decision HPCC/REC/66/2006 of 15 July 2006 was final and, in accordance with Article 2, Section 7 of UNMIK Regulation 1999/23, could not be subject to review by any court or before any administrative authority in Kosovo.

40. On 14 January 2009, the Applicant submitted to the Municipal Court in Kamenica a Request for Renewal of the Procedure, requesting it to annul its decision of 26 September 2000, by which it had declared the contract on the use and the contract on the purchase of the apartment null and void. He informed the Municipal Court that, as the owner of the apartment in Kamenica, he had submitted, through the Office of the Norwegian Refugee Council, a Claim with the HPD/HPCC under UNMIK Regulation 1999/23 and that, by Certified Decision of 28 July 2005, the HPCC had returned to him the possession over the apartment, while the person occupying the premise had been ordered to vacate the property within 30 days after notification. He further informed the Municipal Court that the Reconsideration Request by the occupant had been rejected by "Certified Decision on Reconsideration Request" of the HPCC of 4 September 2006, on the ground that the evidence had shown that the claimed property had been legally converted into residential property and, therefore fell under the HPCC's jurisdiction and that the Applicant had proved in the first instance procedure a property right at least in the form of lawful possession over the claimed property.

41. On 11 January 2010, the Municipal Court of Kamenica rejected, by Decision No. 36/2000, the Request for Renewal of the Procedure as being out of time. The Court stated that the Applicant had obtained new evidence on 15 September 2006, as he received the Certified Decision on Reconsideration No. DS200053&DS006436 of the second instance body of HPD, on 15 September 2006, whereas the first instance decision was delivered to him on 28 July 2005. In the opinion of that court, the proposal for renewal of the procedure, filed with the court on 14 January 2009, should have been submitted within 30 days from the date on which the party was able to provide new facts or evidence to the court, in accordance with Article 423(1) of the Law on Contested Procedure. The court further held that the Applicant received the decision of the first instance body of HPCC on 28 July 2005 and the decision of the second body of HPCC on 15 September 2006 and was, therefore, able to provide new evidence to the court as of 15 September 2006. Instead, the Applicant submitted the proposal for renewal of the procedure on 14 January 2009, that is more than two years after the deadline of 30 days had expired, which should be

counted from the date when the Applicant received the decisions. The Court, therefore, concluded that the Applicant's proposal for renewal of the procedure was submitted out of time and had to be rejected.

42. Thereupon, the Applicant filed an appeal with the District Court of Gjilan, stating that the Municipal Court had wrongly applied substantive law, when it did not consider UNMIK Regulation 1999/23, which provides that final decisions of the HPCC are binding and applicable and are not subject to review by any other judicial authority in Kosovo.

43. On 7 June 2010, the District Court of Gjilan, by Decision GŽ. No. 78/2010, rejected the appeal as ungrounded and confirmed the decision of the Municipal Court of Kamenica. The District Court held that, on 28 July 2005, the HPCC decided to return the possession of the claimed property to the Applicant, whereas the appeal filed by the occupant of the apartment was rejected by Certified Decision on Reconsideration Request of HPCC, stating that the Applicant is the owner of the property.

44. The District Court further stated that, as to the subsequent proposal of the Applicant to renew the procedure, the Municipal Court had concluded that the Applicant received the decision of the first instance body of the HPCC on 28 July 2005 and the decision of the second instance body of HPCC on 15 September 2006 and, therefore, found that the proposal for renewal of the procedure was out of time, since the Applicant failed to submit the proposal within 30 days from the date when the decision was delivered to him.

45. On 29 June 2010, Decision GZ. No. 78/2010 of the District Court of Gjilan was served upon the Applicant, but did not contain any advice on the legal remedy open to the Applicant to appeal this Decision. The Applicant explains that he has not filed an appeal with the Supreme Court against the decision of the District, because there was no instruction regarding a legal remedy contained in that decision and that he could not afford an attorney because of the costs, since the costs of his search for justice so far amounted to about 2000 Euro.

46. On 6 July 2010, the Applicant requested the Municipal Cadastre Office (hereinafter: MCO) in Kamenice/Kamenica to register his property rights of part of the building-apartment, based on the purchase contract and attached copies of the purchase and use contracts as well as the Certified Decision on Reconsideration Request of the HPCC and the Handover Protocol of the Keys of the apartment of 1 November 2006.

47. On 4 August 2010, MCO rejected the Applicant's request, whereupon the latter requested MCO, by letter of 9 August 2010 to reconsider his request on the basis of the information provided.

48. In its Decision No. 280/10 of 24 August 2010, MCO indicated that it had obtained the judicial history of the Applicant's case mentioned above from the Municipal Court, including the outcome of the Applicant's Request for Renewal of Procedure before the District Court of 29 June 2010 (Decision GZ. No. 78/2010). MCO was also informed by the KPA that the reconsideration requests regarding the Applicant's property had been dismissed, but that, apparently, the property was returned to the Applicant.

49. MCO held that, in view of Article 3.4(iii) ("the validity of the request or any of the supporting documents is in question") of Law No. 2002/ on the Establishment of an Immoveable Property Register) the Applicant's request for the registration of immovable property had been dismissed. It indicated that the Applicant was entitled to file an appeal with the Kosovo Cadastral Agency in Pristina within 30 days after having been notified of the present decision.

50. Also on 24 August 2010, the Applicant sent a letter to the Kosovo Property Agency (KPA), explaining the details of his case, including the fact that HPCC had certified his property rights of the apartment, that he had received the keys from HABITAT on 1 November 2006 and that he and his family was living there since. The Applicant further submitted that KARACEVO, from which he bought the apartment, was sold and that, thus, the Privatization Agency of Kosovo was administering it, which considered the decisions of the courts and of HPCC not-binding and invalid. He, therefore requested

the KPA to influence the MCO to implement and comply with the Law in order to protect his human and legal rights. The Applicant has apparently not received any reply so far.

51. On 21 September 2010, the Applicant filed an appeal with the Kosovo Cadastral Agency in Pristina, claiming that MCO had violated the provisions of the Law on General Administrative Procedure, when it dismissed his request for the registration of his property rights to the apartment concerned, because it had not considered nor had it provided reasons for refusing to execute the HPCC decision, which was final and applicable pursuant to Kosovo law, thereby wrongly applying the Law on Registration of Immoveable Property Rights. The Applicant requested the Kosovo Cadastral Agency to register the apartment in his name. The case is apparently still pending.

Applicant's allegations

52. The Applicant alleges that Judgments P. Posl. No. 36/2000 of the Municipal Court of Kamenica of 26 September 2000, GŽ No. 10/2001 of the District Court of Gjilan of 23 April 2001, Rev. No. 141/2003 of the Supreme Court in Pristina of 30 December 2004 and Decisions P. Posl. No. 36/2000 of the Municipal Court of Kamenica of 11 January 2010 and GŽ No. 10/2001 of the District Court of Gjilan of 7 June 2010 violated his right to enjoy his personal property and his right to legal certainty due to the existence of duality of the judicial and administrative decisions.

53. The Applicant also alleges that there is another apartment in the building owned by an employee of the same firm. The employee concluded a purchase contract under the same conditions as he had done, but no legal action had been undertaken against that employee. In the Applicant's opinion, the reason that legal action has only been undertaken against him is, that he is a Serb.

54. He further asks the Constitutional Court to confirm Decisions No. HPCC/D/194/2005/C of 18 June 2005 and No. HPCC/REC/66/2006 of 15 July 2006, issued by HABITAT, which ordered the return of the ownership of the property.

55. The Applicant further states that the apartment is located on socially owned land and that KARACEVO no longer exists as it was privatized; therefore, the Privatization Agency of Kosovo manages the land and neither recognizes his ownership over the apartment referred to in the court decisions, nor allows the Cadastral Agency to register the apartment as his own.

56. The Applicant expects another eviction from the apartment, although, in his view, the decisions of HPD are final and binding and, therefore, should be recognized. He claims that the above judgments violate his right to enjoy his personal property and his right to legal certainty.

Applicable law

57. The provisions referred to by the HPCC in its decisions are defined in the following legal instruments:

UNMIK Regulation No. 1999/23 on the Establishment of the Housing and Property Directorate and the Housing and Property Claims Commission:

Housing and Property Directorate

[...]
Section 1.2: "*As an exception to the jurisdiction of the local courts, the Directorate shall receive and register the following categories of claims concerning residential property including associated property*:

Claims by natural persons whose ownership, possession or occupancy rights to residential real property have been revoked subsequent to 23 March 1989 on the basis of legislation which is discriminatory in its application or intent;

Claims by natural persons who entered into transactions of residential real property on the basis of the free will of the parties subsequent to 23 Mrch 1989;

Claims by natural persons who were the owners, possessors or occupancy right holders of residential real property prior to 24 March 1999 and who do not now enjoy possession of the property, and where the property has not voluntarily been transferred."

The Directorate shall refer these claims to the Housing and Property Claims Commission for resolution or, if appropriate, seek to mediate such disputes and, if successful, refer them to the HPCC for resolution. [...]".

Section 2:

Housing and Property Claims Commission

2.1. *The Housing and Property Claims Commission (the "Commission") is an independent organ of the Directorate which shall settle private non-commercial disputes concerning residential property referred to it by the Directorate until the Special Representative of the Secretary-General determines that local courts are able to carry out the functions entrusted to the Commission.* [...]

2.7. *Final decisions of the Commission are binding and enforceable, and are not subject to review by any other judicial or administrative authority in Kosovo."*

UNMIK Regulation No. 2000/60 of 31 October 2000

[...]

Section 2.4: "*Any person who acquired the ownership of a property through an informal transaction based on the free will of the parties between 23 March 1989 and 13 October 1999 is entitled to an order from the Directorate or Commission for the registration of his/her ownership in the appropriate public record. Such an order does not affect any obligation to pay tax or charge in connection with the property or the property transaction.*"

Section 2.5: "*Any refugee or displaced person with a right to property has a right to return to the property, or to dispose of it in accordance with the law, subject to the present regulation.*"

Section 2.6: "*Any person with a property right on 24 March 1999, who has lost possession of that property and has not voluntarily disposed of the property right, is entitled to an order from the Commission for repossession of the property. The Commission shall not receive claims for compensation for damage to or destruction of property.*"

Assessment of the admissibility of the Referral

58. In order to be able to adjudicate the Applicant's Referral, the Constitutional Court needs first to examine, whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution, as further specified in the Law and the Rules of Procedure.

59. In this respect, the Court refers to Article 113.7 of the Constitution which provides as follows:

"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";

and to Article 47.2 of the Law, stipulating that:

"The individual may submit the referral in question only after he/she has exhausted all legal remedies provided by the law".

60. The Court recalls that a similar admissibility criterion is prescribed by Article 35 of the European Convention on Human Rights (the "ECHR").

61. In this respect, the Court wishes to emphasize that the rationale for the exhaustion rule is to afford the authorities concerned, including the courts, the opportunity to prevent or put right the alleged violation of the Constitution and that the legal order of thr country will provide an effective remedy for the violation of its provisions (see, mutatis mutandis, ECHR, Selmouni v. France, no. 25803/94. Decision of 28 July 1999). However, it is not necessary for the constitutional rights to be expressly raised in the proceedings concerned. As long as the issue was raised implicitly or in substance, the exhaustion of remedies requirement is satisfied (see, mutatis mutandis, ECHR, Azinas v. Cyprus, no. 56679/00, decision of 28 April 2004).

62. This Court applied the same reasoning, when it issued the Resolution on Inadmissibility in Case No. KI. 41/09, AAB-RIINVEST University L.L.C. vs. Government of the Republic of Kosovo, of 27 January 2010, and in Case No. KI. 73/09, Mimoza Kusari-Lila vs. The Central Election Commission, of 23 March 2010.

63. As to the present Referral, the Court notes that, on 15 July 2006, the HPCC rejected the Reconsideration Request, submitted by the Applicant's opposing party against the HPCC decision of 28 July 2005, by which the Applicant was given the possession of the claimed property. On 4 September 2006, the HPCC decision rejecting the Reconsideration Request was certified by the HPCC Registrar, whereupon, on 1 November 2006, UN-HABITAT handed the keys of the apartment, together with a hand-over Protocol, to the Applicant.

64. In the Court's view, the HPCC decision of 15 July 2006 must be considered as the final decision, which became res judicata, when it was certified by the HCPP Registrar on 4 September 2006, as was confirmed by the HPCC Letter of Confirmation to

the Applicant, dated 7 May 2008. This letter also stated that the procedures in connection with the Applicant's application had been submitted to the Directorate of Housing and Property Directorate in accordance with Section 1.2 of UNMIK Regulation 1999/23, and had been completed, while the remedies that were available to the parties in accordance with the provisions of UNMIK Regulation 2000/60 had been exhausted.

65. The letter further stated that Decision HPCC/REC/66/2006 was final and, in accordance with Section 2.7 of UNMIK Regulation 1999/23, could not be subject to review by any court or before any administrative authority in Kosovo.

66. In these circumstances, the Court concludes that the Applicant has exhausted all legal remedies available to him under applicable law.

Assessment of the merits of the Referral

67. As to the assessment of the merits of the present Referral, the Court notes that the applicable law at the time of the events, which are at the basis of the Applicant's complaint, was UNMIK Regulation No. 1999/23 on the Establishment of the Housing and Property Directorate [HPD] and the Housing and Property Claims Commission [HPCC] and UNMIK Regulation No. 2000/60 on Residential Property Claims and The Rules of Procedure and Evidence of the Housing and Property Directorate and the Housing and Property Claims Commission of 31 October 2000.

68. Section 1.2 of UNMIK Regulation 1999/23, inter alia, provides that "*As an exception to the jurisdiction of the local courts, the Directorate [HPD] shall receive and register the following categories of claims concerning residential property including*

associated property: [...] Claims by natural persons who were the owners, possessors or occupancy right holders of residential real property prior to 24 March 1999 and who do not now enjoy possession of the property, and where the property has not voluntarily been transferred".

69. Moreover, Section 2.5 of UNMIK Regulation 1999/23 stipulates that: "*As an exception to the jurisdiction of local courts, the Commission [HPCC] shall have exclusive jurisdiction to settle the categories of claims liste in Section 1.2 of the present Regulation [...], whereas its Section 2.7 determines that "Final decisions of the Commission are binding and enforceable, and are not subject to review by any other judicial or administrative authority in Kosovo*".

70. In this connection, the Court notes that, in Decision HPCC/REC/66/2006 of 15 July 2006, the HPCC found that "As the evidence shows that the claimed property was legally converted into residential property, the case falls under the Commission's [HPCC] jurisdiction [...]". In the Court's opinion, this means that the property claimed by the Applicant was covered by UNMIK Regulation 1999/23 since its entry into force on 15 November 1999 and that local courts were no longer competent to deal with property claims falling under Section 1.2 of UNMIK Regulation 1999/23 like the one of the Applicant.

71. In this respect, the Court finds that, on 13 July 2000 when UNMIK Regulation 1999/23 had indeed entered into force, KARACEVO filed a lawsuit with the Municipal Court in Kamenica against the Applicant, who had left the premises at the order of KARACEVO, requesting the court to annul the contracts on the use and purchase of the apartment, signed between the Applicant and KARACEVO on 20 April 1993.

72. The Court further notes that, on 7 September 2000, the Norwegian Refugee Council in Kraljevo informed the Municipal Court in Kamenica that, at the request of the Applicant, it had forwarded his claim regarding the ownership of the apartment to the newly established HPD and HPCC and that, pursuant to UNMIK Regulation 1999/23, the issue should fall under the exclusive jurisdiction of the HPCC. The Council, therefore, requested the Municipal Court to immediately suspend any further proceedings in relation to the lawsuit because of lack of jurisdiction.

73. The Court also observes that the Municipal Court upheld KARACEVO's lawsuit without referring to UNMIK Regulation 1999/23 and that not only the District Court rejected the Applicant's appeal on 23 April 2001 without any reference to his arguments relating to UNMIK Regulation 1999/23, but that also the Supreme Court ignored, in its decision of 30 December 2004, the Applicant's information that the HPCC had ruled, by Order HPCC/D/194/2005/C of 18 June 2004, that he be given possession of the property. As mentioned above, the HPCC Order was confirmed by HPCC Decision No. HPCC/REC/66/2006 of 15 July 2006, which, pursuant to Section 2.7 of UNMIK Regulation 1999/23, was final and became *res judicata* and, thus, enforceable on 4 September 2006. As a result, UN Habitat handed the keys of the apartment to the Applicant, together with the Protocol for the hand-over, on 1 November 2006.

74. Furthermore, the Court observes that, in its letter of 7 May 2008, mentioned above, the HPCC certified to the Applicant that its Decision HPCC/REC/66/2006 of 15 July 2006 was final and, in accordance with Article 2, Section 7 of UNMIK Regulation 1999/23, could not be subject to review by any court or before any administrative authority in Kosovo.

75. In the Court's opinion, this can only mean that, since the HPCC's finding of 15 July 2006 became *res judicata* on 4 September 2006, the Applicant enjoyed the right to possession of the property, as guaranteed by Article 46 of the Constitution and Article 1 of Protocol 1 to the ECHR, and that any interference of this right by any court or any administrative would have to be considered as a violation of that right.

76. However, so far, the Applicant's attempts to have the HPCC's decision implemented by the courts and the competent administrative authorities have remained unsuccessful and have created a situation of legal uncertainty for the Applicant and his rights under the Constitution and the ECHR, even while he and his family are presently occupying the property.

77. In this connection, the Court refers to the Stasbourg case law under Article 6 [Fair Trial] ECHR, where the ECtHR has held, inter alia, that the competent authorities are under a positive obligation to organize a system for enforcement of decisions that is effective both in law and in practice and ensures their enforcement without undue delay (see, for instance, Pecevi v. Former Yugoslav Republic of Macedonia, no. 21839/03, 6 November 2008).

78. It is true that, in the present case, a Memorandum was signed between the Kosovo Property Agency (KPA) and the Kosovo Cadastral Office (KCO) of 13 July 2009, stipulating, inter alia, that " *KPA will provide to the KCO electronic copies of final decisions of the Housing and Property Claims Commissions in order to update the cadastral data*", but the fact remains that, even six years after the HPCC's decision of 15 July 2006, the Applicant's right to possession of the property concerned has still not been entered into the appropriate data base of the Kosovo Cadastral Office.

79. In these circumstances, the Court concludes that the courts as well as the administrative authorities concerned were held to take due account of the proceedings under UNMIK Regulation 1999/23 before the HPD and HPCC, in which the Applicant was involved, and to enforce their decisions.

FOR THESE REASONS

The Constitutional Court of Kosovo, in its session of 13 December 2011, unanimously,

DECIDES

I. TO DECLARE the Referral Admissible.

II. HOLDS that there has been a violation of Article 46 [Protection of Property] of the Constitution and Article 1 [Right to Property] of Protocol 1 of the European Convention on Human Rights and Fundamental Freedoms.

III. REMINDS the competent authorities of their obligations under Rule 63 [Enforcement of Decisions] of the Court's Rules of Procedure.

IV. This Judgment shall be notified to the Parties and to the courts concerned as well as to the Kosovo Property Agency and the Kosovo Cadastral Office.

V. In accordance with Article 20.4 of the Law, this Judgment shall be published in the Official Gazette.

VI. This Judgment is effective immediately and may be subject to editorial revision.

Judge Rapporteur **President of the Constitutional Court**

Prof. Dr. Ivan Čukalović Prof. Dr. Enver Hasani

KI 08/11 dated 10 May 2012 - Malush Sopa, Sedat Kuqi, Fazli Morina, Rrahman Kabashi and Liman Gashi V/ Unknown Public Authority

Case KI 08/11, decision dated 24 April 2012.
Keywords: Privatization Agency of Kosovo, violation of constitutional rights and freedoms, Special Chamber of the Supreme Court of Kosovo, individual referral, non-exhaustion of legal remedies, principle of subsidiarity, legal person.

The applicanst filed the referral pursuant to Article 113.7 and 21.4 of the Constitution of Kosovo, thereby claiming that their constitutional rights were violated by the decision of the Special Chamber of the Supreme Court of Kosovo, which upheld the decision of the Privatization Agency of Kosovo on privatization of the socially owned enterprise "Suhareka" in Suhareka. The Applicants claimed that the Special Chamber of the Supreme Court of Kosovo had violated their rights and freedoms guaranteed, *inter alia*, by Articles 23, 24, 31, 32, 44, 53, 54, 84.6, 102, 103, 104, and 119 of the Constitution of Kosovo.

The Court found that the referral of applicant was inadmissible, pursuant to the rule 36 of the Rules of Procedure, due to the fact that the Applicants had not, inter alia, observed the principle of subsidiarity, which means sequenced exhaustion of legal remedies. The Court also argued further by noting that the Applicants had not clarified the rights and freedoms they alleged to have been violated, and what was the concrete act of a public authority they dispute. Quoting the decision of the ECtHR, *Scordino v. Italy,* the Court further argued that the Applicants had failed in substantiating their allegations on violation of constitutional rights and freedoms. Due to the reasons provided above, the Court decided to find the referral of Applicant as inadmissible.

Pristine, 24 April 2012
Ref. No.: RK223/12

RESOLUTION ON INADMISSIBILITY

in

Case No. KI 08-11

Applicant

Malush Sopa, Sedat Kuqi, Fazli Morina, Rrahman Kabashi and Liman Gashi

V/

Unknown Public Authority

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Enver Hasani, President
Kadri Kryeziu, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Ivan Čukalović, Judge
Gjyljeta Mushkolaj, Judge and
Iliriana Islami, Judge

Applicants

1. The Applicants are: Malush Sopa, in the capacity of President of the Independent Union of NBI "Suhareka" in Suhareke; Sedat Kuqi, former Director of NBI "Suhareka" in Suhareke; Fazli Morina, director of Viniculture; Rrahman Kabashi, director of winery from village of Mohlan and Liman Gashi, commercial director from Suhareka.

2. The Applicants filed with the Constitutional Court a set of documents which they called a "Notice before action". They submitted the authorization to represent eighty (80) former workers of "Suhareka".

3. The "Constitutional Court of Kosovo – President" is among the 12 (twelve) addresses of public authorities to which they sent such a "Notice before action".

Challenged decisions

4. The subject of that Memo is: "Notice before Action for Procrastination of the case SCC-09-0213 dated 31/01/2011 in accordance with the lawsuit of the 16th of November 2009 and the appeal No. 474 dated 15/02/2011" and is related with purchasing NBI "Suhareka" LLC, in Suhareka.

5. The Applicants claim that "*On 19 November 2009, the Independent Trade Union of AIE "Suhareka" in Suhareka through the representatives authorized by the Authorization dated 23 October 2009 has sued: 1) Kosovo privatization*

Agency in Prishtina; 2) QMI- Italian Center for Furniture l.l.c with its residence in Suhodoll of Lipjan municipality;3) Gruppo Vinicolo Fantinel Spa from Italy, which Lawsuit can be found on the case SCC-09-0213".

6. The Applicants further point out that "*On 31 January 2011, the Special Chamber of the Supreme Court of Kosovo (...) issued (...) Decision by ruling down our Lawsuit as unacceptable and without any legal basis, although in the legal case SCC-09-0213 all the facts and evidences were attached along with secret documents which have been signed on 28 November 2006 in Treviso of Italy for fraud and conspiracy against our collective".*

7. Finally, the Applicants state that "*The Independent Trade Union of AIE "Suhareka" in Suhareka on 15 February 2011 within the legal deadline has presented the Complaint No.474 in the Board of Complaints and Appeals of the Special Chamber of the Supreme Court of Kosovo in Prishtina and has informed all local and International missions in Kosovo for the (...) Decision SCC-019-0213 dated on 31 January 2011 against our collective in contrary to the article 346 of KCC and the article 102, paragraph 2, 3 and 4 of the Constitution of the republic of Kosovo (...)".*

Subject matter

8. The Applicants filed that "Notice before action" with the Constitutional Court, among other numerous legal provisions, "pursuant to Articles 23[Human Dignity]; 24[Equality Before the Law]; 31[Right to Fair and Impartial Trial]; 32[Right to Legal Remedies]; 44[Freedom of Association]; 53[Interpretation of Human Rights Provisions]; 54[Judicial Protection of Rights]; 84.6[Competencies of the President]; 102[General Principles of the Judicial System]; 103[Organization and Jurisdiction of Courts]; 104[Appointment and Removal of Judges]; 119[General Principles] of the Constitution of the Republic of Kosovo".

Legal basis

9. Articles 113. (7) and 21. (4) of the Constitution of the Republic of Kosovo (hereinafter, the "Constitution"), Articles 20, 22(7) and 22(8) of Law No.03/L-121 on the Constitutional Court of the Republic of Kosovo of 15 January 2009 (hereinafter, the "Law") and Rule 56 (2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter, the "Rules of Procedure").

Proceedings before the Court

10. On 26 January 2011, the Applicants submitted the abovementioned "Notice before action".

11. On 14 February 2011, the President appointed Judge Almiro Rodrigues as Judge Rapporteur and a Review Panel

composed of Judges Altay Suroy (Presiding), Kadri Kryeziu and Enver Hasani.

12. On 16 February 2011, the Applicants filed additional documents with the Court and also addressed the said additional documents to 12 different authorities in the Republic of Kosovo.

13. On 1 June 2011, the Applicants filed additional documents with the Court and again addressed the said documents to 12 different authorities in the Republic of Kosovo.

14. On 26 July 2011, the Servicing Enterprise "Ekspertimi" filed with the Court a document called "Financial Opinion" in relation to the Applicant's Referral. On the same date, the said enterprise addressed the said document to 11 different authorities in the Republic of Kosovo.

15. On 28 July 2011, the Servicing Enterprise "Ekspertimi" filed with the Court a letter explaining few technical errors in the document called "Financial Opinion" which they filed with the Court on 26 July 2011.

16. On 2 August 2011, the Applicants filed additional documents with the Court, addressed the said documents to 14 different authorities in the Republic of Kosovo.

17. On 2 August 2011, Servicing Enterprise "Ekspertimi" replied to questions of the Court dated 26 July 2011, regarding its capacity to file before the Court the "Financial Opinion" pertinent to the Applicant's Referral.

18. On 12 August 2011, the Applicants were notified about the registration of the "Notice before action" (Referral). On the same date, the Referral was communicated to the Kosovo Privatization Agency, the Special Chamber of the Supreme Court of Kosovo, QMI- Italian Center for Furniture and Gruppo Vinicolo Fantinel Spa, who have not replied to date.

19. On 17 August 2011, the Applicants filed additional documents with the Court. The said documents were addressed to 16 different authorities in the Republic of Kosovo.

20. On 5 September 2011, the Applicants filed additional documents with the Court and, again, the same documents were addressed to 18 different authorities in the Republic of Kosovo.

21. On 14 September 2011, the Applicants were requested to clarify and complete some aspects of the Referral, namely in relation to: the personal representative's data; the factual details on the act(s) of public authorities they are complaining about; the exact court or public authority the Applicants claim that with their actions or omissions have violated their rights and freedoms guaranteed by the Constitution; rights and

freedoms guaranteed by the constitution they claim to have been violated; the complaint under the Constitution, indicating which Article(s) of the Constitution have been allegedly violated by public and explaining why the act(s) of this/these authority(ies) amount to a violation under the Constitution; the court or the authority final decision, if any; and what they want to achieve through the referral to the Court.

22. On 20 September 2011, the Applicants filed more or less the same documents, which were sent to 19 different authorities in the Republic of Kosovo.

23. On 4 October 2011, the Applicants replied to the Court questions filing the same set of documents, but now including an agreement of 27 August 2007 struck between, on one side, Kosovo Trust Agency (KTA), and, on the other side, QMI-Italian Center for Furniture and Gruppo Vinicolo Fantinel Spa.

24. On 23 November 2011, the Review Panel considered the Report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

25. On 19 June 2006, the Municipal Court in Suhareka issued an *assertion- verdict* C.nr.217/05 based on the lawsuit of the Applicant against the respondent AIE – SOE "Suhareka" in

Suhareka duly represented with the power of attorney by Nazim Elshani, a lawyer, regarding the compensation of personal income of the workers for the period 1991-1998, which held the following:

"*Is APPROVED the lawsuit and request-claim of the workers of the Al E "SUHAREKA" in Suhareke, according to the register 11.11.2003, which can be found in the documents of the proceedings starting from 1, worker Sadik Ahmeti until 186 the worker Muhamet Elshani against the respondents AlE "Suhareka" in Suhareke.*

Respondent AlE "Suhareka" in Suhareka is OBLIGED that to all workers according to the register dated on 11.11.2003, which can be found at the documents of this case starting from 1, worker Sadik Ahmeti until the ordinal number 186, worker Muhamet Elshani, to pay the incomes according to the record of the workers and special Decisions of the Workers Council, to each one of the workers individually, as foreseen in the record, and the total amount of all workers according to the register of 11.11.2003, signed by the commission is 750.087,00 Euros, in general amount without interest."

This Verdict can be executed in the moment of privatization of AlE "Suhareka" in Suhareke., to realize this legal right".

26. In the rationale of the same *assertion-verdict*, the Municipal Court in Suhareka stated the following:

> "*The court based on assertions of the representatives of the workers and representatives of AIE" Suhareka" in Suhareke, and that for this case been informed also the Kosovo Trust Agency decided to approve the Lawsuit completely and to issue a Verdict based on assertion 331 of LPC".*

27. The Kosovo Trust Agency (hereinafter, "KTA") in the year 2006-2007 during the 19-th wave of privatization by special spin-off declared the QMI-Italian Center for Furniture with residence in Lipjan and Gruppo Vinicolo Fantinel Spa with residence in Spilimbergo (Pordenone), in Italy, as provisional winners of the privatization tender.

28. On 16 November 2009, the Applicant filed a claim with the Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency Related Matters (hereinafter, "SCSC") against respondents Privatization Agency Kosovo, QMI-Italian Center for Furniture with residence in Lipjan and Gruppo Vinicolo Fantinel Spa with residence in Spilimbergo (Pordenone) Italy, thereby seeking the annulment of the privatization of SOE "Suhareka" alleging that the provisional winner conspired with Kosovo Privatization Agency (hereinafter, "PAK") as the seller.

29. On 21 January 2010 and 23 February 2010, the SCSC issued order instructing the Applicant about the necessity of translations and also that the Trade Union has to be represented by a lawyer in front of the SCSC.

30. On 19 March 2010, the Applicant submitted the translation of the claim to the SCSC. The Applicant sought annulment of the privatization of SOE "Suhareka", alleging that the provisional winner of the privatization tender conspired with Kosovo Privatization Agency as the seller. On 30 July 2010, the Applicant submitted further documents to the SCSC emphasizing the possible criminal relevance of the case.

31. On 4 August 2010, the SCSC once again issued an order instructing the Applicant to submit a power of attorney and an instrument or instruments constituting the legal person (trade union) pursuant to Sections 24.1 and 25.4 of UNMIK AD 2008/6. On the same day, the SCSC addressed the Special Prosecution Office of the Republic of Kosovo, inquiring whether there was a criminal investigation linked to the allegations of the Applicant. The SCSC also addressed the Municipal Court of Suhareke /Suva Reka in order to obtain a copy of the case file C.nr 233/2009 mentioned in the claim.

32. On 12 August 2010, the Municipal Court of Suhareke /Suva Reka submitted the required file, wherein the said Municipal Court declared itself as incompetent and instructed the Applicant that the SCSC has jurisdiction over the case.

33. On 25 August 2010, the Applicant submitted further documents to the SCSC supplementing his claim. On 23 September 2010, the Applicant submitted additional documents to the SCSC. In none of those submissions, the Applicant attached the documents required by the SCSC.

34. Also on 25 August 2010, the Special Prosecution Office of the Republic of Kosovo confirmed to the SCSC that they are interviewing the Applicant but could not confirm the existence of an ongoing investigation.

35. On 24 September 2010, the SCSC once again ordered the Applicant to submit a power of attorney and an instrument or instruments constituting the legal person (trade union) as required by Section 25.4 of UNMIK AD 2008/6. The SCSC gave a detailed explanation in the order also warning the Applicant that failure to comply with the order will result in the rejection of the claim on the grounds of inadmissibility.

36. Within its appeal of 11 October 2010 against the said order, supplemented on 23 November 2010, the Applicant requested to *"exclude from the ruling of this case the EULEX Judge Esma Erterzi because of her unilateral behaviour when she gave the illegal, anti-constitutional and discriminating decision and tricking our collective of 237 workers according to the legal dispositions*", thereby referring to its arguments

in the appeal that it should be allowed to represent itself, and that it is not going to "*accept any lawyer from anyone*".

37. On 23 November 2010, "the recusal request" of the Applicant was rejected as ungrounded with the decision of the President of the SCSC, numbered AGJ-2010-132. However, the appeal proceedings against the order of the SCSC Judge Rapporteur, dated 24 September 2010, are still pending. Nonetheless, the Trial Panel considers that the appeal against the order of the judge in charge does not hinder the Trial Panel to render a decision on the admissibility of the claim.

38. On 31 January 2011, the SCSC (decision SCC-09-0213) dismissed the Applicant's claim on annulling the privatization of SOE "Suhareka" as inadmissible. The SCSC in the said decision provided the following legal advice for the Applicant:

"*Since the Special Chamber did not render a Decision on the merits of the claim the Claimant may file a completed or corrected claim pursuant to the UNMIK Regulations and UNMIK Administrative Direction of 2008/6".*

"*Pursuant to Section 9.5 of UNMIK Regulation 2008/4 an appeal against this decision can be submitted in writing to the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency Related Matters within 30 (thirty) days from the receipt of this decision*".

Assessment of the admissibility

39. That so called "Notice before action" which includes, more or less, the same documents filed in different dates and sent to different authorities does not appear as a Referral legal format as designed for complaining against violation of protected constitutional rights by the public authorities, which is the main working subject of the Constitutional Court.

40. On the contrary, the Applicants simultaneously and parallelly gave "notice before action", sending the same information to twelve/nineteen different institutions and authorities.

41. Thus, having in mind the legal nature and scope of the Constitutional Court, the "Notice before action" would not fall under the preliminary consideration of the Court and shouldn't have been registered at all; nevertheless, the Court will take it for the sake of pedagogical purposes.

42. Article 113. (1 and 7) of the Constitution establishes the general frame of legal requirements for admissibility. It provides:

"1. The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties.

(...)

7 Individuals are authorized to refer violations by public authorities of their individual rights and freedoms

guaranteed by the Constitution, but only after exhaustion of all legal remedies provided by law."

43. Those admissibility requirements are further developed in the Law and the Rules of Procedure, which in addition specify, among others: complying with a prescribed deadline; including a procedural and substantive justification of the referral, with a succinct statement of facts and accurate clarification of the rights that have been violated; indicating the concrete act of public authority that is subject to challenge and the relief sought; and attaching the necessary supporting information and documents.

44. The Applicants are acting not as individuals but as representatives of legal persons. Article 21 (4) of the Constitution provides that *"fundamental rights and freedoms set forth in the Constitution are also valid for legal persons to the extent applicable"*. Thus, the Applicants are entitled to submit a constitutional complaint. (*See Resolution in Case No. KI. 41/09, AAB-RIINVEST University L.L.C., Pristina, versus Government of the Republic of Kosovo, paragraph 14).*

45. However, this means that the Applicants are equally under the obligation to exhaust all legal remedies provided by law, as stipulated by Article 113.(7) for individuals.

46. The purpose of the exhaustion rule is allowing the opportunity to the public authorities, including the regular courts, of preventing or settling alleged violations of the Constitution. The exhaustion rule is operatively intertwined with the subsidiary character of the constitutional justice procedural frame work.(*See Selmouni v. France [GC], § 74; Kudła v. Poland [GC], § 152; Andrášik and Others v. Slovakia (dec.).*

47. The principle of subsidiarity requires that the Applicants exhaust all procedural possibilities in the regular proceedings, either administrative or judicial, in order to prevent the violation of the constitution or, if any, to remedy such violation of a fundamental right. Thus, Applicants are liable to have their case declared inadmissible by the Constitutional Court, when failing to avail themselves of the regular proceedings or failing to report a violation of the Constitution in the regular proceedings. That failure shall be understood as a waiver of the right to object the violation and complain. (*See Resolution, in Case No. KI. 07/09, Demë KURBOGAJ and Besnik KURBOGAJ, Review of Supreme Court Judgment Pkl.nr. 61/07 of 24 November 2008, paragraph 18*).

48. The Applicants, in the instant case, acted simultaneously and parallelly, which is completely against the successive and step by step nature of the exhaustion rule. Thus, they showed not having exhausted all the remedies provided by the regular legal system.

49. Therefore, the Court, taking into account all the above, should conclude that the so called referral is manifestly to be rejected as inadmissible.

50. On the other side, Article 48 of the Law on Constitutional Court establishes:

"The applicant of the request is obliged to mention and clearly define which rights and freedoms have been violated and which relevant Act of the public authority is also contested".

51. The Applicants also failed to specify which rights and freedoms have been violated and which public authority act they are contesting. They do not disclose any appearance of a violation of the rights guaranteed by the Constitution.

52. Moreover, the Applicants neither have substantiate a case, where they consider themselves as victims of a violation of the Constitution (See *Scordino v. Italy (no. 1)* [GC], § 179.), nor they have attached the necessary supporting information and documents, nor they have indicated the relief sought.

53. In fact, the proceedings before the Constitutional Court are adversarial in nature. It is therefore for the parties to substantiate their factual arguments (by providing the Court with the necessary factual evidence) and also their legal arguments (explaining why and how, in their view, the Constitution provisions relied on have or have not been breached). The Court is responsible for establishing the facts; it is up to the parties to provide active assistance by supplying

it with necessary supporting information and relevant documents.

54. Bearing all the foregoing in mind, it is not up to the Court to guess what the intention of the Applicants is or to build the case on behalf of the Applicants. On the contrary, under Article 113. (1) of the Constitution, it is up to the Applicants to refer the matter to the Court "in a legal manner" and comply with all requirements on admissibility of a referral.

55. In sum, the Court considers that the abovementioned "Notice before action" does not reach the minimum threshold to be considered a "legal manner" of referring the matter to the Court.

56. The way the "Notice before action" has been filed could be seen, in a strict approach, as an abuse of the right to complain. The European Court of Human Rights established that *"any conduct of an applicant that is manifestly contrary to the purpose of the right of individual application as provided for in the Convention and impedes the proper functioning of the Court or the proper conduct of the proceedings before it constitutes an abuse of the right of application"*. (See *Mirolubovs and Others v. Latvia**, §§ 62 and 65).

57. The Constitutional Court is bound by Article 53 [Interpretation of Human Rights Provisions] of the Constitution which establishes that "Human rights and fundamental freedoms guaranteed by this Constitution shall be interpreted consistent with the court decisions of the European Court of Human Rights".

58. However, the Court considers that, at this stage of development of the constitutional case law in Kosovo, it is not advisable to adopt such a strict approach; however, it is important for the Applicants to be aware of, as it looks like the Applicants misapprehended the role of the Constitutional Court and the nature of the constitutional justice legal working frame as established by the Constitution, the Law and the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court pursuant to Article 113.(7) of the Constitution and Rule 36 of the Rules, on 23 November 2011, by MAJORITY,

DECIDES

I. TO REJECT the Referral as inadmissible;

II. This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20 (4) of the Law; and

III. This Decision is effective immediately.

Judge Rapporteur **President of the Constitutional Court**

Almiro Rodrigues Prof. Dr. Enver Hasani

KI 56/11 dated 10 May 2012- Constitutional Review of the Judgment of the Supreme Court of Kosovo Ae.Nr.104/2009, dated 21 September 2010

Case KI 56/11, decision dated March 2012
Keywords: Individual referral, assessment of constitutionality of Supreme Court judgment

The Applicant filed the referral in accordance with Article 113.7 and 21.4 of the Constitution, Articles 20, 22.7 and 22.8 of the Law no. 03/L-121 on the Constitutional Court of the Republic of Kosovo, on 15 January 2009.
On 26 April 2011, the Applicant filed the referral with the Constitutional Court of the Republic of Kosovo.
On 28 April 2011, the President of the Court appointed Judge Almiro Rodrigues as Reporting Judge, and the Review Panel composed of: Altay Suroy (Presiding), Ivan Čukalović and Kadri Kryeziu.
The Court, on 6 December 2011, demanded from the District Commercial Court in Prishtina to obtain information on the date of service of the Supreme Court judgment to the applicant.
The District Commercial Court in Prishtina, on 27 June 2008, rendered a judgment allowing execution of case in which the applicant was claimant.
The applicant filed a complaint against this judgment on 16 January 2009. The District Commercial Court quashed the judgment allowing execution, of 27 June 2008, thereby annulling the obligation of the applicant to pay the debt principal, interests and procedural costs.
The applicant, in February 2009, filed a claim for restoration to initial state.
The District Commercial Court in Prishtina, on 12 May 2009, decided to "REJECT the claim of the claimant for restoration to initial state as ungrounded".
The applicant further filed a complaint with the Supreme Court.
The Supreme Court of Kosovo, on 21 September 2010, decided to "reject the complaint" [of the applicant].
Upon the referral of the Applicant, the Constitutional Court wishes to remind all that according to the Constitution, it is not a court of appeal, or a court of fourth instance, in reviewing decisions rendered by regular courts. It is the duty of regular courts to interpret the law and apply relevant procedural rules and material law.

The Applicant's referral does not claim that the Supreme Court acted in an arbitrary or otherwise improper manner. It is on the Constitutional Court to substitute its own assessment of facts with the assessment of regular courts, and as a matter of principle, it is on the regular courts to assess the evidence before them.
Pursuant to Article 113, paragraph 7 of the Constitution, and Rule 36 of the Rules of Procedure, the Constitutional Court unanimously decided to reject the referral as inadmissible.

Pristine, 24 April 2012

Ref. No.:RK222 /12

RESOLUTION ON INADMISSIBILITY

in

Case No. KI 56/11

Applicant

NP-Media Print

Constitutional Review of
the Judgment of the Supreme Court of Kosovo
Ae.Nr.104/2009,
dated 21 September 2010

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Enver Hasani, President
Kadri Kryeziu, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Ivan Čukalović, Judge
Gjyljeta Mushkolaj, Judge and
Iliriana Islami, Judge.

Applicant

1. The Applicant is a private enterprise "NP-Media Print" from Pristina, represented by a lawyer Teki Bokshi from Gjakova.

Challenged decision

2. The Applicant challenges the decision of the Supreme Court of Kosovo Ae.Nr.104/2009, dated 21 September 2010.

3. The Applicant alleges that there was a violation of Article 21 (general human rights principals), Article 22 (direct applicability of international agreements and instruments) and Article 53 (human rights and fundamental freedoms guaranteed by the Constitution are to be interpreted consistent with the court decisions of the European Court of Human Rights) of the Constitution of the Republic of Kosovo (hereinafter, the "Constitution"). The Applicant further alleges that there has been a violation of Article 6 of the European Convention on Human Rights (hereinafter, the "Convention") as well as Article 1 Protocol No. 1 to the Convention.

Legal Basis

4. The Referral is based on Article 113 (7) of the Constitution, Articles 46, 47, 48 and 49 of Law No. 03/L-121 on the

Constitutional Court of the Republic of Kosovo (hereinafter, the "Law"), and Rule 56 (2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter, the "Rules").

Proceedings before the Court

5. On 26 April 2011, the Applicant filed a referral with the Constitutional Court of Kosovo (hereinafter, the "Court").

6. On 28 April 2011, the President appointed Judge Almiro Rodrigues as Judge Rapporteur and a Review Panel composed of Judges Altay Suroy (Presiding), Ivan Čukalović and Kadri Kryeziu.

7. On 6 December 2011, the Court requested to the District Commercial Court Pristina information on the date of service of the Supreme Court judgment on the Applicant. On 13 December 2011, the District Commercial Court responded that the District Commercial Court attempted to serve the judgment on the Applicant on two separate occasions without success. The main reason for the inability to serve the judgment was the death of the Applicant's then representative, Leke Vuksani. On 13 March 2011, Teki Bokshi became the authorised representative of the Applicant and then the District Commercial Court provided him with access to the court file.

8. On 16 March 2012, the Review Panel considered the Report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

9. On 27 June 2008, the District Commercial Court in Pristine delivered a judgment for permission of an execution in the case E No 260/08, where the Applicant was the Claimant.

10. The Applicant filed an appeal against that judgment and the District Commercial Court scheduled a session to hear the matter on 16 January 2009.

11. On 16 January 2009, the Applicant's representative at the time, Leke Vuksani, though invited in the regular manner, he failed to attend that session without justifying his absence.

12. On that same date of 16 January 2009, the District Commercial Court, in the case II.C.No. 290/2008, annulled the judgment on permission of execution E.No 260/08, dated 27 June 2008, and thereby suppressing entirely the obligation for the principal debt, interest and procedure expenses.

13. On 2 February 2009, Leke Vuksani filed a motion requesting "the permission to return to previous situation due to his absence from the session dated 16 January 2009, attaching to the motion only a report from the specialist doctor".

14. On 12 May 2009, the District Commercial Court, in the same case II.C.No 290/2008, decided "TO DISMISS the Claimant's authorized representative motion, MP-MEDIA PRINT of Prishtina for return to previous situation, as not founded", because the representative did not comply with article 130 (4) of the Law on Contested Procedure (hereinafter, the "LCP") which provides:

If the return to previous situation is requested due to failure to complete the procedural action within the prescribed period of time, the requestor is bound to attach the written action which failed to be completed on time.

15. The Applicant filed an appeal with the Supreme Court against that Judgment of the District Commercial Court.

16. On 21 September 2010, the Supreme Court of Kosovo, by judgment Ae.Nr.104/2009, decided "to dismiss the [Applicant's] appeal as not founded, and to uphold the Judgment of the District Commercial Court in Prishtina, C.No. 290/2008, date 16.01.2009", by which the judgment on permission of execution E.No. 260/2008 has been annulled.

17. The Supreme Court considered that the "the first instance court has rightly applied provisions of the contest procedure from article 130.4 of the LCP". The Supreme Court held that the Applicant's representative did not meet the conditions

stipulated in article 130 (4) in order to substantiate a return to previous situation because illness did not justify the absence of counsel from a court session.

Applicant's allegations

18. The Applicant claims that the circumstance where counsel is absent from a court session is foreseen in article 129 (1) of the LCP which provides that:

When the party does not take part in the proceeding or misses the due date for completion of any procedural action and due to this it loses the right to complete the procedural action bound to the prescribed period of time, the court may permit this party to complete this action with delay if there are reasonable circumstances which cannot be determined or avoided.

19. The Applicant alleges violations of Article 21 of the Constitution, which provides for general human rights principles and Article 22 of the Constitution, which guarantees the direct applicability of international agreements and instruments, especially Article 6 of the Convention, because the judgment II.C.No 290/2008 of District Commercial Court dated 12 May 2009 was "not based on an objective reality".

20. The Applicant also alleges that there has been a violation of Article 53 of the Constitution which provides that human rights and fundamental freedoms guaranteed by the Constitution shall be interpreted consistent with the court decisions of the European Court of Human Rights. In this regard, the Applicant believes that the judgments of the District Commercial Court and the Supreme Court were "absolutely unfair".

Assessment of admissibility

21. In order to be able to adjudicate the Applicant's Referral, the Court needs first to examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution as further specified in the Law and the Rules of Procedure.

22. Article 49 (Deadlines) of the Law, provides that:

The referral should be submitted within a period of four (4) months. The deadline shall be counted from the day upon which the claimant has been served with a court decision. In all other cases, the deadline shall be counted from the day when the decision or act is publicly announced.

23. The Applicant claims that the decision of the Supreme Court dated 21 September 2010 was served on him on 6 April 2011 and for that reason he could have filed the Referral with the Constitutional Court only on 26 April 2011.

24. However, he has not supplied the Court with a certificate attesting the date of service, which is prescribed by law as evidence of when the Applicant was served with the judgment. Rather, he has provided the Court with a receipt from the District Commercial Court dated 6 April 2011 for the cost of photocopying the Supreme Court judgment no.290/08.

25. Apparently the Applicant is seeking to rely on the date of the receipt for the cost of photocopying as the same date of first service of the judgment, which is not logically necessary. Moreover, it appears that the judgment allegedly was not served on the Applicant due to the fact that his representative had died and only on 13 March 2011 a new representative was appointed.

26. Even tough a receipt for photocopying the judgment is not a compelling evidence of the date of service of it, the specific circumstances of the case advice for reconsideration.

27. In fact, the District Commercial Court stated that they attempted to serve the judgment on the Applicant on two separate occasions without success, because of the absence/death of representative. The District Commercial Court further states that they provided the new representative with access to the court file and this could have happened on 6 April 2011, the date inserted in the receipt for photocopying the judgment delivered in that file case.

28. Before the foregoing, the Court considers that it is reasonable to admit that the Applicant learnt for the first time about the

judgment and its content on 6 April 2011, the date the new representative received a copy and that date is the one relevant for assessing the deadline in which the referral must be filed, in accordance with Article 49 of the Law.

29. Therefore, the conclusion is that the Referral is in time.

30. The Court also refers to:
    a. Rule 36 (1) (a) and (c) of the Rules: *the Court may only deal with referrals if (...) the referral is not manifestly ill-founded.*

    b. Rule 36 (2) (b) and (d): *the Court shall reject a referral as being manifestly ill-founded when it is satisfied that the presented facts do not in any way justify the allegation of a violation of the constitutional right or the Applicant does not sufficiently substantiate his claim.*

31. In this regard, the Applicant has not substantiated his claim, explaining how and why a violation has bee committed, or furnished evidence to prove that a right guaranteed by the Constitution has been violated.

32. The Constitutional Court reiterates that it is not its task under the Constitution to act as a court of appeal, or a court of fourth instance, in respect of the decisions taken by regular courts. It is the role of the latter to interpret an apply the pertinent rules of both procedural and substantive law (see, mutatis mutandis, García Ruiz v. Spain [GC], no 30544/96, para 28 European Court on Human Rights [ECHR] 1999-I).

33. The mere fact that the Applicant is dissatisfied with the outcome of the case cannot of itself raise an arguable claim of a breach or Article 31 of the Constitution (see mutatis mutandis Judgment ECHR Appl. No. 5503/02, Mezotur Tizsazugi Tarsulat v. Hungary, Judgment of 26 July 2005.)

34. Moreover, the Referral does not indicate that the Supreme Court acted in an arbitrary or unfair manner. It is not within the province of the Constitutional Court to substitute its own assessment of the facts for that of the regular courts and, as a general rule, it is for these courts to assess the evidence before

them. The Constitutional Court's task is to ascertain whether the regular court's proceedings were fair in their entirety, including the way in which evidence was taken (see Judgment ECHR App. No 13071/87 Edwards v. United Kingdom, para 34, of 10 July 1991).

35. The Referral does not disclose any appearance of a violation of the rights and freedoms set out in the Constitution and in the Convention. In particular, the Applicant failed to show and prove that the challenged Judgment of the Supreme Court was "absolutely unfair" and thus violated Articles 21, 22 and 53 of the Constitution and Article 6 of the European Convention on Human Rights.

36. In these circumstances, the Applicant cannot be considered to have fulfilled the abovementioned established admissibility requirements and therefore the Referral is inadmissible.

FOR THESE REASONS

The Constitutional Court pursuant to Article 113 (7) of the Constitution and Rule 36 of the Rules, unanimously,

DECIDES

I. TO REJECT the Referral as Inadmissible;

II. This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20 (4) of the Law; and

III. This Decision is effective immediately.

Judge Rapporteur **President of the Constitutional Court**

Almiro Rodrigues Prof. Dr. Enver Hasani

KI 161/11 dated 22 May 2012- Constitutional review of the Resolution of Supreme Court of Kosovo Ac.br.2/2011 dated 10 June 2011

Case KI 161/11, decision dated 19 April 2012
Keywords; individual Referral, right to property, recognition of a Judgment of foreign country, manifestly ill-founded

The Applicant filed the Referral pursuant to Article 113.7 of the Constitution of Kosovo, challenging the Resolution of the Supreme Court of Kosovo Ac. no. 2/2011 of 10 June 2011, by which it was upheld the Resolution of the District Court in Prizren NDr. no. 302/10 of 23 November 2010 and it was rejected the Applicant's proposal for having his purchase contract Leg. no. 1255/99 of 25 June 1999, certified with the First Municipal Court in Belgrade, recognized as a Resolution of a foreign country.
The Applicant challenging the Resolution of the Supreme Court of Kosovo Ac. no. 2/2011 of 10 June 2011 requested from the Constitutional Court to regard the case of disputed contract as a Resolution of a foreign country, respectively of state of Serbia, and therefore the Court should recognize this contract as a Resolution of a foreign country.
Deciding about the Referral of Applicant Milan Petrović, after having examined the proceedings in their entirety, the Constitutional Court did not find that the relevant proceedings before the ordinary courts were in any way unfair or arbitrary. Therefore, the Court concluded that the Referral is manifestly ill-founded as the presented facts do not in any way justify the allegation of a violation of the constitutional rights.

Pristine, 25 April 2012
Ref. no.: RK224/12

RESOLUTION ON INADMISSIBILITY

in

Case KI 161/11

Applicant

Milan Petrović

Constitutional review of the Resolution of Supreme Court of Kosovo Ac.br.2/2011 of 10 June 2011

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Enver Hasani, President
Kadri Kryeziu, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Ivan Čukalović, Judge
Gjyljeta Mushkolaj, Judge and
Iliriana Islami, Judge.

Applicant

1. The Applicant is Milan Petrović from Prizren, represented before the Constitutional Court of Kosovo by lawyer Ymer Koro from Prizren.

Challenged decision

2. The challenged decision is the Resolution of the Supreme Court of Kosovo Ac. no. 2/2011 of 10 June 2011 served on the Applicant on 10 August 2011, by which it was confirmed the Resolution of District Court in Prizren NDr. no. 302/10 of 23 November 2010 and it was rejected the proposal of the Applicant to recognize to him the purchase contract Leg. no. 1255/99 of 25 June 1999

certified with the First Municipal Court in Belgrade as a Resolution of a foreign state.

Subject matter

3. The Applicant challenges the Resolution of the Supreme Court of Kosovo Ac. no. 2/2011 of 10 June 2011, without specifically stating Articles of the Constitution which have been allegedly violated, however from the Referral it may be inferred that the subject matter is a legal property dispute for which the Applicant considers that "*...the case of the contested contract must be considered as a decision of a foreign country, in this particular case of state of Serbia and the court must recognize this contract as a decision of a foreign country*."

Legal basis

4. The Referral is based on Articles 113.7 and 21.4 of the Constitution, Articles 20, 22.7 and 22.8 of the Law no. 03/L-121 on Constitutional Court Republic of Kosovo of 16 December 2008 (hereinafter: "Law") and Rule 56 (2) of the Rules of Procedure.

Proceedings before the Court

5. On 10 December 2011, the Applicant sent by mail from Prizren a Referral to the Constitutional Court of Republic of Kosovo (hereinafter: the Court) which was registered with the Court on 13 December 2012.

6. On 27 January 2012, the Constitutional Court notified the Applicant, the District Court in Prizren and the Supreme Court of Kosovo that a proceeding of constitutional review of decisions in case KI 161/11 has been initiated.

7. On 19 April 2012, after considering the report of the Judge Rapporteur Altay Suroy, the Review Panel composed of Judges: Ivan Čukalović (presiding), Iliriana Islami and Gjyljeta Mushkolaj made a recommendation to the full Court on inadmissibility of the Referral.

Summary of the facts

8. The Applicant submitted a proposal to the District Court in Prizren for recognition of apartment purchase contract Leg. No. 1255/99 of 25 June 1999 certified with the First Municipal Court in Belgrade. By the said contract the Applicant purchased the contested apartment from the Secretariat of Internal Affairs in Prizren which was the owner of the apartment. The apartment concerned is located in Prizren but the Applicant certified the said contract at the First Municipal Court in Belgrade due to the circumstances created following the intervention of NATO troops.

9. District Court in Prizren by Resolution NDr. no. 302/10 of 23 November 2010 rejected Applicant's proposal as unfounded considering that the contract does not meet the requirements provided in Law on resolving conflicts of laws with regulations of other countries, Official Gazette SFRY no. 43/1982 which in Article 86 provides the following:

    a. *"A decision of a foreign court shall have the same status as the decision of the court of the Federal Republic of Yugoslavia and it shall produce legal effects in the Federal Republic of Yugoslavia only if recognized by a court of the Federal Republic of Yugoslavia.*

    b. *A settlement reached before a court (a court settlement) shall also be considered a foreign court decision within the meaning of paragraph 1 of this Article.*

    c. *A decision of another authority which is equivalent to the court decision in the country where it was taken shall also be considered a foreign court decision or court settlement respectively if it governs the relationships referred to in Article 1 hereof."*

10. Against this Resolution the Applicant filed an appeal with the Supreme Court of Kosovo which, by Resolution Ac. No. 2/2011 rejected the proposal of the Applicant as unfounded and upheld the Resolution of the District Court in Prizren NDr. No. 302/2010 of 23 November 2010, with the following reasoning:

a. *"...requirements for recognizing the apartment purchase contract as a decision of foreign court are not met, because such contract cannot be considered as a court decision nor as a court settlement as the petitioner claims in the appeal."*

Applicant's allegations

11. The Applicant challenges the Resolution of the Supreme Court of Kosovo Ac. No. 2/2011 of 10 June 2011, alleging:

a. *"In territory of Kosovo we have hundreds of cases when citizens of Kosovo approach the District Court which is competent for recognition of decisions of foreign countries in the state of Kosovo and mainly these are court decisions on divorces and so far every such decision has been considered as a foreign decision and the District Court as the competent court has recognized them as such.*

b. *Also the case of the disputed contract must be considered as a decision of a foreign country, namely of state of Serbia and the court must recognize this contract as a decision of a foreign country.*

c. *Based on all the foregoing, the Applicant is of the opinion that his rights as guaranteed by the Constitution of Republic of Kosovo have been violated and because of this it is proposed that the Constitutional Court of Kosovo approve this Referral as grounded and in its decision assess and find that the resolutions presented in this Referral are in violation of the Constitution of Republic of Kosovo and therefore annul them as such"*

Assessment of the admissibility of Referral

12. In order to be able to adjudicate the Applicant's Referral, the Court needs first to examine whether the Applicant has fulfilled all admissibility requirements laid down in the Constitution as further specified in the Law and the Rules of Procedure.

13. Applicant's Referral is in compliance with time limits prescribed in the Constitution, the Law or in the Rules of Procedure. Rule 27 paragraphs 3 and 6 stipulate the way how time limits are calculated:

    a. *"3. When a period is expressed in months, the period shall end at the close of the same day of the month as the day during which the event or action from which the period to be calculated occurred or when appropriate the first day of the following month;*

    6. *When a time period would otherwise end on a Saturday, Sunday or official holiday, the period shall be extended until the end of the first following working day."*

14. Article 48 of the Law on Constitutional Court of Republic of Kosovo provides:

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

15. Under the Constitution the Constitutional Court is not a court of appeal, when reviewing the decisions taken by ordinary courts. It is the role of the latter to interpret and apply the pertinent rules of both procedural and substantive law (see, *mutatis mutandis*, Garcia Ruiz v. Spain [GC), no. 30544/96, § 28, European Court on Human Rights [ECHR 1999-1).

16. The Applicant has not provided any *prima facie* evidence which would point out to a violation of their constitutional rights (see Vanek vs. Slovak Republic, ECHR Court on admissibility, Application no. 53363/99 of 31 May 2005). The Applicant does not state which Articles of the Constitution support his Referral as it is required with Article 113.7 of the Constitution and Article 48 of the Law.

17. In the present case, the Applicant was provided numerous opportunities to present his case and challenge the interpretation of the law, which he considers as being incorrect, before the District Court in Prizren and the Supreme Court of Kosovo. After

having examined the proceedings in their entirety, the Constitutional Court did not find that the pertinent proceedings were in any way unfair or arbitrary (see *mutatis mutandis*, Shub v. Lithuania, ECtHR Decision as to the Admissibility of Application no. 17064/06 of 30 June 2009).

18. Finally, admissibility requirements have not been met in this Referral. The Applicant has failed to point out and substantiate the allegations that his constitutional rights and freedoms have been violated by the challenged decision.

19. It follows that the Referral is manifestly ill-founded in accordance with Rule 36 (2b) of the Rules of Procedure which provides that *"The Court shall reject a Referral as being manifestly ill-founded when it is satisfied that: b) when the presented facts do not in any way justify the allegation of a violation of the constitutional rights"*.

FOR THESE REASONS

The Constitutional Court of Kosovo, pursuant to Article 113 (7) of the Constitution, Article 20 of the Law and Rule 56 paragraph 2 and Rule 36 (2b) of the Rules of Procedure, on its session held on 19 April 2012, unanimously,

DECIDES

I. TO REJECT the Referral as Inadmissible;

II. This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20 (4) of the Law; and

III. This Decision is effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Altay Suroy	Prof. Dr. Enver Hasani

KI 160/11 dated 10 May 2012- Constitutional Review of the Decision of the Special Chamber of the Supreme Court of Kosovo, ASC-09-0106, dated 7 October 2011

Case KI 160/11, decision dated 19 April 2012
Keywords: individual referral, interim measures, right to fair and impartial trial, violation of individual rights and freedoms, manifestly ill-founded

The applicant filed a referral pursuant to Article 113.7 of the Constitution of Kosovo asserting that their individual rights and freedoms guaranteed by the Constitution and the ECHR was infringed by the decision of the Appellate Panel of Special Chamber of the Supreme Court of Kosovo ASC-09-0106 of 7 October 2011, which rejected PAK's complaint as unfounded and upheld the judgment of the Trial Panel of 22 October 2009 (Judgment ASC-08-0056). The Appellate Panel ruled that "Due to the fact that Claimant of the case in question was not the party of the previous legal process and since the company did not have regular chances to present evidence which support its stance and use ordinary remedies which are in disposal of the party in procedure, from these procedural cases in total should be drawn the conclusion that the previous judgment cannot prevent the claim review of the Claimant ENG Office." Further, the Applicants requested the Court to impose interim measures.
The Court held that the Referral was inadmissible because the Applicant have failed to submit evidence that the relevant proceedings were in any way unfair or tainted by arbitrariness. Hence, the Court held that the Referral was manifestly ill-founded pursuant to Rule 36 (1.c) of the Rules of Procedure. Furthermore, as to the Applicants question of the legal status of PAK, the Court held that it has already decided on the legal status of PAK in its Judgment in Case No. KI. 25/10. Therefore, this will not be dealt with in the present case, pursuant to Rule 36 (3) (e) of the Rules which provides: "A Referral may also be deemed inadmissible in any of the following cases: the Court has already issued a Decision on the matter concerned and the Referral does not provide sufficient grounds for a new Decision". Furthermore, as to the request for interim measure the Court held that taking into account that the Referral was found

inadmissible, the Applicants are not entitled under Rule 54 (1) of the Rules of Procedure to request interim measures.

Pristine, 26 April 2012
Ref. No.: RK226/12/12

RESOLUTION ON INADMISSIBILITY

in

Case No. KI 160/11

Applicant

Kosovo Privatization Agency

Constitutional Review of the Decision of the Special Chamber of the Supreme Court of Kosovo, ASC-09-0106, dated 7 October 2011

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Enver Hasani, President
Kadri Kryeziu, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Ivan Čukalović, Judge
Gjyljeta Mushkolaj, Judge and
Iliriana Islami, Judge

Applicant

1. The Applicant is the Privatization Agency Kosovo (hereinafter, "PAK"), represented by the Senior Legal Officer of PAK, Mr. Gani Ademi.

Challenged decision

2. The Applicant challenges the decision of the Appellate Panel of Special Chamber of the Supreme Court of Kosovo (hereinafter, the "Appellate Panel") ASC-09-0106 of 7 October 2011, which was served on him on 18 October 2011.

Subject matter

3. The Applicant alleges that the abovementioned decision violated his rights as guaranteed by the Constitution of the Republic of Kosovo (hereinafter: the "Constitution"), Articles 102.3 [General Principles of the Judicial System], 31 [Right to Fair and Impartial Trial] and as well as Article 6 [Right to a fair trial] of the European Convention on Human Rights and Fundamental Freedoms (hereinafter: the "ECHR").

4. Furthermore, the Applicant requests the Court to impose interim measures stopping the execution of the Judgment of the Special Chamber, ASC-09-0106, for the reason that *"There is a risk that the claimant requests forced execution of the judgment ASC-09-0106 and in this way irreparable damage are caused to the Applicant and violate the public interest. At the same time, since the whole tendering procedure during the privatization process is decided with the applicable law, it may be negatively perceived by the public and the number of participants may decrease in the tender."*

Legal basis

5. The Referral is based on Article 113.7 of the Constitution, Articles 22 and 27 of the Law on the Constitutional Court of the Republic of Kosovo of 15 January 2009, (No. 03/L-121), (hereinafter, the "Law") and Rules 54, 55 and 56 (2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter, the "Rules of Procedure").

Proceedings before the Court

6. On 12 December 2011, the Applicant filed the Referral with the Court.

7. On 17 January 2012, the President appointed Judge Almiro Rodrigues as Judge Rapporteur and the Review Panel composed of Judges Robert Carolan (Presiding), Enver Hasani and Kadri Kryeziu.

8. On 6 February 2012, the Referral was communicated to the Special Chamber.

9. On 19 April 2012, the Review Panel considered the Report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

10. In 2006, the Kosovo Trust Agency (hereinafter, the "KTA") tendered the sale of New Co "Jugoterm" in Gjilan.

11. On 14 November 2006, one of the bidders, Mr. Sh.A, complained to the Special Chamber, requesting the tender procedure to be annulled because, allegedly, there were hidden agreements amongst the bidders, whereby he himself was part of these agreements, and thus the rules of tender were violated.

12. On 8 August 2007, the Special Chamber issued a judgment (Judgment SCC-06-0475), whereby it partly admitted the claim. The Special Chamber obliged KTA to annul the tender, in which the Public Enterprise "Eng Office" was announced the winner of the sale of New Co "Jugoterm", because the Special Chamber found that there were irregularities with the tender procedure. The part of the claim through which is requested from the Special Chamber to order KTA to organize a new tender for the abovementioned New Co is rejected because it is up to KTA to decide a new tender or not.

13. The bidder who had bought New Co "Jugoterm", "Eng Office" requested the same Special Chamber to review the Judgment of the Special Chamber of 8 August 2007.

14. On 5 February 2008, the same Special Chamber (Decision SCA-08-0007) rejected "Eng Office's" request for review, reasoning that no new factual or legal allegation were raised and that the Judgment of the Special Chamber of 8 August 2007 was in accordance with applicable law. This decision was final and binding and could not be appealed.

15. On 3 March 2008, "Eng Office" filed a claim with the Special Chamber against KTA for having violated the rules of tender and proposed that KTA should be obliged to sign the agreement with "Eng Office" as the winner in the bidding process and to pay compensation for material and non-material damages.

16. Meanwhile, on 21 May 2008, the Assembly of the Republic of Kosovo (hereinafter, the "Assembly") passed Law No. 03/L-067 on the Privatization Agency of Kosovo (hereinafter, the "Law on PAK"). Article 1 of the Law on PAK states that "[t]he Agency is established as an independent public body ...." and "....is established as the successor of the Kosovo Trust Agency (hereinafter, the "KTA") regulated by UNMIK Regulation 2002/12 'On the establishment of the Kosovo Trust Agency,' (hereinafter, "UNMIK Regulation 2002/12"), as amended, and all assets and liabilities of the latter shall be assets and liabilities of the Agency." Furthermore, Article 31 of the Law on PAK stipulates, in its paragraph 1, that the Law on PAK "shall supersede any provisions in the Applicable Law which are inconsistent herewith", while its paragraph 2 states that "UNMIK Regulation 2002/12, as amended, will cease to have legal effect after the Law on PAK enters into force".

17. On 22 October 2009, the Trial Panel of the Special Chamber of the Supreme Court of Kosovo (hereinafter, the "Trial Panel") partly admitted "Eng Office's" claim. The Trial Panel concluded (Judgment SCC-08-0056) that "Eng Office" is the winning bidder, obliged KTA and PAK to find the mean and the procedure in order to conclude the tender and obliged KTA to pay compensation for material damage. The Trial Panel concluded based on the evidence submitted that the annulment made by the KTA Managing Director is invalid because the Board of Directors is the only authorized body to annul the tender. Further, the Trial Panel concludes that this case cannot be considered *res judicata* because the parties in the judgment

SCC-06-0475 of 8 August 2007 were different from those that are in this case and the request is also different.

18. On 17 December 2009, PAK filed a complaint with the Appellate Panel against the judgment of 22 October 2009, because the judgment is violating the principle of *res judicata*.

19. On 7 October 2010, the Appellate Panel (Judgment ASC-09-0106) rejected PAK's complaint as unfounded and upheld the judgment of the Trial Panel of 22 October 2009 (Judgment ASC-08-0056). The Appellate Panel ruled that *"Due to the fact that Claimant of the case in question was not the party of the previous legal process and since the company did not have regular chances to present evidence which support its stance and use ordinary remedies which are in disposal of the party in procedure, from these procedural cases in total should be drawn the conclusion that the previous judgment cannot prevent the claim review of the Claimant ENG Office."*

Applicant's allegations

As to the legal status of PAK

20. The Applicant alleges that the Special Chamber has violated the Law adopted by the Assembly of Kosovo on the Establishment of the Privatization Agency of Kosovo (Law No. 03/L-067), the applicable law in Kosovo, and Article 102 of the Constitution by recognizing KTA legal status before the Special Chamber.

21. In the Applicant's view, the Special Chamber is part of the Supreme Court of Kosovo and has an obligation to implement the laws adopted by the Assembly of Kosovo. With Judgment ASC-09-0106, KTA is recognized legal status and a right to be a party before the Special Chamber although KTA as an entity has ceased to exist with Law No. 03/L-067. The executive decision of UNMIK no. 2008/34 of 29 June 2008 shows that the activities of KTA have ceased *de facto* and *de iure*.

22. The Special Chamber, allegedly, has in previous judgments decided that PAK can represent a Socially Owned Enterprise before the Special Chamber only if KTA do not exercise the right to represent the Socially Owned Enterprise or do not have such a

right. Consequently, allegedly, this is in violation of applicable law of Kosovo, Law No. 03/L-067.

As to the alleged violation of the principle *res judicata*

23. Further, the Applicant alleges that with Judgments SCC-08-0056 and ASC-09-0106, the Special Chamber has decided on a legal issue which has already been decided before with Judgment SCC-06-0475 of 8 August 2007. Hence, allegedly, the Special Chamber has violated the principle *res judicata* since the object of the judgment in SCC-06-0475 of 8 August 2007 and SCC-08-0056 of 22 October 2009 was the issue of the tender published by KTA for privatizing New Co "Jugoterm". In the first case SCC-06-0475 of 8 August 2007, the Special Chamber issued a ruling annulling the tender; while in the second case SCC-08-0056 of 22 October 2009, it issued a ruling requesting the closure of the tender by signing the Agreement on Sale.

24. The Applicant alleges further that the Special Chamber in an indirect way itself accepts that it is reviewing an adjudicated matter:

25. "...

a. *In the Judgment SCC-08-0056 (p. 10), the Special Chamber stressed that the Judgment SCC-06-0475, was rendered under the influence of these circumstances:*

26. *"The Chamber stressed the fact that at that time it was informed with a letter that the Board of Kosovo Trust Agency had annulled the tender. It comes out that this is a false statement." It continues with other conclusion that: "Perhaps it would be right if the Special Chamber of Supreme Court of Kosovo for KTA related matters to invite to trial the temporary winning bidder, precisely the ENG Office. Managers of Kosovo Trust Agency on annulment of the tender"*

27. *and*

a. *In the judgment ASC-09-0106 (the last page), Special Chamber stressed that in the case of SCC-06-0475, ENG Office was not the party in the procedure, therefore, the new judicial process should not be prohibited.*

28. ..."

29. Assessment of the admissibility of the Referral

30. The Court notes that the Applicants complain about two issues:

a. The legal status of PAK;

b. The violation of the principle *res judicata*.

31. In this respect, in order to be able to adjudicate the Applicants' Referral, the Court needs first to examine whether the Applicants have fulfilled the admissibility requirements laid down in the Constitution as further specified in the Law and the Rules of Procedure.

As to the legal status of PAK

32. The Constitutional Court has already taken the legal status of PAK in its Judgment in Case No. KI. 25/10.

33. The Court held *"that the Special Chamber of the Supreme Court (...) considered Law No.03/L-067 not as a Law, duly adopted by the Assembly of Kosovo, but as valid and binding internal rules of organization for PAK, which it characterized as a factual entity, instead of an independent public body possessing full legal standing, as laid down in Law No. 03/L-067.*

34. The Constitutional Court concluded in that case that, *"by not applying Law 03/L-067 on PAK, duly adopted by the Assembly of Kosovo, the Special Chamber has acted in breach of Article 102 of the Constitution"*.

35. Therefore, this will not be dealt with in the present case, pursuant to Rule 36 (3) (e) of the Rules which provides: *"A Referral may also be deemed inadmissible in any of the following cases: the Court has already issued a Decision on the matter concerned and the Referral does not provide sufficient grounds for a new Decision"*.

As to the violation of the principle of *res judicata*

36. As to the violation of the principle *res judicata* the Court emphasizes that, under the Constitution, it is not to act as a court of fourth instance, when considering the decisions taken by ordinary courts.

37. It is the role of ordinary courts to interpret and apply the pertinent rules of both procedural and substantive law (see, *mutatis mutandis,* Garcia v. Spain [GC], no. 30544/96, para. 28, European Court of Human Rights [ECHR] 1999-I).

38. The Court can only consider whether the evidence has been presented in such a manner, and whether the proceedings in general, viewed in their entirety, have been conducted in such a way that the Applicants has had a fair trial (see among other authorities, Report of the Eur. Commission of Human Rights in the case Edwards v. United Kingdom, App. No. 13071/87, adopted on 10 July 1991).

39. In the present case, the Applicant merely disagrees with the courts' findings with respect to the case and indicates some legal provisions of the Constitution and European Convention as having been violated by the challenged decision of the Special Chamber. However, the Applicant does not explain how and why the Special Chamber violated those legal provisions, meaning that the Applicant does not substantiate a case on grounds of constitutionality.

40. In sum, the Applicant does not show that the proceedings before the Special Chamber were in any way unfair or tainted by arbitrariness (see *mutatis mutandis*, Shub v. Lithuania, ECHR Decision on Admissibility of Application No. 17064/06 of 30 June 2009).

41. Rule 36 (2) (d) of the Rules foresees that "the Court shall reject a Referral as being manifestly ill-founded when it is satisfied that (…) the Applicant does not sufficiently substantiate his claim".

42. Therefore, taking into account the above considerations, it follows that the Referral as a whole must be rejected as manifestly ill-founded.

a. Assessment of the request for Interim Measures

43. Article 27 of the Law and, in particular, Rule 54 (1) of the Rules of Procedure, provide that "when a referral is pending before the Court and the merits of the referral have not been adjudicated by the Court, a party may request interim measures.. However, taking into account that the Referral was found inadmissible, the Applicant is not entitled under Rule 54 (1) of the Rules of Procedure to request interim measures.

FOR THESE REASONS

The Constitutional Court, pursuant to Rules 36 (3) (e), 36 (3) (d), 54 (1) and 56 (2) of the Rules of Procedure, on 19 April 2012, unanimously

DECIDES

I. TO REJECT the Referral as Inadmissible;

II. TO REJECT the Request for Interim Measures;

III. This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20 (4) of the Law; and

IV. This Decision is effective immediately.

Judge Rapporteur **President of the Constitutional Court**

Almiro Rodrigues Prof. Dr. Enver Hasani

KI 153/11 dated 22 May 2012- Constitutional Review of the Judgment of the Supreme Court, A. no. 564/2011, dated 5 August 2011.

Case KI 153/11, decision dated 19 April 2012
Keywords: administrative procedure, equality before the law, health and social protection, individual referral, violation of individual rights and freedoms, manifestly ill-founded

The applicant filed a referral pursuant to Article 113.7 of the Constitution of Kosovo asserting that her rights under Articles 24 [Equality Before the Law] and 51 [Health and Social Protection] was infringed by the Judgment of the Supreme Court, which concluded that the evidence prove that the Applicant does not meet the legal criteria for recognizing the required right to pension disability.
The Court held that the Referral was inadmissible because the Applicant failed to submit evidence that the relevant proceedings were in any way unfair or tainted by arbitrariness. Hence, the Court held that the Referral was manifestly ill-founded pursuant to Rule 36 (1.c) of the Rules of Procedure.

Pristine, 26 April 2012
Ref. No.: RK225/12

RESOLUTION ON INADMISSIBILITY

in

Case No. KI 153/11

Applicant

Fazilja Berisha

Constitutional Review of the Judgment of the Supreme Court, A. no. 564/2011, dated 5 August 2011.

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Enver Hasani, President
Kadri Kryeziu, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Ivan Čukalović, Judge
Gjyljeta Mushkolaj, Judge and
Iliriana Islami, Judge

Applicant

1. The Applicant is Ms. Fazilja Berisha, represented by her son, Mr. Ramadan Berisha, from Pristina.

Challenged decision

2. The Applicant challenges the Judgment of the Supreme Court, A. no. 564/2011, of 5 August 2011, which was served on the Applicant on an unspecified date.

Subject matter

3. The subject matter of the Referral is the assessment by the Constitutional Court of the Republic of Kosovo (hereinafter: the "Court") of the constitutionality of the Judgment of the Supreme Court, A. no. 564/2011, by which, allegedly, her

rights as guaranteed by the Constitution of the Republic of Kosovo (hereinafter: the "Constitution"), Articles 24 [Equality Before the Law] and 51 [Health and Social Protection] have been violated.

Legal basis

4. Article 113.7 of the Constitution, Article 22 of the Law on the Constitutional Court of the Republic of Kosovo of 15 January 2009, (No. 03/L-121), (hereinafter: the "Law") and Rule 56 (2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the "Rules of Procedure").

Proceedings before the Court

5. On 30 November 2011, the Applicant submitted the Referral with the Court.

6. On 17 January 2012, the President, with Decision No. GJR. KI 153/11 appointed Judge Altay Suroy as Judge Rapporteur. On the same date, the President, with Decision No. KSH. KI 153/11, appointed the Review Panel composed of Judges Ivan Čukalovič (Presiding), Gjyljeta Mushkolaj and Iliriana Islami.

7. On 3 February 2012, the Court requested the Applicant to notify this Court when the Applicant was served with the Judgment of the Supreme Court, A. no. 564/2011 of 5 August 2011 and to submit the decision of the Appeals Council, No. 5066727 dated 20 April 2011. So far no reply has been received.

8. On 6 February 2012, the Court communicated the Referral to the Supreme Court and to the Ministry of Labor and Social Welfare - Appeals Council (hereinafter: Appeals Council).

9. On 19 April 2012, the Review Panel considered the Report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

10. On 19 January 2011, the Doctor's Commission, established to determine medical eligibility for Disability Pensions, rejected the Applicant's request for disability pension based on the findings and opinion of medical commission of the first instance court of 6 December 2010, which estimated that the Applicant did not show permanent disabilities to work as foreseen by Article 3 [Criteria for Disability Determinations] of the Law No. 2003/23 on Disability Pensions in Kosovo (Decision No. 5066727). The Applicant appealed this decision to the Ministry of Labour and Social Welfare – Department of Pension Administration (hereinafter: the Department of Pension Administration).

11. On 7 March 2011, the Department of Pension Administration rejected the appeal of the Applicant and upheld the decision of the Doctor's Commission (Decision No. 5066727). The Applicant appealed against this decision to the Appeals Council.

12. On 20 April 2011, the Appeals Council rejected the appeal of the Applicant as unfound and upheld the decision of the Department of Pension Administration (Decision No. 5066727). The Applicant initiated an administrative conflict procedure with the Supreme Court.

13. On 5 August 2011, the Supreme Court rejected the Applicant's complaint as unfounded. The Supreme Court concluded that the evidence prove that the Applicant does not meet the legal

criteria for recognizing the required right to pension disability (Judgment A. no. 564/2011).

Applicant's allegations

14. The Applicant alleges that the Supreme Court *"did not properly examine the facts and the Supreme Court has not made an examination of the physical evidences at all, did not invite us in the hearing as plaintiff and the verdict is based only in the case file"*.

Assessment of the admissibility of the Referral

15. The Applicant alleges that her rights guaranteed by Articles 24 [Equality Before the Law] and 51 [Health and Social Protection] of the Constitution have been violated. The Court observes that, in order to be able to adjudicate the Applicant's complaint, it is necessary to first examine whether she has fulfilled the admissibility requirements laid down in the Constitution as further specified in the Law and the Rules of Procedure.

16. In this respect, the Court emphasizes that it is not the task of the Constitutional Court to deal with errors of fact or law (legality) allegedly committed by the Supreme Court, unless and in so far as they may have infringed rights and freedoms protected by the Constitution (constitutionality). Thus, the Court is not to act as a court of fourth instance, when considering the decisions taken by regular courts. It is the role of regular courts to interpret and apply the pertinent rules of both procedural and substantive law (see, mutatis mutandis, García Ruiz v. Spain [GC], no. 30544/96, para. 28, European Court on Human Rights [ECHR] 1999-I).

17. The Court can only consider whether the evidence has been presented in such a manner, and whether the proceedings in general, viewed in their entirety, have been conducted in such a way that the Applicant has had a fair trial (see among other authorities, Report of the Eur. Commission of Human Rights in the case Edwards v. United Kingdom, App. No. 13071/87, adopted on 10 July 1991).

18. In the present case, the Applicant merely disputes whether the Supreme Court correctly applied the applicable law and disagrees with the courts' factual findings with respect to her case.

19. Having examined the proceedings before the regular courts as a whole, the Constitutional Court does not find that the relevant proceedings were in any way unfair or tainted by arbitrariness (see mutatis mutandis, Shub v. Lithuania, ECHR Decision on Admissibility of Application No. 17064/06 of 30 June 2009).

20. It follows that the Referral is manifestly ill-founded pursuant to Rule 36 1. (c) of the Rules of Procedure which provides that *"The Court may only deal with Referrals if: c) the Referral is not manifestly ill-founded."*

21. It follows that the Referral is inadmissible

FOR THESE REASONS

The Constitutional Court, pursuant to Rule 36 (1) (c) and Rule 56 (2) of the Rules of Procedure, on 19 April 2012, unanimously

DECIDES

I. TO REJECT the Referral as Inadmissible;

II. This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20 (4) of the Law;

III. This Decision is effective immediately.

Judge Rapporteur **President of the Constitutional Court**

Altay Suroy Prof. Dr. Enver Hasani

KI 05/11 dated 28 May 2012- Constitutional review of the Joint Statement No.122/08, dated 14 October 2008

Case KI 05/11, decision dated 19 April 2012
Keywords: administrative procedure, basic principles of municipal finances, competences of the government, individual referral, municipal directors, non-exhaustion, universal declaration of human rights, violation of individual rights and freedoms,

The applicant filed a referral pursuant to Article 113.7 of the Constitution of Kosovo asserting that their rights under Article 93 [Competencies of the Government], paragraphs 6 and 7, of the Constitution, Article 23.2 of the Universal Declaration of Human Rights and Articles 62 [Municipal Directors], paragraph 3, and 24 [Basic Principles of Municipal Finances], 4, of Law on Local Self-Government, (No. 03 – L-040), was infringed by the Joint Statement No.122/08, dated 14 October 2008, concluded between the Applicant, the Central Strike Council and the Ministry of Health of the Republic of Kosovo, which granted the Applicants an increase of salary.
The Court held that the Referral was inadmissible because the Applicants have not exhausted all legal remedies available to them under applicable law as provided by the UNMIK Regulation 2001/36 on Kosovo Civil Service or Law No.03/L –212 on Labour.

Pristine, 26 April 2012
Ref. No.: RK227/12

RESOLUTION ON INADMISSIBILITY

in

Case No. KI 05/11

Applicant

The Trade Union Health Federation of Kosovo

Constitutional review of the Joint Statement No.122/08, dated 14 October 2008

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Enver Hasani, President
Kadri Kryeziu, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Ivan Čukalović, Judge
Gjyljeta Mushkolaj, Judge and
Iliriana Islami, Judge

Applicant

1. The Applicant is the Trade Union Health Federation of Kosovo (hereinafter: the "TUHFK") represented by Mr. Armend Shkoza, a practicing lawyer from Mitrovica, acting under a power of attorney, dated 13 January 2011 and duly signed by the President of TUHFK, Mr. Blerim Syla.

Challenged decision

2. The Applicant challenges the Joint Statement No.122/08, dated 14 October 2008, concluded between the Applicant, the Central Strike Council and the Ministry of Health of the Republic of Kosovo (hereinafter: the "Ministry").

Subject matter

3. The Applicant alleges a violation of Article 93 [Competencies of the Government], paragraphs 6 and 7, of the Constitution of the Republic of Kosovo (hereinafter: the "Constitution"), Article 23.2 of the Universal Declaration of Human Rights and Articles 62 [Municipal Directors], paragraph 3, and 24 [Basic Principles of Municipal Finances], 4, of Law on Local Self-Government, (No. 03 – L-040),.

Legal basis

4. Article 113.7 of the Constitution, Article 22 of the Law on the Constitutional Court of the Republic of Kosovo of 15 January 2009, (No. 03/L-121), (hereinafter: the "Law"), and Rule 56 (2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the "Rules of Procedure").

Proceedings before the Court

5. On 17 January 2011, the Applicant filed a Referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the "Court").

6. On 14 February 2011, the President, by Decision No. GJR. KI05/11, appointed Judge Iliriana Islami as Judge Rapporteur. On the same date, the President, by Decision No. KSH. KI05/11, appointed the Review Panel composed of Judges Snezhana Botusharova (Presiding), Almiro Rodrigues and Kadri Kryeziu.

7. On 4 May 2011, the Referral was communicated to the Government and the 14 Municipalities (see Appendix A).

8. On 16 June 2011, the Court requested additional information from the Applicant, the Government and the Municipalities.

9. On 24 June 2011, the Municipality of Fushë-Kosovë replied providing that they have implemented completely the Joint Statement.

10. On 27 June 2011, the Municipality of Lipjan replied providing that they will as soon as possible compensate the remaining amount after reviewing the budget for 2011.

11. On 28 June 2011, the Applicant replied providing that they have requested the municipalities to implement the Joint Statement and have also notified the Central Government that the Joint Statement has not been implemented completely.

12. On 1 July 2011, the Municipality of Vushtrri replied providing that they have fulfilled all the obligations in respect to the Joint Statement.

13. On 6 July 2011, the Municipality of Klina replied providing that they will as soon as possible pay the remaining amount to the health workers.

14. On 18 July 2011, the Municipality of Klina submitted to this Court the Decision to divide the financial means in order to compensate the remaining amount to the health workers.

15. So far, 11 Municipalities have not submitted any reply to the request for information

16. On 28 July 2011, additional information was required from the Government including the Ministry of Health, the Ministry of Public Administration and the Ministry of Economy and Finance, who replied on 9, 10, 11 and 15 August 2011, respectively.

17. On 12 October 2011, the Court requested from the Applicant to submit power of attorney for the TUFHK president Mr. Blerim Syla by the members of the TUFHK as well as the list with the names of health care workers for each municipality individually who allege that respective municipalities have not paid them the compensation of 44 euro, which they did on 30 November 2011.

18. On 21 March 2012, the Court requested from the Applicant to submit to the Court information whether they have initiated any procedure in any of the regular Courts of Kosovo on the issue raised at the Constitutional Court.

19. On 22 March 2012, the Applicant submitted to the Court that they have not raised other procedure with the regular Courts because only the Constitutional Court is competent to decide on the act of the joint declaration signed by the representatives of THUFK and the Government of the Republic of Kosovo. Further, allegedly, the Law on Administrative Dispute does not allow them to initiate an administrative conflict procedure.

20. On 19 April 2012, the Review Panel considered the Report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

21. The Applicant is registered as a legal person at the Ministry of Labor and Social Welfare, pursuant to the Decision 200/06 issued on 11 April 2006, and Decision 531 dated on 1 February 2010.

22. On 13 October 2008, the Applicant representing the interests of its members, who are the health care workers, organized a country-wide strike with the aim to fulfill the legitimate request of the health care workers.

23. The subsequent negotiations between the Applicant, the Central Strike Council and the Ministry of Health resulted in a joint statement between them and the Ministry of Health.

24. On 14 October 2008, the Joint Statement in question was signed providing that 13.247 health care workers would receive a compensation of 44 Euro. The compensation would be paid over the next couple of years by the Municipalities, to which the Government would allocate the necessary financial means.

25. After the Joint Statement had been signed, problems regarding its implementation began to appear, since the Joint Statement was interpreted by the different parties in different ways.

26. As a result the 44 Euro compensation was not paid by the Municipalities, who, by virtue of the Law on Local Self-Government were competent to manage the primary health care sector.

27. On 24 February 2009, the health care workers organized a strike in order to have the Joint Statement of 14 October 2008 implemented.

28. On 3 March 2009, in order to remedy the problem, the Prime-Minister held a public meeting with the heads of the Municipalities, where also members of the National Council of the Applicant were present as well as the Council for Protection of Human Rights and Freedoms as a third party and guarantor of the continued implementation of the Joint Statement. At the

meeting, the Prime-Minister requested the heads of Municipalities to continue the implementation of the Joint Statement.

29. On 26 August 2009, the Ministry of Economy and Finances in order to avoid eventual misunderstandings, requested the Mayors about the continuation of the payment of the compensation of 44 Euro of all Municipalities.

30. Since the endorsement of the Joint Statement, the Applicant has been monitoring its implementation and has identified bottlenecks in the implementation by the relevant Municipalities being responsible for the primary health care sector.

31. On 23 August 2010, the Ministry of Economy and Finances sent a Budgetary Circular to all municipalities, confirming that it had allocated the necessary means to them in order to pay the 44 Euro compensation to the primary health care workers.

Applicant's allegations

32. The Applicant alleges that during 2009 and 2010, 14 Municipalities (see Appendix A) have not executed their obligations for the payment of the 44 Euro compensation.

33. The Applicant claims that the Municipalities concerned, through their acts, have violated the constitutionality and legality of the legal order of the Republic of Kosovo as well as international agreements and instruments on human rights.

34. In particular, Article 93 paragraphs (1),(6) and (7) of the Constitution, Articles 62(3) and 24(4) of Law No. 03 – L-040 On Local Self-Government, and Article 23(2) of the Universal Declaration of Human Rights have been violated by the non-

implementation of the Joint Statement of the Government regarding the 44 Euro compensation.

35. The Applicant claims that by the incorrect implementation of the Joint Statement, approximately 3,545 (out of a total of 5,892 primary health care workers) were discriminated, because their colleagues from the secondary and tertiary health care sector as well as several units of the primary health care sector were receiving the 44 Euro compensation.

36. Moreover, the Applicant claims that the Municipalities concerned do not implement the Law on Amending and Supplementing the Law on the Consolidated Kosovo Budget for the year 2010 (Law No. 03/L-177 of 14 January 2010), which provides the means for the payment of the compensation of 44 Euro by the municipal organs, even for the primary health care sector.

37. Finally, the Applicant requests this Court to:

- ascertain the obligation of the relevant Municipalities regarding the payment of the 44 Euro compensation for all primary health care workers and identify the infringement of constitutionality in connection to Chapter VI article 93 (1) and (6) on the Competencies of the Government as well as the infringement of the legality regarding the application of the Law Nr.03/L-177 on Amending and Supplementing the Kosovo Consolidated Budget;
- oblige these Municipalities to settle all obligations with respect to primary health care workers for the years 2009 and 2010 not later than the first quarter of the year 2011;
- ascertain the continuation of the Joint Statement of 14 October 2008;
- oblige the competent municipal bodies to conduct their financial activities in accordance with the Law on

Amending and Supplementing the Kosovo Consolidated Budget for the year 2010 (Law no.03/L-177);
- ensure that the 44 Euro compensation, which cannot be given as a daily allowance, is enjoyed by all workers regardless of whether or not they use any of the leave to which they are entitled under the legislation in force;
- identify the amount paid for work performance and differentiate the 44 Euro compensation from the amount paid for work performance;
- exempt the Applicant from all procedural expenses incurred in these proceedings.

Reply by the Government and the respective Ministries

38. On 15 August 2011, the Government and the respective Ministries replied:

"The primary level of health is under full responsibility of the municipalities; therefore, for this level of health care, the municipalities are obliged to secure the means from their own income in order to pay the amount of 44 Euro, because in accordance with the decentralization of expenditures by the Ministry of Finance, the just and timely management of the municipal budget is a responsibility of budgetary organizations at the local level. Also, the Ministry of Public Administration is ready to execute the said means as soon as they are provided for this purpose by the respective municipalities".

Assessment of the admissibility of the Referral

39. The Court notes that the Applicant alleges a violation of Article 93 [Competencies of the Government], paragraphs 6 and 7, of the

Constitution, Article 23.2 of the Universal Declaration of Human Rights and Articles 62 [Municipal Directors], paragraph 3, and 24 [Basic Principles of Municipal Finances], 4, of Law on Local Self-Government, (No. 03 – L-040),.

40. However, in order to be able to adjudicate the Applicants' Referral, the Court needs first to examine whether the Applicant have fulfilled the admissibility requirements laid down in the Constitution as further specified in the Law and the Rules of Procedure, in particular, whether the Applicant have exhausted all legal remedies available under the applicable law, as required by Article 113.7 of the Constitution and Article 47.2 of the Law.

41. The rationale for the exhaustion rule is to afford the authorities concerned, including the courts, the opportunity to prevent or remedy the alleged violation of the Constitution. The rule is based on the assumption that the Kosovo legal order will provide an effective remedy for the violation of constitutional rights (see: Resolution on Inadmissibility: Maliqi and others vs Kosovo Bar Association, of 16 December 2010 and, mutatis mutandis, ECHR, Selmouni v. France, no. 25803/94, decision of 28 July 1999.).

42. As to the present Referral, the Court notes that pursuant to Section 1 of UNMIK Regulation No. 2001/36 on the Kosovo Civil Service a civil servant is *"any employee of an employing authority, whose salary is paid from the Kosovo Consolidated Budget"*, i.e. including the medical staff of the health service.

43. In this respect, the Applicants as civil servants had the opportunity to initiate a procedure before the Independent Oversight Board pursuant to Section 10 and 11 of UNMIK Regulation 2001/36 on Kosovo Civil Service.

44. However, the Court notes that with the adoption of the Law No. 03/L-149 on the Civil Service of the Republic of Kosovo, the

medical staff of the health service was excluded as category from Civil Service pursuant to Article 4 [Categories of Public Employees excluded from the Civil Service] of Law No. 03/L-149.

45. Notwithstanding this, the Court notes that the medical staff of the health service in accordance with Article 78 [Protection of Employees' Rights] and Article 79 [Protection of an Employee by the Court] of the Law No.03/L –212 on Labour could pursue their claim before the regular courts.

46. From the Applicant's submissions, however, it appears that they did not follow the procedure laid down in UNMIK Regulation 2001/36 on Kosovo Civil Service or Law No.03/L –212 on Labour.

47. The Court, therefore, concludes that the Applicants have not exhausted all legal remedies available to them under applicable law.

48. It follows that the Referral must be rejected, pursuant to Article 113.7 of the Constitution and Article 47.2 of the Law.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution and Article 47.2 of the Law, and Rule 56 (2) of the Rules of Procedure, on 19 April 2012, unanimously

DECIDES

I. TO REJECT the Referral as Inadmissible;

II. This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20 (4) of the Law;

III. This Decision is effective immediately.

Judge Rapporteur **President of the Constitutional Court**

Dr.Iliriana Islami Prof. Dr. Enver Hasani

Appendix A

Municipalities

1. Municipality of Gjakova
2. Municipality of Podujeva
3. Municipality of Kamenica
4. Municipality of Lipjan
5. Municiplaity of Peja
6. Municipality of Mitrovica
7. Municipality of Vushtrri
8. Municipality of Klina
9. Municipality of Rahovec
10. Municipality of Shtime
11. Municipality of Kastriot
12. Municipality of Prishtina
13. Municipality of Fushë-Kosovë
14. Municipality of Gjilan

KI 125/11 dated 28 May 2012 - Request for constitutional review of the Judgment of the Supreme Court of Kosovo Rev. 217/2008 dated 10 June 2011

Case KI 125/11, decision dated 10 June 2011
Keywords: individual referral, right to work, manifestly illfounded, resolution on inadmissibility

The applicant stated that the contested decision of a public authority violated his constitutional right to work (Article 49 - The right to work and exercise profession).

Constitutional Court finds no evidence that the Supreme Court did not adjudicate a "fair and impartial trial" bringing the decision as to the revision of the abovementioned and does not find that with that decision the rights guaranteed by the Constitution have been violated.

In these circumstances the Applicant, did not “sufficiently substantiate his claim", and the Constitutional Court finds no violation of the rights guaranteed by the Constitution and therefore according to the Rule 36 paragraph 2 item c and d, decides to reject the Referral as manifestly ill founded.

Pristine, 30 April 2012
Ref. No.: RK228/12

RESOLUTION ON INADMISSIBILITY

in

Case No. KI 125/11

Applicant

Shaban Gojnovci

Request for constitutional review of the Judgment of the Supreme Court of Kosovo Rev. 217/2008 of 10 June 2011

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Enver Hasani, President
Kadri Kryeziu, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Ivan Čukalović, Judge
Gjyljeta Mushkolaj, Judge and
Iliriana Islami, Judge

Applicant

1. The Applicant is Mr. Shaban Gojnovci from village Lismir, Municipality of Fushë Kosova.

Challenged decision

2. Challenged decision of the public authority alleging the violations of the rights guaranteed by the Constitution of the Republic of Kosovo, is the Judgment of the Supreme Court of Kosovo Rev. 217/2008 of 10 June 2011, which was served on the applicant on 01 August 2011.

Subject matter

3. The subject matter submitted with the Constitutional Court of the Republic of Kosovo on 28 September 2011, is the Constitutional Review of the Judgment of the Supreme Court

rev. 217/2008 of 10 June 2011, whereby the Applicant claims that he has been denied the Constitutional right to work.

Legal Basis

4. Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: Constitution), Article 47 of the Law no. 03/L-121 on Constitutional Court of the Republic of Kosovo of 16 December 2009, which entered into force on 15 January 2010 (hereinafter: Law), and Article 29 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: Rules).

Proceedings before the Court

6. On 28 September 2011, the Constitutional Court received the Referral of Mr. Shaban Gojnovci and registered it under KI 125/11.

7. On 03 October 2011, the President by Decision GJR. 125 /11, appointed Judge Dr. Iliriana Islami as Judge Rapporteur. On the same date, the President, by Decision No. KSH. KI 125/11 appointed the Review Panel composed of Judges Robert Carolan (Presiding), Ivan Čukalović and Kadri Kryeziu.

8. On 20 February 2012, the Constitutional Court informed Supreme Court and the Applicant on registering of the Referral.

Summary of the facts

9. On 28 February 2001 the Kosovo Railways (hereinafter: K. R.) issued the Decision no. 175 on termination of employment due to awaiting retirement of employee Shaban Gojnovci assigned in the workplace as train driver namely from 28 February 2001 due to reaching the waiting period to retirement.

10. The paragraph two of this decision stipulates that the employee is awarded a long-term service benefit in amount of 120 DM for the whole year.

11. In the introduction of the decision, as legal basis for its issuance are determined the: "Administrative Instructions 2001/3 of the Department of Transport and Infrastructure" approved on 27 February 2001. Whereas in its reasoning states that according to these instructions, to all the active and reserve employees of the K.R. (about 350 of them), that in 2001 have reached or will reach the age of 60, or have 35 years of experience, taking into account the benefit length of service, will be awarded this material benefit for long-term service.

12. On 04 May 2007, the Municipal Court in Pristine issued Judgment CI. No. 428/06 approving as grounded the claim of the plaintiff's representative, Mr. Gojnovci and hereby has annulled the K.R. decision No. 175 of 28 February 2001, by forcing the respondent K.R. to return the plaintiff at the duty of the train driver or at any other working duty that corresponds to his professional experience, by recognizing all his rights arising from employment contract of 28 February 2001.

13. The Municipal Court in the reasoning of its Judgment stated that was found indisputably that the plaintiff was employed for an indefinite period at the respondent, and that the "Administrative Instructions" of the Department of Transport and Infrastructure of 27 February 2001, had no power of Legal Acts and that in legal-formal sense were not instructions or regulations of UNMIK, nor administrative regulations, therefore termination of employment based on their provisions, was unlawful.

14. Against this Judgment, the respondent K. R. appealed with this District Court in Prishtina.

15. On 26 February 2008, the District Court in Prishtina, by Judgment Ac. No. 853 /2007, rejected as ungrounded the appeal of the respondent K.R. and confirmed by upholding the Judgment of the Municipal Court in Pristine CI. 428/ 2006.

16. Against this Judgment, the respondent K.R. within the legal deadline filed a request for Revision with the Supreme Court of Kosovo.

17. On 10 June 2011, the Supreme Court of Kosovo by Judgment Rev. No. 217/2008 approved as grounded the Revision of the Respondent K.R., and herewith changed the Judgment of the District Court in Pristine Ac. No. 853 /2007 of 26 June 2008, and the Judgment of the Municipal Court in Pristine CI. No. 428/06 of 04 May 2007, in order to reject as UNGROUNDED the claim of the plaintiff, Mr. Shaban Gojnovci, for annulment of the decision on termination of his employment.

18. The Supreme Court in the reasoning of its Judgment of Revision noted that the courts of lower instances have proved "fully and fair" the factual situation regarding the decisive facts, but in this proven situation had erroneously applied the substantive law because K. R. on the basis of the presented factual documents, have been registered and they operated under the name of "UNMIK Railways", and have been administered by UNMIK, and in line with Article 3.1 of UNMIK Regulation 2000/47 of 18 August 2000: "UNMIK, its property, funds and assets" are exempt from any legal process.

19. On 28 September 2011, finally unsatisfied with the Judgment of Supreme Court, Gojnovci filed a referral with the Constitutional Court claiming that his right to work guaranteed under Article 49 of the Constitution of Kosovo, is violated.

Assessment of admissibility

20. In order to be able to adjudicate on the Applicants' Referral, the Court has first to examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution as further specified in the Law and the Rules of Procedure.

21. In this respect, the Court refers to Article 113.7 of the Constitution which provides as follows:

22. *"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."*

23. The Court also considers the:

24. Rule 36 of the Rules of Procedure of the Constitutional Court, which provides:

25. *"(1) The Court may only deal with Referrals if:*

b) The Referral is not manifestly ill-founded".

26. Referring to the Applicant's claim for alleged violation of rights guaranteed by the Constitution of the Republic of Kosovo and of International Conventions and other Instruments, the Court finds:

27. In Article 102 [General Principles of the Judicial System] paragraph 3 of the Constitution it is clearly provided: that " **the Courts judge based on the Constitution and the Law"**

28. In Article **103** [Organizing and the Jurisdiction of the Courts], of the Constitution in paragraph 2 it is also clearly provided that: "The Supreme Court of Kosovo is the highest judicial authority"

29. Constitutional Court is not a court of verifying fact and wants to note that finding of fair and factual situation is full jurisdiction of regular courts and that the role of the Constitutional Court is only to ensure compliance with rights that are guaranteed with the Constitution and other legal instruments and therefore can not act as a "forth instance court" (see, mutatis mutandis Akdivar vs. Turkey, 16 September 1996 RJ. D. 1996-IV, par. 65).

30. Regarding the alleged violation of the right to work as guaranteed under Article 49 of the Kosovo Constitution, the Constitutional Court notes that the Constitution of Kosovo guaranties this basic human right and enables all Kosovo citizens to exercise this right without discrimination and

under the same conditions, the Constitution of Kosovo does not specify the conditions to enjoy this right, but these terms are defined by the relevant laws of the scope of labor. In this regard, if the establishment and the termination of the employment relationship, or other work-related conditions is respected, is a matter of assessing the legality and not the Constitutionality, so if the Law is applied right or not is a competence assessed by the regular Courts and is related to the issue of verification of facts.

31. In this regard the Constitutional Court does not find that the applicant has provided a crucial fact, that the Supreme Court deciding upon the request for revision for which is expressively authorized under the Article 212 of the LPK, to have violated the Article 31.2 (Right to a Fair and Impartial Trial) or Article 49 (The Right to Work and Exercise Profession), for which the Applicant has alleged to have been violated.

32. The simple fact that the applicants are unsatisfied with the result of the case can not serve them the right to file a substantiated referral on the violation of Article 31 of the Constitution (see *mutatis mutandis* ECHR Judgment, Application No. 5503/02, Mezotur-Tiszazugi Tarsulat against Hungary, Judgment of 26 July 2005.)

33. In these circumstances, the Constitutional Court finds no evidence that the Supreme Court has not judged "fairly and impartially" by deciding upon the above-mentioned revision and does not find that with that decision to be violating the constitutionally guaranteed rights.

34. In these circumstances the Applicant, "did not sufficiently substantiate his claim", and the Constitutional Court finds no violation of the rights guaranteed by the Constitution and therefore according to the Rule 36 par. 2 item c and d, decides to reject the Referral as manifestly ill founded, and

FOR THESE REASONS

Pursuant to Article 113.7 of the Constitution of the Republic of Kosovo, Article 47 of the Law on Constitutional Court and Rule 36 of

the Rules of Procedure, the Constitutional Court on 18 January 2012, unanimously

DECIDES

I. TO REJECT the Referral as Inadmissible;

II. This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20 (4) of the Law; and

III. This Decision is effective immediately.

Judge Rapporteur **President of the Constitutional Court**

Dr. Iliriana Islami Prof. Dr. Enver Hasani

KI 155/11 dated 18 May 2012- Request for review of the judgment of the Municipal Court in Viti no. 22/2004 dated 28 May 2007, the judgment of the District Court in Gjilan no. 323/2007 dated 26 October 2007 and the judgment of the Supreme Court of Kosovo no. 52/2008 dated 10 June 2011

Case Kl 155/11, decision dated 19 April 2012
Keywords; Individual Referral, constitutional review of judgments of Municipal Court, District Court and Supreme Court of Kosovo

The Referral is based on Articles 113 (7) and 21.4 of the Constitution, Articles 20, 22.7 and 22.8 of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo dated 15 January 2009.
The Applicant submitted the Referral to the Court on 1 December 2011.
On 17 January 2012, the President appointed Judge Robert Carolan as Judge Rapporteur and a Review Panel composed of Judges Altay Suroy (Presiding), Gjyljeta Mushkolaj and Iliriana Islami.
On 10 September 2002, the Municipal Court in Vitia handed down its judgment (no. P.o. 92/2002) finding AB. guilty of a traffic offence resulting in the death of Binaze Sahiti and causing serious injury to Mergim Sahiti. AB. was sentenced to 18 months in prison.
On 27 November 2003, the Municipal Court in Ferizaj concluded that it did not have jurisdiction over the compensation matter and ruled that the case be sent to the Municipal Court in Vitia.
On 28 May 2007, by judgment no. 22/2004, the Municipal Court in Vitia ordered the insurance company to pay compensation to only some of the claimants, namely the immediate family members.
The claimants then filed an appeal with the District Court in Gjilan against the decision of the Municipal Court, in relation to the compensation awarded to them.
On 26 December 2007, by judgment no. 323/2007, the District Court in Gjilan evaluated the appeal and rejected it as partly ungrounded. The District Court affirmed the decision of the Municipal Court in Vitia.
On 10 June 2011, by decision no.52/2008, the Supreme Court of Kosovo rejected the revision as ungrounded because the adjudicated amounts awarded to the claimants (the parents and siblings) by the

District Court were in compliance with the substantive and procedural provisions.
The Applicant claims that the lower courts violated court procedures from the commencement of proceedings in the District Court up to the final decision of the Supreme Court. The Applicant alleges the courts have violated the Constitution without specifying any particular article.
The Court concludes that it is evident from the Referral that the Applicant is asking the Court to review the decisions of the lower courts in relation to the adequacy of compensation awarded to
the Sahiti family as well as the decision not to compensate the Applicant and the extended family members.
The Court must reiterate that that it is not a court of fourth instance and therefore it cannot retry cases or assess the facts which have led the lower courts to adopt one decision rather than another.
Furthermore, the Applicant failed to substantiate his allegations that the decisions the lower courts violated his constitutional rights and freedoms and of his family members.
Taking into account all circumstances of the submitted Referral, the Constitutional Court of Kosovo pursuant to Article 113.1 and 113(7) of the Constitution, Article 46, Article 47 and 48 of the Law and Rule 36 (1a) and 36 (3c) of the Rules, in the session held on 19 April 2012, unanimously decided to reject the Referral as inadmissible.

Pristine, 04 May 2012
Ref. No.: RK230/12

RESOLUTION ON INADMISSIBILITY

in

Case No. KI 155/11

Applicant

Avni Sahiti and other members of the Sahiti family

Request for review of the judgment of the Municipal Court in Viti no. 22/2004 dated 28 May 2007, the judgment of the District Court in Gjilan no. 323/2007 dated 26 October

2007 and the judgment of the Supreme Court of Kosovo no. 52/2008 dated 10 June 2011

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Enver Hasani, President
Kadri Kryeziu, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Ivan Čukalović, Judge
Gjyljeta Mushkolaj, Judge and
Iliriana Islami, Judge.

The Applicant

1. The Referral was filed by Avni Sahiti from Lubishte in Viti (hereafter, the "Applicant") in his own name and on behalf of the relatives of Binaze Sahiti and Mergim Sahiti. The Applicant is the uncle of the deceased Binaze Sahiti.

2. The Applicant believes that he and all of his family members, in total 27 of them, have been deprived of the right to compensation as a result of the decisions of the lower courts by deciding not to grant compensation to all family members, including extended relatives, but to limit compensation to the parents and siblings of the victim.

Legal basis

3. The Referral is based on Articles 113 (1) and 113 (7) of the Constitution, Articles 46, 47, 48 and 49 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter, the "Law"), and Rule 56 (2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter, the "Rules").

Proceedings before the Court

4. On 1 December 2011, the Applicant submitted to the Court a Referral registered under no. KI 155/11.

5. On 17 January 2012, the President appointed Judge Robert Carolan as Judge Rapporteur and a Review Panel composed of Judges Altay Suroy (Presiding), Gjyljeta Mushkolaj and Iliriana Islami.

6. On 19 April 2012, the Review Panel considered the Report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

7. On 10 September 2002, the Municipal Court in Viti handed down its judgment (no. P.o. 92/2002) finding A.B. guilty of a traffic offence resulting in the death of Binaze Sahiti and causing serious injury to Mergim Sahiti. A.B. was sentenced to 18 months in prison.

8. A.B. held motor vehicle insurance with "Kosovo e Re". The immediate and extended family members of Binaze Sahiti and Mergim Sahiti filed a claim for compensation from the insurance company for the "spiritual and physical pain" resulting from the loss of their family member, Binaze Sahiti, and pain associated with the injury caused to Mergim Sahiti. The father of the deceased also claimed for the cost of medical treatment incurred from the time of the accident up to 29 May 2002, when Binaze Sahiti died in hospital. Other expenses claimed included the burial cost and the cost of erecting a memorial.

9. On 27 November 2003, the Municipal Court in Ferizaj concluded that it did not have jurisdiction over the compensation matter and ruled that the case be sent to the Municipal Court in Viti.

10. On 28 May 2007, by judgment no. 22/2004, the Municipal Court in Viti ordered the insurance company to pay

compensation to only some of the claimants, namely the immediate family members. The Municipal Court came to its decision pursuant to Article 154 of the LCP by considering the statement of claim, the forensic evidence and the representations made in court by the parties. Having assessed the claims, the Municipal Court decided not to grant the full amount claimed.

11. The claimants then filed an appeal with the District Court in Gjilan against the decision of the Municipal Court, in relation to the compensation awarded to them. The claimants argued that the Municipal Court had wrongly applied the substantive law, violated procedural provisions and had made an incomplete determination of the factual situation.

12. On 26 October 2007, by judgment no. 323/2007, the District Court in Gjilan evaluated the appeal and rejected it as partly ungrounded. The District Court affirmed the decision of the Municipal Court in Viti. Unsatisfied with the outcome in the District Court, the claimants filed the revision with the Supreme Court of Kosovo against the District Court decision.

13. On 10 June 2011, by decision no.52/2008, the Supreme Court of Kosovo rejected the revision as ungrounded because the adjudicated amounts awarded to the claimants (the parents and siblings) by the District Court were in compliance with the substantive and procedural provisions. Therefore, the District Court was held to have applied the law in a correct manner. Furthermore, the Supreme Court found no violations of the procedural provisions by the Municipal and District Courts.

14. In its reasoning the Supreme Court specify as follows: "[T]his court evaluates that the courts of lower instances have applied the substantive law in a right miner also in the part of the claimant of claim of other claimants when they found that it is totally ungrounded, because pursuant to Article 201 par 1 of the Law on Obligations, is provided that in case of death of a person, the court may entitle the member of his close family (spouse, children and parents0 the right to compensation with the money for their spiritual pain, while with para 2. of the same article is foreseen that this compensation can be

adjudicated to brothers and sisters, if between them and the dead person existed continuous cohabitation. In this case the claimants do not belong to the close family of the late and the conditions par.2 of the same law were not fulfilled."

Applicant's allegations

15. The Applicant alleges that the extended family of Binaze Sahiti are also entitled to compensation because they lived "in family union" based on "Albanian (Kosovar) habits, customs and traditions" and therefore the extended relatives are all entitled to compensation, not just the parents and siblings, since they are a "big family" who have all suffered loss.

16. The Applicant also alleges that the insurance company should have responded to his request for payment to send Binaze Sahiti overseas for medical treatment which may have saved her life.

17. The Applicant claims that the lower courts violated court procedures from the commencement of proceedings in the District Court up to the final decision of the Supreme Court. The Applicant alleges the courts have violated the Constitution without specifying any particular article.

Assessment of admissibility

18. In order to be able to adjudicate the Applicant's referral, the Court needs first to examine whether the Applicant has fulfilled all admissibility requirements.

19. In this regard, the Court refers to Rule 36 (1) (a) and (c) of the Rules which state that the Court may only deal with referrals if all effective remedies available under the law have been exhausted and the referral is not manifestly ill-founded. Rule 36 (2) provides that the Court shall reject a Referral as being manifestly ill-founded when it is satisfied that (a) the Referral is not prima facie justified; (b) when the facts do not in any justify the allegation of a violation of the constitutional rights; (c) when the Applicant is not a victim of a violation of rights

guaranteed by the Constitution; or (d) when the Applicant does not sufficiently substantiate his claim.

20. It is evident from the Referral that the Applicant is asking the Court to review the decisions of the lower courts in relation to the adequacy of compensation awarded to the Sahiti family as well as the decision not to compensate the Applicant and the extended family members.

21. The Court must reiterate that that it is not a court of fourth instance and therefore it cannot retry cases or assess the facts which have led the lower courts to adopt one decision rather than another.

22. This Referral stems from a misapprehension of the Court's role. The Court may not assess the facts that led to the decisions of the lower courts unless there has been a flagrant and manifestly arbitrary conclusions reached by the courts resulting in the infringement of an individual's rights and freedoms protected by the Constitution (*Sisojeva and Others v. Latvia,* Decision of ECHR, No. 60654/00 of 15 January 2007).

23. After reviewing the proceedings in its entirety, there is no evidence that the decisions from the lower courts were in any way incorrect or arbitrary (see mutatis mutandis, *Shub vs Lithuanis*, Decision of ECHR on admissibility of request, No. 17064/06 of 30 June 2009).

24. Furthermore, the Applicant has failed to substantiate the allegation that the decisions of the lower courts violated his or his family's constitutional rights and freedoms.

FOR THESE REASONS

The Constitutional Court pursuant to Article 113(7) of the Constitution and Rule 36 of the Rules, unanimously:

DECIDES

I. TO REJECT the Referral as Inadmissible;

II. This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20 (4) of the Law; and

III. This Decision is effective immediately.

Judge Rapporteur **President of the Constitutional Court**

Robert Carolan Prof. Dr. Enver Hasani

KI 27/11 dated 18 May 2012- Constitutional Review of the Judgment of the Supreme Court of Kosovo, Rev. No. 820/2010, dated 25 January 2010

Case KI 27/11, decision dated 4 May 2012
Keywords: medical review commission, individual referral, manifestly ungrounded referral, Complaints Council, disability pension, constitutional rights and freedoms.

The applicant filed the referral pursuant to Article 113.7 of the Constitution of Kosovo, thereby claiming that his constitutional rights were violated by the judgment of the Supreme Court of Kosovo, which upheld the decision of the Medical Review Commission on pensions for disabled persons. The Applicant alleged that his rights and freedoms guaranteed by the Constitution were violated, without quoting any specific constitutional provision.

The Court found that the referral of applicant was inadmissible, pursuant to Rule 36 (2) (b) of the Rules of Procedure, because the referral was manifestly ungrounded, and the facts submitted in no way justified the alleged violation of constitutional rights and freedoms. Quoting its case law in the *case no. KI. 06/09, Applicant X v. Judgment of the Supreme Court no. 215/2006; Judgment of the District Court no. 741/2005; judgment of the Municipal Court no. 217/2004,* the Court further noted that it is not a court of Appeal for other courts in Kosovo, and cannot interfere on the basis that the ordinary courts have rendered an erroneous decision or have erroneously ascertained the facts. Due to the reasons provided above, the Court decided to find the referral of Applicant as inadmissible.

Pristine, 04 May 2012
Ref. No.: RK 229/12

RESOLUTION ON INADMISSABILITY

in

Case No. KI 27/11

Applicant

Xhevdet Rrahmani

**Constitutional Review of the Judgment of the Supreme Court of Kosovo,
Rev. No. 820/2010, dated 25 January 2010**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Enver Hasani, President
Kadri Kryeziu, Deputy-President
Robert Carolan, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Ivan Čukalović, Judge
Gjyljeta Mushkolaj, Judge and
Iliriana Islami, Judge

The Applicant

1. The Applicant is Xhevdet Rrahmani from Lladovc Village in the Municipality of Podujeva.

Challenged Decision

2. Judgment of the Supreme Court of Kosovo, Rev. No. 820/2010, dated 25 January 2010.

Subject Matter

3. The Applicant alleges that his rights as a person with a disability have been violated. The Applicant does not specifically cite any article of the Constitution of the Republic of Kosovo which is said to have been violated. The Applicant requests recognition of his right to receive a pension as a person with disabilities.

Legal Basis

4. The Referral is based on Article 113 (7) of the Constitution, Articles 46, 47, 48 and 49 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter referred to as the "Law"), and Rule 56 (2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter referred to as the "Rules of Procedure").

Procedure before the court

5. On 28 February 2011, the Applicant filed a Referral with the Constitutional Court.

6. The President of the Constitutional Court appointed Judge Robert Carolan as Judge Rapporteur. The President of the Constitutional Court appointed a Review Panel composed of Judges Snezhana Botusharova (presiding), Prof. Dr. Enver Hasani, and Gjyljeta Mushkolaj.

7. On 07 March 2012 the Review Panel considered the Preliminary Report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

8. On 5 September 1980, the Applicant's father was granted an entitlement to additional support for assistance and care for a child with disabilities (the Applicant) by the Self-Government

Intern Republican Association of the Pension and Invalid Insurance of Employees, Association for the City of Belgrade.

9. On 27 January 2006, the Applicant was granted a disability pension, made retroactive to 12 January 2005. At that time, the Applicant was found to fulfill the criteria laid out in Law No. 2003/23 on Disability Pensions in Kosovo regarding eligibility for a disability pension and was informed by letter that his eligibility would be re-examined in five years.

10. On 20 April 2010, the Applicant's eligibility was re-examined by Medical Review Commission – Department of Pension Administration (hereinafter referred to as the "Commission") and the Applicant was denied a disability pension because he was deemed not to be fully and permanently disabled.

11. On 8 June 2010, the Applicant filed a complaint with the Board on Complaints for Disability Pensions (hereinafter referred to as the "Board").

12. On 28 July 2010, Applicant's appeal was refused as ungrounded. The Board found that the Commission's assessment that there was insufficient evidence to allow for eligibility for benefits from a full and permanent disability pension was correct and in compliance with Law No. 2003/23 on Disability Pensions in Kosovo.

13. The Applicant appealed the Board's decision to the Supreme Court. In this appeal, the Applicant disputed the legality of the Commission's decision and alleged the Commission did not take into account the evidence he presented regarding the severity of his medical condition and his inability to work.

14. On 25 January 2011, the Supreme Court rejected the appeal as unfounded in judgment A.No. 820/2010. The Supreme Court found that the Commission correctly applied Law No. 2003/23 on Disability Pensions in Kosovo in finding the Applicant does not meet the criteria in Article 3 of that law.

15. The Applicant was served with this decision on 15 February 2011.

Party which bears the burden of proof facts

16. In accordance with Rule 29 (2) h) of the Rules of Procedure, it is up to the Applicant to include in the Referral "supporting documentation and information".

Legal arguments presented by the Applicant

17. Applicant alleged that the findings of the Supreme Court, the Board and the Commission violate his rights as a person with a disability. Specifically, the Applicant seemed to argue that the Commission failed to consider evidence presented by the Applicant when concluding he was not eligible for a disability pension. The Applicant did not specify which Article of the Constitution of the Republic of Kosovo has been violated but it may be inferred he believes Article 51 [Health and Social Protection] has been violated.

Assessment of the admissibility of the Referral

18. In order to be able to adjudicate the Applicant's Referral, the Court needs first to examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution, further specified in the Law on the Constitutional Court and the Rules of Procedure.

19. Article 113 Section 1 and 7 of the Constitution establish the general legal frame required for admissibility. It provides:

> *"1. The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties.*
>
> *(...)*
>
> *7. Individuals are authorized to refer violations by public authorities of their individual rights and freedoms guaranteed by the Constitution, but only after exhaustion of all legal remedies provided by law."*

20. Furthermore, Article 48 of the Law states:

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

21. Finally, Rule 36 of the Rules of Procedure states:

"1. The Court may only deal with Referrals if:

c) the Referral is not manifestly ill-founded.

2. The Court may reject a Referral as being manifestly ill-founded when it is satisfied that:

a) the Referral is not prima facie justified, or

b) when the presented facts do not in any way justify the allegation of the violation of constitutional rights, or

c) when the Court is satisfied that the Applicant is not a victim of a violation of rights guaranteed by the Constitution, or

d) when the Applicant does not sufficiently substantiate the claim"

22. The Applicant seems to allege, but does not specifically state in the Referral that Article 51 of the Constitution of the Republic of Kosovo has been violated. Article 51 states:

"1. Health care and social insurance are regulated by law.

2. Basic social insurance related to unemployment, disease, disability and old age shall be regulated by law."

23. The relevant provision of the law at issue, Article 3 of Law No. 2003/23 on Disability Pensions in Kosovo, lays out the criteria for disability determinations:

"3.1 In order to be eligible for a Disability Pension, an Applicant must be habitually residing in Kosovo and must meet the Disability requirements of this Law.

3.2 Doctor's Commissions will assess the medical condition of Applicants for Disability Pensions. Disability assessments by Doctor's Commissions must be in writing and include the following:

(a) A specific statement of the diagnosis of the physical, sensory or mental condition, disease or disability that the Applicant is suffering and the date of the condition, disease or disability onset; the diagnosis must describe the condition, disease or disability as well as the particular impact of the condition, disease or disability on employment, including a specific description of impaired functioning of the Applicant.

(b) An assessment of the Applicant's functioning with respect to daily living tasks and tasks associated with employment; this must include reference to Applicant's prior employment if any.

(c) A determination of whether or not the Applicant can be employed, in any capacity, given the total circumstances of the disease or disability.

(d) A determination of complete disability for a prior period of one year or longer, during which time the Applicant was medically incapable of employment for remuneration.

(e) Prognosis of the permanence of disability.

3.3 Persons who reside in, are confined in, or are financially supported by institutions caring for the disabled, including psychiatric or medical establishments, religious institutions caring for the infirm or disabled, residential schools and prisons, and other institutions receiving support from the Kosovo Consolidated Budget to care for the disabled, are not eligible for Disability Pension payments under this Law.

3.4 Persons capable of employment or actually employed in any manner, including any Self-employment as defined in the tax laws of Kosovo, shall not be eligible for Disability Pensions. Actual employment, including Self-employment, shall constitute presumptive proof of the cessation of Disability. Disability Pension payments will cease as of the first date of employment or Self-employment. . ."

24. Article 4.6 of Law No. 2003/23 on Disability Pensions in Kosovo addresses the evidence on which the Commission may base its decision, stating:
"The Doctor's Commission may base its decision as to the existence of total and permanent disability on evidence provided by the Applicant and/or on its own medical findings and examinations. All Applicants must undergo a medical examination arranged by the Doctor's Commission. The Doctor's Commission is not obliged to accept the medical evidence provided by the Applicant but may consider it in making its determination."

25. The Applicant presents no evidence in his Referral that Law No. 2003/23 was violated, thus resulting in a violation of Article 51 of the Constitution of the Republic of Kosovo. In fact, the law specifically states that the Commission does not have to rely on evidence provided by the Applicant when making its determination.

26. As stated by the Constitutional Court in Case No. KI. 06/09, Applicant X vs. Supreme Court Judgment Nr. 215/2006, District Court Judgment Nr. 741/2005, Municipal Court Judgment Nr. 217/2004:

> "*. . . the Court would like to underline that it is not a court of appeal for other courts in Kosovo and it cannot intervene on the basis that such courts have issued a wrong decision or have erroneously assessed the facts. The role of the Court is solely to ensure compliance with the rights guaranteed by the Constitution and other legal instruments and cannot therefore act as a "fourth instance" court (see, mutatis mutandis, i.a., Akdivar v. Turkey, 16 September 1996, R.J.D, 1996-IV, para. 65).*"

27. Therefore the Referral is manifestly ill-founded pursuant to Rule 36 (2b) of the Rules of Procedure which provides that: " The Court shall reject a Referral as being manifestly ill-founded when it is satisfied that: b) when the presented facts do not in any way justify the allegation of a violation of the constitutional rights."

FOR THESE REASONS

The Court, following deliberations on 07 March 2012, pursuant to Articles 113.7 of the Constitution, Articles 20 of the Law and Rule 56.2 of the Rules, unanimously

DECIDES

I. TO REJECT the Referral as inadmissible;

II. This Decision is to be notified to the Applicant; and

III. This Decision shall be published in accordance with Article 20(4) of the Law and is effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Robert Carolan	Prof. Dr. Enver Hasani

KI 87/11 dated 11 June 2012- Request for review of the Supreme Court of Kosovo Judgement Rev.Nr.247/2007 dated 12 January 2011

Case KI 87/11, dated March 2012.
Keywords: Individual referral, property rights, constitutional review of Supreme Court judgment.

The applicant filed a Referral based on the Article 113.7 and 21.4 of the Constitution, Articles 20, 22.7 and 22.8 of the Law no. 03/L-121 on the Constitutional Court of the Republic of Kosovo, of 15 January 2009.

The applicant filed his referral to the Court on 29 June 2011.

The President of the Court, on 17 August 2011, appointed Judge Gjyljeta Mushkolaj as Judge Rapporteur, and the Review Panel composed of: Almiro Rodrigues (Presiding), Enver Hasani and Iliriana Islami.

The applicant filed a claim with the Municipal Court in Gjilan for certification of property rights.
The Municipal Court in Gjilan, by judgment of 10 January 2007, approved the claim of the Applicant, thereby certifying that the claimant and other members of his family are owners to the property.
The District Court in Gjilan, by judgment of 22 June 2007, upheld the judgment of the Municipal Court, and rejected the complaint of the opposing party.
Nevertheless, the Supreme Court of Kosovo, by judgment of 12 January 2011, quashed the judgments of lower instance courts, and rejected the claim of claimant in relation to property.
The Supreme Court reviewed the factual situation in the case, and found that lower instance courts had erroneously applied material law, when deciding to the favour of the claim suit of the Applicant.
The Supreme Court took into account the following facts.
The Supreme Court did not agree with the decisions of lower instance courts that the Applicant had acquired property rights by adverse possession.

The Applicant demanded from the Supreme Court to review the constitutionality of the Supreme Court decision, and impose interim measure to ensure that the judgment of the Supreme Court is null and void, if constitutional violations are established.
The Constitutional Court maintains that according to the Constitution, it is not its duty to act as a court of appeal, or a court of fourth instance. The Constitutional Court may only assess whether the evidence is presented in the manner, and whether the general proceeding, in its entirety, executed in the manner of ensuring a fair trial of the Applicant.
The Court maintains that the facts presented in no way corroborate the allegations of violation of Constitutional right to protection of property. Therefore, pursuant to Article 113, paragraph 7 of the Constitution, Article 27 of the Law, and Rule 36 of the Rules of Procedure, the Constitutional Court unanimously decided to REJECT the request for interim measure, and REJECT the referral as inadmissible.

Pristine, 10 May 2012
Ref. No. RK231/12

RESOLUTION ON INADMISSIBILITY

in

Case No. KI 87/11

Applicant

Ukshin Aliti

Request for review of the Supreme Court of Kosovo Judgement Rev.Nr.247/2007 dated 12 January 2011

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Enver Hasani, President
Kadri Kryeziu, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Ivan Čukalović, Judge
Gjyljeta Mushkolaj, Judge and
Iliriana Islami, Judge

Applicant

1. The Applicant is. Ukshin Aliti, resident of Gjilan (the "Applicant"). He is represented by attorney practising lawyer Gani Tigani.

Subject matter

2. The Applicant filed a claim in the Municipal Court in Gjilan for the determination of property rights over parcels Nr.1727 and 1728 registered in the Cadastral Municipality of Gjilan (hereafter the "Property"). The Applicant claims that he inherited the Property from his late father, Mr. Riza Aliti. On 10 January 2007, the Municipal Court approved the summary claim and confirmed the Applicant's ownership of the Property. The respondents in that matter filed an appeal in the District Court of Gjilan. On 22 June 2007, the District Court affirmed the decision of the Municipal Court and rejected the appeal. On 12 January 2011, the Supreme Court of Kosovo overturned the respective decisions of the Municipal and District Courts and rejected the summary claim of the Applicant.

3. The Applicant requests the Constitutional Court to review the constitutional validity of the decision of the Supreme Court and issue a temporary measure to ensure that the judgment of

the Supreme Court does not take legal effect should it be found to have decided in breach of the Constitution.

Legal basis

4. The Referral is based on Articles 113.7 of the Constitution of the Republic of Kosovo (hereafter the "Constitution"); Articles 27, 46, 47, 48 and 49 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter referred to as the "Law on the Constitutional Court"), and Rule 56 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter referred to as the "Rules of Procedure").

Proceedings before the Court

5. On 29 June 2011, the Applicant submitted to the Court a Referral.

6. On 17 August 2011, the President appointed Judge Gjyljeta Mushkolaj as Judge Rapporteur and a Review Panel composed of Judges Almiro Rodrigues (Presiding), and Enver Hasani and Iliriana Islami.

7. On 19 March 2012, after having considered the Report of the Judge Rapporteur, the Review Panel, made a recommendation to the full Court on the inadmissibility of the Referral.

Summary of facts

8. The Applicant's late father is said to have purchased the Property in 1964 and executed a verbal contract for sale. Therefore, the Applicant asserts that possession commenced from 1964 by his father without interruption, and thereafter by his successors, including the Applicant until 1996 - 1997.

9. The Municipal Court in Gjilan, by judgment C.Nr.26/2004 dated 10 January 2007, approved the Applicant's petition and confirmed that the Applicant and other members of his family were the owners of the Property.

10. The District Court in Gjilan, by judgment Ac.Nr.165/2007 dated 22 June 2007, confirmed the judgment of the Municipal Court and refused the appeal by the respondents.

11. However, the Supreme Court of Kosovo, by judgment Rev.Nr.247/2007 dated 12 January 2011, overturned the judgements of the lower courts and rejected the Applicant's claim over the Property.

12. According to the Applicant the Supreme Court judgment of 12 January 2011 have been served on the Applicant on 13 April 2011.

13. The Supreme Court considered the factual situation of the case and found that the lower courts wrongfully applied the law by deciding in favour of the Applicant's summary claim. The Supreme Court considered the following facts:

a. Based on the geodesy expert report dated 2 August 2000, the Property was registered under the name of KB "Mlladost" in 1954-1955. At present, the Property is registered under the name KM "Agrokultura".

b. KB "Mlladost" and a third party "A" (names withheld) executed a contract of exchange of immovable property nr.804 dated 28 July 1997 which was certified by the Municipal Court of Gjilan (Vr.nr.1427/97 dated 28 July 1997).

c. Third party "A" and third party "B" (names withheld) executed a contract of sale of the Property on 20 September 1997 which was certified by the Municipal Court of Gjilan (Vr.nr.1315/2000 dated 11 December 2000).

d. Therefore, the Applicant lost possession over the Property in 1996 – 1997 when a third party acquired the ownership rights over the Property.

e. The Property was developed by the third party owner and numerous houses were built and some were subsequently sold.

f. The verbal contract of sale which the Applicant considers to be the basis of the ownership right is invalid as it does not satisfy the form required by the applicable law on real estate. The applicable law requires contracts of this nature to be in writing and the signatures of the parties certified before a court. Neither requirement for a valid contract was met.

g. The Supreme Court disagreed with the decision of the lower courts that the Applicant acquired the ownership rights through prescriptive acquisition.

h. The Applicant became a tenant of the Property in bona fide from the moment of inheritance which is said to have taken place on 20 February 1994, the date of the death of Riza Aliti. The Supreme Court stated as follows: "The claimants as inheritors became tenants in bona fide of the immovable property from the moment of the opening of inheritance. From the death certificate is indicated that the claimants predecessor Riza Aliti, passed away on 20.02.1994, whereas the claimants lost the possession on disputed property in 1996-1997, therefore in the present case the legal requirements foreseen by paragraph 4, article 28 of the Law on Basic Property relations, for the claimant to acquire the ownership right over the disputed property through prescription, are not meet"

14. In consideration of the factual situation summarised above, the Supreme Court deemed there were reasons to amend the judgments of the lower courts.

Alleged violations of the constitutionally guaranteed rights

15. The Applicant alleges that the judgment of the Supreme Court violates his constitutionally guaranteed rights to fair and impartial trial and the right to protection of property pursuant to Articles 31 and 46 of the Constitution. The Applicant argues that the Supreme Court's approach is in direct conflict with Article 80. 6 (entry into force of law) regarding Article 102.3 (general principles of the judicial system) which determines that "Courts shall adjudicate based

on the Constitution and the law). The Applicant argues this since the prescription period was completed while Riza Aliti himself was alive (1964 beginning of prescription period and possession of 20 years ends with year 1984), which is not contested. From this angle for the Applicant it appears quite unacceptable and unconstitutional position of the Supreme Court of Kosovo.

Assessment of interim measure

16. As regards the Applicant's request that the Constitutional Court issue an interim measure to ensure that the judgment of the Supreme Court does not take legal effect, this request does not contain sufficient evidence or reasons, which might justify the granting of an interim measure.

17. In particular, the Applicant has not shown, as required by Article 27 of the Law, that he will suffer irreparable damage, if an interim measure is not granted. Moreover, it has not been established that the imposition of interim measures would be in the public interest.

18. Therefore, the requirements for the imposition of interim measures are not satisfied and the Applicant's' request must be rejected.

Assessment of admissibility

19. In order to be able to adjudicate the Applicant's referral, the Court needs first to examine whether the Applicant has fulfilled all admissibility requirements laid down in the Constitution.

20. In this regard, the Court refers to Articles 53 of the Constitution as follows:

21. "Human rights and fundamental freedoms guaranteed by this Constitution shall be interpreted consistent with the court decisions of the European Court of Human Rights."

22. The Court also refers to Article 113(7) of the Constitution as follows:

23. *"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".*

24. Finally the Court recalls to its Rules of Procedure, most notable to:

a. Rule 36 (1) (c) of the Rules according to which: the Court may only deal with referrals if the referral is not manifestly ill-founded.

b. And Rule 36 (2) (b) and (d) according to which: *the Court shall reject a referral as being manifestly ill-founded when it is satisfied that the presented facts do not in any way justify the allegation of a violation of the constitutional right or the Applicant does not sufficiently substantiate his claim.*

25. The Constitutional Court reiterates that it is not its task under the Constitution to act as a court of appeal, or a court of fourth instance, in respect of the decisions taken by ordinary courts. It is the role of the latter to interpret an apply the pertinent rules of both procedural and substantive law (see, *mutatis mutandis,* García Ruiz v. Spain [GC], no 30544/96, para 28 European Court on Human Rights [ECHR] 1999-I).

26. The Constitutional Court can only consider whether the evidence has been presented in such a manner and the proceedings in general viewed, in their entirety, have been conducted in such a way that the Applicant had a fair trial (see, Report of the European Commission on Human Rights in the case Edwards v. United Kingdom App. No 13071/87 adopted on 10 July 1991).

27. The mere fact that the Applicant is dissatisfied with the outcome of the case cannot of itself raise an arguable claim of a breach or Article 31 of the Constitution (see mutatis mutandis Judgment ECHR Appl. No. 5503/02, Mezotur Tizsazugi Tarsulat v. Hungary, Judgment of 26 July 2005.)

28. With regard to the Applicant's complaint of the alleged violation of protection of property of Article 46 of the Constitution as well Article 1 of Protocol No. 1 to the Convention the Court recalls that this applied only to a person's existing possessions.

29. Thus, the hope that a long-extinguished property right may be revived cannot be regarded as a "possession"; nor can a conditional claim which has lapsed as a result of a failure to fulfil the condition (see *Gratzinger and Gratzingerova v. the Czech Republic* (dec.) [GC], no. 39794/98, para. 69, ECHR 2002-VII). However, in certain circumstances, a "legitimate expectation" of obtaining an "asset" may also enjoy the protection of Article 1 of Protocol No. 1. Thus, where a proprietary interest is in the nature of a claim, the person in whom it is vested may be regarded as having a "legitimate expectation" if there is a sufficient basis for the interest in national law, for example where there is settled case-law of the domestic courts confirming its existence (see *Kopecký v. Slovakia* [GC], no. 44912/98, para. 52, ECHR 2004-IX). However, no legitimate expectation can be said to arise where there is a dispute as to the correct interpretation and application of domestic law and the applicant's submissions are subsequently rejected by the national courts (see *Kopecký*, cited above, para. 50).

30. The Court recalls that in the present case there is a dispute as to the correct interpretation and application of applicable law and the Applicant's submissions are subsequently rejected by the Supreme Court.

31. The Curt is therefore satisfied that the presented facts do not in any way justify the allegation of a violation of the constitutional right to protection of property.

FOR THESE REASONS

The Constitutional Court pursuant to Article 113.7 of the Constitution, Article 27 of the Law and Rule 36 of the Rules of the Procedure unanimously:

DECIDES

I. TO REJECT the Request for interim measure;

II. TO REJECT the Referral as Inadmissible;

III. This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20 (4) of the Law; and

IV. This Decision is effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Dr. Gjyljeta Mushkolaj	Prof. Dr. Enver Hasani

KI 150/11 dated 28 May 2012- Constitutional Review of the Judgment of the Supreme Court of Kosovo A.no. 396/11, dated 7 June 2011

Case KI 150/11, dated 5 May 2012.
Keywords: Individual referral, constitutional review of Supreme Court judgment.

The applicant filed a Referral based on the Article 113.7 and 21.4 of the Constitution, Articles 20, 22.7 and 22.8 of the Law no. 03/L-121 on the Constitutional Court of the Republic of Kosovo, of 15 January 2009.

The applicant filed his referral to the Constitutional Court on 21 November 2011.

The President of the Court, on 17 January 2012, appointed Judge Kadri Kryeziu as Judge Rapporteur, and the Review Panel composed of: Robert Carolan (Presiding), Altay Suroy and Enver Hasani.

The applicant was rejected his application for Pension as KLA Invalid by the Division for Families of Heroes, War Invalids and Civil Victims, on 28 January 2011, since he lacked the original certification by the KPC Headquarters.

Discontented with this decision, the Applicant lodged a complaint with the Complaint Section of the above-mentioned Division.

The Complaint Section of the above-mentioned Division, on 8 April 2011, rendered a decision thereby rejecting the complaint of the Applicant. According to the decision of 8 April 2011, the complaint of the Applicant was rejected due to the fact that the document submitted by the applicant did not demonstrate that the Applicant was member of the KLA, and that he was wounded.
The Applicant, on 5 May 2011, filed a complaint with the Supreme Court, thereby requiring to quash the decision of 8 April 2011. The Applicant claimed that the decision is unlawful and unfair.

The Supreme Court, on 7 June 2011, by Judgment A. no. 396/2011, rejected the claim of the Applicant.

The Applicant alleges that the Supreme Court, and prior to that, administrative bodies, have erroneously established the facts.

Following review of the Referral, the Constitutional Court noted that according to the Constitution, the Court is not a court of fourth instance, in reviewing the decisions rendered by regular courts. It is a role of regular courts to interpret and apply relevant procedural rules and material law.
Following a comprehensive review of proceeding, the Court did not find that relevant procedures were unlawful or arbitrary in any way.
Therefore, pursuant to Article 113, paragraph 7 of the Constitution, and Rule 36 of the Rules of Procedure, the Constitutional Court unanimously decided to reject the referral as inadmissible

Pristine, 11 May 2012
Ref. No.: RK232/12

RESOLUTION ON INADMISSIBILITY

in

Case No. KI 150/11

Applicant

Naser Shala

Constitutional Review of the Judgment of the Supreme Court of Kosovo A.no. 396/11, dated 7 June 2011

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Enver Hasani, President
Kadri Kryeziu, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Ivan Čukalović, Judge
Gjyljeta Mushkolaj, Judge and
Iliriana Islami, Judge.

Applicant

1. The Applicant is Naser Shala resident of Pristina.

Subject Matter

2. The subject matter of the Referral is the alleged violation of the Applicant's right to invalid pension guaranteed by the Law No. 02/L-2 on the Status and the Rights of the Families of Heroes, Invalids, Veterans and Members of KLA and of the Families of Civilian Victims of War.

Legal Basis

3. The Referral is based on Art. 113.7 of the Constitution; Articles 46, 47, 48 and 49 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter referred to as the Law), and Rule 56 (2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter referred to as the Rules of Procedure).

Challenged decision

4. The Applicant challenges the Judgment of the Supreme Court of Kosovo A.no.396/11 dated 7 June 2011, which was served on him on 10 October 2011.

Procedure before the Court

5. On 21 November 2011 the Applicant submitted a referral to the Constitutional Court of Kosovo (hereinafter the "Court")

6. On 17 January 2011 the President appointed Kadri Kryeziu as Judge Rapporteur and a Review Panel composed of Judges Robert Carolan (Presiding), Altay Suroy and Enver Hasani.

7. On 4 May 2012, the Review Panel considered the Report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

8. According to the documents submitted by the Applicant, the facts of the case may be summarised as follows.

9. On 28 January 2011 the Department for Martyr Families, Invalids of War and Civil Victims in Prisitina by its decision no.01-01/7043 rejected the Applicant's claim to a KLA invalid pension since it lacks the original certificate from KPC General Headquarters.

10. Unsatisfied with this decision the Applicant complained to the appeal division of the above mentioned Department.

11. On 8 April 2011 the appeal division of that Department issued its Decision rejecting the Applicant's appeal. According to the Decision of 8 April 2011, the Applicant's claim was rejected because the document the Applicant submitted did not demonstrate that he was a member of the KLA and was wounded between 30.12.1991 and 19.09.1999 in the course of his KLA membership as prescribed in Article 7.4 and Article 19 Paragraph 4 of the Law on War Values No. 02/L (hereinafter "Law No. 02/L") and Administrative Instruction no.09/2006 of the MLSW.

12. The Applicant brought a claim to the Supreme Court on 5 May 2011 for the annulment of Decision of 8 April 2011. The Applicant alleged that the challenged Decision was unfair and illegal because of an incomplete and erroneous confirmation of the factual situation and wrong application of the substantive law. The Applicant emphasized that the first instance body has

erroneously concluded the factual situation, without proper consideration given to the medical documents submitted by the Applicant.

13. On 7 June 2011 the Supreme Court of Kosovo by its Judgment A.no.396/2011 rejected the Applicant's claim. The Supreme Court found that the Department for Martyr Families, Invalids of War and Civil Victims appeal division had in a complete and right manner confirmed the factual situation when it rejected the appeal of the Applicant. The Supreme Court concurred with the reasoning in the first and second administrative decision that the Applicant failed to produce a certificate that would prove the date and place of the alleged wound in the course of the Applicant's duty as a KLA soldier.

Applicant allegations

14. The Applicant alleges that the Supreme Court as well as previous administrative bodies have incorrectly ascertained the facts, and that he has in fact been a wounded KLA member who therefore qualifies for benefits under the applicable laws.

15. The Applicant argues that there has been violation of the relevant provisions of the Law No. 02/L-2 on the Status and the Rights of the Families of Heroes, Invalids, Veterans and Members of KLA and of the Families of Civilian Victims of War

16. The Applicant, by implication, alleges that the previous courts violated his right to a fair trial under Article 31 of the Constitution and Article 6(1) of the ECHR.

Assessment of admissibility

17. In order to be able to adjudicate the Applicant's referral, the Court needs first to examine whether the Applicant has fulfilled all the admissibility requirements laid down in the Constitution.

18. Under the Constitution, the Constitutional Court is not a court of appeal when it reviews decisions taken by lower courts. The role of lower courts is to interpret and apply the pertinent rules of both procedural and substantive law (see *mutatis mutandis*,

Garcia Ruiz vs. Spain [GC], No. 30544/96, Paragraph 28, European Court for Human Rights [ECHR] 1999-I)

19. With regard to the Applicant's claim to an invalid pension, the Applicant was provided with many opportunities to present his case and to challenge the interpretation of the law which he deemed to be incorrect both before the Department for Martyr Families, Invalids of War and Civil Victims and before the Supreme Court. After reviewing the proceedings in its entirety, the Court did not find that relevant proceedings were in any fashion incorrect or arbitrary (see *mutatis mutandis* Shub vs. Lithuania, Decision of ECtHR on admissibility of request, No. 17064/06 of 30 June 2009)

20. Finally, admissibility requirements have not been met in this Referral. The Applicant has failed to substantiate the allegation that the challenged decision violated the Applicant's constitutional rights and freedoms.

21. Therefore, it results that the Referral is manifestly ill-founded pursuant to Rule 36 (2b) of the Rules of Procedure which provides that: " The Court shall reject a Referral as being manifestly ill-founded when it is satisfied that: b) when the presented facts do not in any way justify the allegation of a violation of the constitutional rights."

FOR THESE REASONS

The Constitutional Court pursuant to Article 113(7) of the Constitution and Rule 36 of the Rules, unanimously:

DECIDES

I. TO REJECT the Referral as Inadmissible;

II. This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20 (4) of the Law; and

III. This Decision is effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Kadri Kryeziu	Prof. Dr. Enver Hasani

KI 17/12 dated 04 July 2012- Request for constitutional review of the Decision of the Government of Kosovo nr. 12/59 dated 01 February 2012

Case KI 17/12, decision dated 11 May 2012
Keywords: human dignity, individual referral, non-exhaustion of legal remedies

The Applicant submitted the Referral pursuant to Article 113 paragraph 7 of the Constitution of Kosovo, alleging that by the decision of the Government of Kosovo no. 12/59 dated 1 February 2012, under which the Applicant was discharged from the position of member of Board of the Regional Water Company (hereinafter: RWC) "Hidrodrini" JSC were violated his rights, guaranteed by Article 23 (Human Dignity) and Article 26 (Right to Personal Integrity) of the Constitution of the Republic of Kosovo.

The Constitutional Court concluded that the Referral is inadmissible, because the Applicant has not exhausted all legal remedies.

Pristine, 11 May 2012
Ref. No.: RK254/12

RESOLUTION ON INADMISSIBILITY

in

Case No. KI 17/12

Applicant

Elez Hajdaraj

Request for constitutional review of the Decision of the Government of Kosovo nr. 12/59 of 01 February 2012

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Enver Hasani, President
Kadri Kryeziu, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Ivan Čukalović, Judge
Gjyljeta Mushkolaj, Judge and
Iliriana Islami, Judge

Applicant

1. The Applicant is Mr. Elez Hajdaraj (hereinafter: the Applicant) resident of village Shushica, Municipality of Istog.

Challenged decision

2. The challenged decision of the public authority allegedly violating the rights guaranteed by the Constitution of Kosovo is the Decision of the Government of Kosovo No. 12/ 59 of 1 February 2012, which was served on the applicant on 23 February 2012.

Subject matter

3. The subject matter of the Referral submitted with the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) on 28 February 2012, is the constitutional review of the Decision of the Government, no. 12/59 of 1 February 2012, under which the applicant was discharged from the

position of member of Board of the Regional Water Company (hereinafter: RWC) "Hidrodrini" JSC, headquartered in Peja.

Legal basis

4. Article 113.7 of the Constitution, Articles 22 and 27 of the Law no. 03/L-121 on the Constitutional Court of the Republic of Kosovo of 15 January 2009, and rules 54, 55 and 56 (2) of the Rules of Procedures of the Constitutional Court of Kosovo.

Proceedings before the Court

5. On 28 February 2012 the applicant submitted the Referral with the Court and the same has been registered under no. KI 17/12.

6. On 29 February 2012, the President, by Decision GJ.R. KI 17/12, appointed judge Altay Suroy as Judge Rapporteur, and by Decision KSH 17/12, appointed the Review Panel composed of Judges Ivan Cukalovic (presiding), Gjyljeta Mushkolaj (member) and Iliriana Islami (member).

7. On 5 March 2012, the Constitutional Court notified the Anti Corruption Agency related to the filed Referral.

8. On 5 March 2012, The Constitutional Court notified the Government of the Republic of Kosovo on the submitted Referral.

9. On 16 March 2012, the Anti Corruption Agency sent a reply in the Court regarding the request in which states that "Mr. Hajdaraj has been informed on time regarding the suspicions for existence of a conflict of interest as he has exercised the function of member of the Board of Directors and as "Officer in charge of the sector of water supply and sanitation", a

situation that is contrary to the Law on Preventing Conflict of Interest in Exercising Public Function No. 02/-L-133 and Law on Public Enterprises No. 03-L-087. Whereas he has not undertaken any action within the legal deadline to resolve this situation, therefore in compliance with its legal competencies this agency has proposed to the Government his removal from the function of the Board member in the Public Enterprise RWC "Hidrodrini" JSC- Peja.

10. On 20 March 2012, the Government of the Republic of Kosovo sent to the Court a reply to the notification explaining that the procedure for Mr. Elez Hajdaraj's dismissal from the position of Board member of N.P. RWC "Hidrodrini", was initiated by the Anti Corruption Agency, and that the Government had adopted the proposal of this Agency as grounded, thus the decision for dismissal was taken conform to the concluded situation by this agency that Mr. Hajdaraj did not eliminate the conflict of interest.

11. On 9 may 2012, the Review Panel, composed as in paragraph 6 of this Resolution, proposed to full Court the inadmissibility of the Referral.

Summary of facts

12. On 16 October 2008, the Office of the Permanent Secretary of Kosovo Government has published the vacancy for Director of the Boards of Central Public Enterprises in Kosovo public media, and among them in item 11, also for RWC "Hidrodrini" JSC - Peja.

13. On 24 December 2008, the Government of the Republic of Kosovo took the Decision No.12 /48 by which the Board of Public Enterprise RWC "Hidrodrini" JSC-Peja, appointed the following candidates: 1) Mr. Shkëlzen Hyseni –presiding, 2)

Mr. Rexhë Abazi, 3) Mr. Elez Hajdaraj (the applicant in CCK) and 4) Mr. Kolë Berisha.

14. On 23 April 2009, the Government of the Republic of Kosovo took the Decision no. 10/16 of 24 December 2008 to appoint the members of the Board of Directors of RWC "Hidrodrini" JSC –Peja, by which the board member, Mr. Kolë Berisha is replaced with a new member, Mr. Gjelosh Gojani, while also based on this decision Mr. Elez Hajdaraj remains appointed to the position of a Board member of this public enterprise.

15. On 4 November 2009, the applicant sues RWC "Hidrodrini" with the Municipal Court in Istog for compensation of the income earned on the basis of work as board member. The Municipal Court in Istog registered this claim under C. No. 314/09.

16. On 28 December 2009, the respondent RWC "Hidrodrini" replied in the lawsuit of the applicant C. no. 314/09, by rejecting entirely the lawsuit as ungrounded. According to the respondent, under the contract of employment no.27 of 19 February 2009, in this company between the applicant and the respondent, the applicant Mr. Elez Hajdaraj, is appointed in the position "Head of the sector water supply and sanitation" and according to them a person can not receive double income by same enterprise.

17. On 24 September 2010, The Municipal Court in Istog, based on the Judgment C. no. 314/09, approves the lawsuit of the applicant and in this way the respondent is obliged within 15 days to compensate him the amount of 5.400, 00 Euro (five thousand And four hundred euros), earned on the basis of the work as a board member.

18. According to the documents attached to the Referral, could not be concluded the fact whether has been filed a complaint against this judgment.

19. On 17 May 2011, the Anti Corruption Agency had informed Mr. Elez Hajdaraj regarding the initiation of procedure to review the situation of conflict of interest related to the function of the applicant as a member of the Board of Directors in addition to his position as regular worker in the company RWC "Hidrodrini".

20. On 20 July 2011, the Anti Corruption Agency had warned the Applicant again on the situation of conflict of interest, and requested by applicant to take all responsible steps, within 30 days, to avoid the conflict of interest.

21. On 1 August 2011, the Applicant replied to the Anti Corruption Agency noting that for certain purposes people within the company had falsified documents in which the applicant is appointed as 'Officer", and that in the position of member of Board of Directors he was appointed on the basis of the regular vacancy announcement.

22. On 6 October 2001, the Anti Corruption Agency by document no. AKK-DP-03/11, proposes to the Government of Kosovo **the dismissal** of Mr. Elez Hajdaraj from the position of Board member of RWC "Hidrodrini" JSC –Peja, because it is concluded the situation of his conflict of interest with the public enterprise where he is member of Board of Directors.

23. On 1 February 2012, the Government of Kosovo, according to the Decision 12/59, approves the request of the Anti Corruption Agency and decides to dismiss the applicant Mr. Elez Hajdaraj from the position of member of Board of

Directors of RWC "Hidrodrini" JSC Peja, giving the reason as in the paragraph 12 of this report.

Applicant's allegations on constitutional violations

24. The Applicant alleges that decision of the Government on his dismissal from the position of Board member in the public enterprise, violated his rights guaranteed by the Constitution as follows; Article 23 of the Constitution of the Republic of Kosovo (Haman Dignity) and Article 26 (Right o Personal Integrity), and from the Constitutional Curt requested the annulment of the Government Decision no. 12/59 of 1 December 2012, and also requested from Constitutional Court to "oblige" the Anti Corruption Agency to make a "public apology" through medias because of violation of his dignity.

Assessment of admissibility of the Referral

25. In order to be able to adjudicate the Referral of the Applicant, the Court needs first to examine whether the Applicant has fulfilled all admissibility requirements laid down in the Constitution, specified further by the Constitution, the Law and the Rules of Procedures.

26. In this relation it refers to the Article 113.7 of the Constitution which provides:

"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".

27. The Court also considers Rule 36 paragraph 1 of the Rules of Procedures of the Constitutional Court where is clearly provides that the Court may only deal with Referrals if:

a) "All effective remedies that are available under the law against the Judgment or decision challenged have been exhausted".

28. In order to verify whether the Applicant has fulfilled the admissibility criteria for exhaustion of legal remedies prior to addressing the issue with the Constitutional Court, the Court considers the legal provisions which regulate this legal matter and in particular the provisions of the Law on the State Administration of the Republic of Kosovo (Law no. 03/L-189), Law on the Administrative Procedure (Law no. 02/L-28), Law on Administrative Conflicts (Law no. 03/L-202) and Regulation No. 02/2011 on Fields of Administrative Responsibility of Office of Prime Minister and the Ministries, and that:

Law on the Administrative Procedure

Article 1.

1.1. The provisions of this Law shall be implemented by all bodies of public administration along exercising their functions through individual or collective administrative acts.

Law on state administration

Article 2

1.1. Highest sate administration authorities-
The Government as a whole, the Prime Minister, the Deputy Prime Ministers and the ministers.

1.2. Highest state administration bodies- the Office of the Prime Minister and the Ministries are highest state administration bodies used by the respective Highest State Administration Authorities for implementation of their governmental and administrative responsibilities.

Article 4 Duties of State Administration

1. Duties of state administration are:
1.6. Setting up in administrative procedure the rights and obligations of citizens and legal entities;

Law on Administrative conflicts

Article 3 – Definitions

1. Terms used in this law have the following meaning:

1.1. **Body –** public administration bodies, central government bodies and other bodies on their dependence, local government bodies and bodies on their dependence, when during exercising public authorization decide on administrative issues.
1.2. **Administrative act –** every decision of the body foreseen in sub-paragraph 1.1 of this paragraph, which shall be taken in the end of the administrative procedure on exercising public authorizations and which effects, in favor or not in favor manner legally recognized rights, freedoms or interest of natural or legal persons respectively other party in deciding the administrative issues.

Article 11

Administrative conflict according to the indictment shall be solved by the Supreme Court of the Republic of Kosovo.

Article 13

1. An administrative conflict can start only against the administrative act issued in the administrative procedure of the court of appeals.

2. An administrative conflict can start also against the administrative act of the first instance, against which in the administrative procedure, complain is not allowed.

29. The Court wishes to emphasize that the rationale for the exhaustion rule is to afford the authorities concerned, including the courts, the opportunity to prevent or remedy the alleged violation of the Constitution. The rule is based on the assumption that the Kosovo legal order will provide and effective remedy for the violation of constitutional rights (see mutatis mutandis, ECHR, Selmouni v. French no. 25804/94 Decision of 28 July 1999).

30. Regarding the issues raised related to the procedure developed by the Anti Corruption Agency and the raised doubt regarding the correct application of the Law on Prevention of Conflict of Interest in Exercising the Public Function (Law no. 03/L-155) and Law on Public Enterprises (Law no. 03/L-087), the Court notes that is not a court of verifying fact and wants to note that finding of fair and factual situation is full jurisdiction of regular courts and that the role of the Constitutional Court is only to ensure compliance with rights guaranteed by the Constitution and other legal instruments, and therefore could not act as a "forth instance court" (see, mutatis mutandis Akdivar vs. Turkey, 16 September 1996 RJ. D. 1996-IV, par. 65).

31. Furthermore, in Article 102 [General Principles of Judicial System] item 3 of the Constitution, clearly provides that: "**Courts shall adjudicate based on the Constitution and the law".**

32. In these circumstances the Referral **is inadmissible** because the Applicant did **not exhaust** all legal remedies prior to addressing the issue with the Constitutional Court, and the Applicant did not fulfill the criteria for admissibility of the Referral, therefore:

FOR THESE REASONS

Pursuant to Article 113.8 of the Constitution of the Republic of Kosovo, Article 47 of the Law on Constitutional Court and Rule 36 of the Rules of Procedure, the Constitutional Court on 9 May 2012, unanimously

DECIDES

I. TO REJECT the Referral as Inadmissible;

II. This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20 (4) of the Law; and

III. This Decision is effective immediately.

Judge Rapporteur **President of the Constitutional Court**

Altay Suroy Prof. Dr. Enver Hasani

KI 129/10 dated 28 May 2012- Request for Constitutional review of the Judgment of Supreme Court of Kosovo A. no. 15/ 2003 dated 30 June 2004

Case KI 129/2010, decision dated 4 May 2012
Keywords: administrative contest, individual Referral, not *"ratione temporis"* in compliance with the provisions of the Constitution and the Law.

The Applicant submitted his Referral based on Article 113.7 of the Constitution, alleging that by the Judgment A. no. 15/2003 his constitutional rights guaranteed by Article 24 [Equality before the Law], Article 31 [Right to Fair and 1m partial Trial] , Article 46 [Protection of Property] of the Constitution; Article 6 of European Convention of Human Rights and Article 1 of Protocol 1 of European Convention of Human Rights.

The Court noticed that the request related to events prior to 15 June 2008, respectively before the entry onto force of the Constitution of the Republic of Kosovo. Therefore, according to this the application is submitted after the prescribed deadline and therefore is not "*ratione temporis*" in compliance with the provisions of the Constitution. The Court cited the case *Jasifmiene against Lituania*, Referral no. 41510/98, the judgment of ECHR of 6 March and 6 June 2003). As a conclusion, the Court concluded that the Referral has not met the admissibility requirements pursuant to Rule 36.3 (4) of the Rules of Procedure of the Court.

Pristine, 14 May 2012

Nr.Ref:RK233/12

RESOLUTION ON INADMISSIBILITY

in

Case No. KI 129/10

Applicant

Agron Xhaferi

Request for Constitutional review of the Judgment of Supreme Court of Kosovo A. no. 15/ 2003 of 30 June 2004

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Enver Hasani, President
Kadri Kryeziu, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Ivan Čukalović, Judge
Gjyljeta Mushkolaj, Judge and
Iliriana Islami, Judge

Applicant

1. The Applicant is Mr. Agron Xhaferi resident of Prishtina, represented by Mr. Ferki Xhaferi, an attorney from Podujeva.

Challenged decision

2. The challenged decision of the public authority allegedly violating the rights guaranteed by the Constitution is the Judgment of the Supreme Court of the Republic of Kosovo, A. no. 15/2003 of 30 June 2004, which was served on the Applicant on 5 July 2004.

Subject matter

3. The subject matter of the Referral submitted with the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) is the constitutional review of the Judgment of the Supreme Court of Kosovo A. no. 15/2003 of 30 June 2004, where the Applicant claims that that by this Judgment are violated his rights guaranteed by the Constitution, due to the rejection of the appeal as ungrounded, by the same, related to the challenged decisions of the Custom Service of Kosovo, respectively the valuation procedures of the goods in the customs point of Peja.

Legal basis

4. Article 113.7 of the Constitution, Article 22 of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo of 15 January 2009 (hereinafter: Law) and Rule 56 (2) of the Rules of Procedure of the Constitutional Court (hereinafter: Rules of Procedures).

Proceedings before the Court

5. On 2 December 2010, the applicant submitted the referral with the Constitutional Court.

6. On 14 February 2011, the President by decision GJR. KI 129/10, appointed judge Iliriana Islami as Judge Rapporteur. On the same day, the President, appointed the Review Panel composed of Judges Altay Suroy (Presiding), Kadri Kryeziu (member) and Enver Hasani (member).

7. On 27 January 2011, the Court notified the applicant and te Supreme Court of Kosovo.

8. On 4 May 2012, the Review Panel considered the Report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

9. On 18 June 2002, the applicant has signed a contract with the enterprise “Tobacco Factory Sarajeva” for the purpose of

purchasing tobacco cigarettes type “Aura” for import and retail in the Kosovo market.

10. On 27 September 2002, in the Custom Branch in Peja had arrived an amount of tobacco based on the invoice no.22 dated 23 September 2002, therefore the applicant claims that his goods have been overvalued/overrated at his expense, and based on the valuation of the goods has been assigned the amount of customs payment to which the applicant has not been agreed.

11. The applicant claims that on 11 September 2002, on the basis of presentation of Single /Unique Custom Document no. 17419 resulting that at the same custom point a company “Gradina” from Zvecan, has passed the costumes procedures with the same kind of goods, and the goods of this company has been valuated much lower compared to the estimation of the applicant goods.

12. On 15 November 2002, after submission of request for repetition of the procedure by the applicant, the Costume Service of UNMIK rendered the decision 07/no. 2391, therefore rejecting the applicant’s request for repetition of the procedure concerning the valuation of custom’s value of the goods (tobacco), since the Article 129 paragraph 2 of the Applicable Customs Law states that the objection can not be filed after the good leave the customs supervision and the case file indicates that the customs value is determined correctly and in accordance with Article 35 of the Costumes Law.

13. On 26 November 2002, the Director of the Custom Service appointed by UNMIK administration deciding in second instance on the basis of the complaint filed by the applicant against the Decision no.2391, therefore, rejects the applicant’s complaints as unfounded. Further the reasoning states that the first –instance body acted right and in conformity with the prescribed method in Article 35 of the Applicable Customs Law.

14. After the claim was filed by the applicant, the Supreme Court on 30 June 2004 issued the Judgment A. no. 15/2003 and rejects the claim of the applicant through which requested to

annul the Decision of the Custom Service 07 no. 2392 of 16 December 2002? The reasoning of this court states that the claimant (plaintiff) has not filed an objection within the deadline as stipulated in Article 129 of the Applicable Customs Law in Kosovo.

Applicant's allegations

15. The applicant alleges that the Judgment of the Supreme Court A. no. 15/2003 of 30 June 2004, violated his rights guaranteed by the Constitution of the Republic of Kosovo and European Convention on Human Rights, as follows:

- Article 24 [Equality before the Law] of the Constitution;
- Article 31 [Right to Fair and Impartial Trial] of the Constitution;
- Article 46 [Protection of Property] of the Constitution;
- Article 6 of European Convention of Human Rights; and
- Article 1 of Protocol 1 of European Convention of Human Rights.

Assessment of Admissibility of the Referral

16. In order to be able to adjudicate the Referral of the Applicant, the Court needs first to examine whether the Applicant has fulfilled all admissibility requirements laid down in the Constitution, specified further by the Constitution, the Law and the Rules of Procedures.

17. In relation to this referral, the Constitutional Court finds that the applicant challenges the Judgments of the Supreme Court A. no. 15/2003 of 30 June 2004. This means that the request relates to events prior to 15 June 2008, respectively before the entry onto force of the Constitution of the Republic of Kosovo. Therefore, according to this the application is submitted after the prescribed deadline and therefore is not "*ratione temporis*" in compliance with the provisions of the Constitution and the Law (see mutatis mutandis *Jasiūnienė against Lituania, Referral no. 41510/98, judgment of ECHR of 6 March and 6 June 2003).*

18. Subsequently, the application is inadmissible pursuant to the Rule 36.3 (h) of the Rules of Procedures which provides:

Rule 36.3(h) *„A Referral may also be deemed inadmissible in any of the following cases:*

h) the Referral is incompatible ratione temporis with the Constitution".

FOR THESE REASONS

The Constitutional Court, pursuant to Rule 36.3 (4) and Rule 56 (2) of the Rules of Procedure, on 4 May 2012, unanimously

DECIDES

I. TO REJECT the Referral as Inadmissible;

II. This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20 (4) of the Law on the Constitutional Court; and

III. This Decision is effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Dr. Iliriana Islami	Prof. Dr. Enver Hasani

KO 38/12 dated 05 June 2012- Assessment of the Government's Proposals for Amendments of the Constitution submitted by the President of the Assembly of the Republic dated 12 April 2012

Case KO 38/12, dated 15 May 2012
Keywords: President of the Assembly of the Republic of Kosovo, assessment of constitutional amendments

The Applicant has filed a Referral in compliance with Articles 113.7 and 21.4 of the Constitution, Articles 20, 22.7 and 22.8 of the Law no. 03/L-121 on the Constitutional Court of the Republic of Kosovo, of 15 January 2009.
On 26 November 2011, the Applicant submitted a Referral to the Constitutional Court.
The President of Assembly submitted the Referral on 12 April 2012, in relation to constitutional amendments proposed by the Government.
On the same date, a copy of the referral was delivered to the President of the Republic of Kosovo, the Prime Minister of Kosovo, and the Ombudsperson.

The Court emphasized that the amendments, amongst others, propose the omission of Articles 146 and 147 of the Constitution, which provide on the mandate, powers and obligations of the ICR. The Court also invoked Article 5, paragraph 2, of the Annex IX of the Comprehensive Proposal for the Kosovo Status Settlement (CSP), which provides: *"5.2 The mandate of the ICR shall be terminated when the International Steering Group determines that Kosovo has implemented the terms of this Settlement"*.

The Court reminded that pursuant to Article 113, paragraph 9 of the Constitution: *„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"*.

Upon review of the Referral, which includes the constitutional amendments as proposed by the Government, submitted on 12 April 2012 by the President of the Assembly of Kosovo, **pursuant to Article 113, paragraph 9, the Constitutional Court unanimously found the referral admissible.**

The Court found that out of 22 amendments in the Government proposal on Constitutional amendments, submitted by the President of Assembly on 12th of April 2012, only amendment no. 17 diminishes the rights and freedoms guaranteed by Chapter II of the Constitution.

Pristine, 15 May 2012
Ref. No.: AK 234 /12

Case KO 38/12

Assessment of the Government's Proposals for Amendments of the Constitution submitted by the President of the Assembly of the Republic on 12 April 2012

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Enver Hasani, President
Kadri Kryeziu, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Ivan Čukalović, Judge

Gjyljeta Mushkolaj, Judge and
Iliriana Islami, Judge.

The Referral

1. On 28 March 2012, the Government of the Republic of Kosovo, pursuant to Articles 92 (4), 93 (4) and (9) and 144 (1) adopted a Decision No. 02/68 on the approval of the proposals for Amendments of the Constitution of the Republic of Kosovo (hereinafter referred to as "the Government's Proposals for Amendments of the Constitution").

2. In accordance with the same decision, the Secretary General of the Office of the Prime Minster was tasked to forward the Government's Proposals for Amendments of the Constitution to the Assembly of the Republic of Kosovo.

3. On 5 April 2012, the Secretary General of the Office of the Prime Minister forwarded the Government's Proposals for Amendments of the Constitution to the Secretary of Kosovo Assembly.

4. On 12 April 2012, the President of the Assembly of Kosovo in accordance with Article 144(3) of the Constitution referred the Government's Proposals for Amendments of the Constitution to the Constitutional Court, for a prior assessment that the proposed amendments do not diminish any of the rights and freedoms set forth in Chapter II of the Constitution.

5. The President of the Assembly is, therefore, the Applicant in the proceedings before the Constitutional Court.

6. The Referral is based on Articles 113(9) and 144(3) of the Constitution, Article 20 and 54 of the Law on the Constitutional Court of the Republic of Kosovo (No. 03/ L-121) of 16 December 2008 (hereinafter, the "Law"), and Rule

56 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter, the "Rules of Procedure").

7. Subject matter of the referral is 22 proposed amendments to the Constitution of the Republic of Kosovo approved by the Decision No. 02/68 of the Government of Kosovo on 28 March 2012.

8. At the outset it should be noted that the majority of the proposed amendments relate to the changes within the Chapter XIII "Final Provisions" and the Chapter XIV "Transitional Provisions" of the Constitution.

9. Indeed, these amendments express the intent of Government to propose changes to the Constitution that are necessary to end supervised independence of the Republic of Kosovo. This is also clear from the Preamble of the Government's Proposals for Amendments of the Constitution, since it recalls the Resolution on Ending International Supervision of Independence, approved by the Assembly of Kosovo on 31 January 2012.

Proceedings before the Court

10. On 12 April 2012, the President of the Assembly submitted a Referral concerning the Government's Proposals for Amendments of the Constitution.

11. On 13 April 2012, the President appointed Judge Kadri Kryeziu as Judge Rapporteur and Judges Robert Carolan (Presiding), Altay Suroy and Snezhana Botusharova as composing the Review Panel.

12. On 20 April 2012, the President of the Assembly was notified that the Court has registered the Referral.

13. On the same date, the Referral was communicated to the President of the Republic of Kosovo, Prime Minister of Kosovo and to the Ombudsperson.

14. On 23 April 2012, the Court also informed the International Civilian Representative (ICR) that the aforementioned referral had been received by the Court.

15. On 2 May 2012, the Court notified the ICR that the Government's Proposals for Amendments of the Constitution relate, inter alia, to several transition provisions in the Constitution as well as the authority of the ICR to continue to function. In that letter, the Court emphasised that the Law on Constitutional Court provides that the Court should submit it decision on the proposed amendments to the extent possible within 60 days of the receipt of the referral.

16. The Court emphasized that the amendments propose, *inter alia*, deletion of Articles 146 and 147 of th*e Constitut*ion that specify the mandate, powers and obligations of the ICR. The Court also referred to Article 5.2. Annex IX, of the Comprehensive Proposal for the Kosovo Status Settlement (CPS) that provides "The mandate of the ICR shall be terminated when the International Steering Group determines that Kosovo has implemented the terms of this settlement."

17. The Law on Constitutional Court obliges the Court to issue a decision on the proposed amendments within 60 days. Meanwhile, the Court will proceed with its assessment, under the understanding that the Government's Proposals for Amendments of the Constitution will not be put forward for their adoption by the Assembly before the condition from Article 5.2. Annex IX of the CPS related to the termination of the ICR mandate has been met.

18. The Review Panel considered the Report prepared by the Judge Rapporteur, and made a recommendation to the full Court.

19. On 10 May 2012 the Court deliberated and voted on the Referral.

Assessment of the admissibility of the Referral

20. As to the Referral with regards to prior assessments of proposed amendments of the Constitution, pursuant to Article 144 [Amendments] the Court observes that, in order to be able to adjudicate the referral, it is necessary to first examine whether the admissibility requirements laid down in the in_the Constitution and further specified in the Law and the Rules of Procedure have been fulfilled.

21. In that respect, the Court needs first to determine whether it has jurisdiction to provide the assessment of the Government's Proposals for Amendments of the Constitution.

22. The Court recalls that, pursuant to Article 113 (9) of the Constitution, "[T]he 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".

23. Consequently, the Court has jurisdiction to assess that the proposed amendments do not diminish the rights and freedoms guaranteed by Chapter II of the Constitution.

24. The next question is who can be considered as an authorized party to refer the referral to the Court, pursuant to Article 113(9) of the Constitution. The Court again reiterates that, pursuant to first part of sentence of Article 113 (9), "The President of the Assembly of Kosovo refers proposed Constitutional amendments …..".

25. In the present Referral, the President of the Assembly, Dr. Jakup Krasniqi, submitted the request for a prior assessment of the proposed amendments of the Constitution. Therefore, the Applicant is an authorized party, entitled to refer this case to the Court, by virtue of Article 113.9 of the Constitution.

26. Therefore, the Referral is admissible, since the Court has jurisdiction to deal with it and the Applicant is an authorized party.

Assessment of the constitutionality of the proposed amendments

Scope of the constitutional assessment

27. The Court will now deal in turn with each of the amendments mentioned in the Government's Proposals for Amendments of the Constitution and submitted by the Applicant on 12 April 2012.

28. As a preliminary remark, the Court emphasizes that, pursuant to Article 112 [General Principles] of Chapter VIII [Constitutional Court], the Constitutional Court is the final authority for the interpretation of the Constitution and the compliance of laws with the Constitution. It is, therefore, up to the Court to interpret Article 144 [Amendments] of the Constitution as it deems necessary.

29. Having this in mind, the Court, under Article 144.3 of the Constitution, considers whether a proposed amendment to the Constitution will diminish any of the rights and freedoms set forth in Chapter II [Fundamental Rights and Freedoms].

30. Turning to Chapter II, the Court notes that, pursuant to Article 21 [General Principles], human rights and fundamental freedoms are indivisible, inalienable and inviolable and are the basis for the legal order of the Republic of Kosovo. Moreover, under Article 21.2, it falls upon the Republic of Kosovo to protect and guarantee human rights and fundamental freedoms as provided by the Constitution.

31. Thus, the Court considers that Article 21 determines the scope of Chapter II to incorporate also those human rights and fundamental freedoms laid down elsewhere in the Constitution. It follows that the Court must assess whether the proposed amendments diminish any of the rights and freedoms guaranteed by the Constitution as a whole.

The Proposed Amendments

Proposed Amendment 1

32. Amendment 1 proposes that paragraph 4 of Article 58 is changed as follows:

a. *"The Republic of Kosovo shall adopt adequate measures as may be necessary to promote, in all areas of economic, social, political and cultural life, full and effective equality among members of communities**, and the effective participation of their members in public life and decision making***. *Such measures shall not be considered to be an act of discrimination*."

33. The Court considers that the wording of the proposed amendment of Article 58(4) of the Constitution reinforces the effective participation of members of communities in public life.

34. Therefore, the Court confirms that the proposed amendment 1 does not appear to diminish any of the rights and freedoms set forth in Chapter II of the Constitution.

Proposed Amendment 2

35. Amendment 2 proposes that paragraph 1 of Article 81 to be changed as follows:

a. Article 81 [Legislation of Vital Interest]

1. The following laws shall require for their adoption, amendment or repeal both **the majority of the Assembly deputies and the majority of the Assembly deputies who hold seats reserved or guaranteed for representatives of Communities that are not in the majority**:"

36. The Court considers that the wording of the proposed amendment of Article 81(1) of the Constitution does not diminish any of the rights and freedoms set forth in Chapter II of the Constitution.

37. Therefore, the Court confirms that Amendment 2 is in conformity with Chapter II.

Proposed Amendment 3

38. Amendment 3 proposes that paragraph 5 of Article 81 of the Constitution be changed as follows:

> (4) Laws on protection of cultural heritage and **special protected areas**."

39. The Court considers that the wording of the proposed amendment of Article 81(5) of the Constitution, namely adding "and special protected areas**",** does not appear to diminish any of the rights and freedoms set forth in Chapter II of the Constitution.

40. Therefore, the Court confirms that proposed amendment 3 is in conformity with Chapter II.

Proposed Amendment 4

41. Amendment 4 proposes that Article 143 of the Constitution be deleted.

42. Article 143 of the Constitution reads as follows:

> **a.** "**Article 143 [Comprehensive Proposal for the Kosovo Status Settlement]**
>
> b. Notwithstanding any provision of this Constitution:
>
> 1. All authorities in the Republic of Kosovo shall abide by all of the Republic of Kosovo's obligations under the

Comprehensive Proposal for the Kosovo Status Settlement dated 26 March 2007. They shall take all necessary actions for their implementation.

2. The provisions of the Comprehensive Proposal for the Kosovo Status Settlement dated 26 March 2007 shall take precedence over all other legal provisions in Kosovo.

3. The Constitution, laws and other legal acts of the Republic of Kosovo shall be interpreted in compliance with the Comprehensive Proposal for the Kosovo Status Settlement dated 26 March 2007. If there are inconsistencies between the provisions of this Constitution, laws or other legal acts of the Republic of Kosovo and the provisions of the said Settlement, the latter shall prevail."

43. The Court considers that the proposed deletion of Article 143 of the Constitution does not appear to diminish any of the rights and freedoms set forth in Chapter II of the Constitution.

Proposed Amendment 5

44. Amendment 5 proposes that Article 144 of the Constitution (Amendments) be moved to Chapter I- Basic Provisions.

45. Article 144 of the Constitution reads as follows:

a. Article 144 [Amendments]

1. The Government, the President or one fourth (1/4) of the deputies of the Assembly of Kosovo as set forth in the Rules of Procedure of the Assembly may propose changes and amendments to this Constitution.

2. Any amendment shall require for its adoption the approval of two thirds (2/3) of all deputies of the Assembly including two thirds (2/3) of all deputies of the Assembly holding reserved or guaranteed seats for representatives of communities that are not in the majority in the Republic of Kosovo.

3. Amendments to this Constitution may be adopted by the Assembly only after the President of the Assembly of Kosovo has referred the proposed amendment to the Constitutional Court for a prior assessment that the proposed amendment does not diminish any of the rights and freedoms set forth in Chapter II of this Constitution.

4. Amendments to the Constitution enter into force immediately after their adoption in the Assembly of the Republic of Kosovo.

46. The Court considers that the proposed moving of Article 144 of the Constitution to the Chapter I (Basic Provisions) does not appear to diminish any of the rights and freedoms set forth in Chapter II of the Constitution.

Proposed Amendment 6

47. Amendment 6 proposes that Article 145 of the Constitution (Continuity of International Agreements and Applicable Legislation) be moved to Chapter I- Basic Provisions.

48. Article 145 of the Constitution reads as follows:

a. Article 145 [Continuity of International Agreements and Applicable Legislation]

1. International agreements and other acts relating to international cooperation that are in effect on the day this Constitution enters into force will continue to be respected until such agreements or acts are renegotiated or withdrawn from in accordance with their terms or until they are superseded by new international agreements or acts covering the same subject areas and adopted pursuant to this Constitution.

2. Legislation applicable on the date of the entry into force of this Constitution shall

b. continue to apply to the extent it is in conformity with this Constitution until repealed, superseded or amended in accordance with this Constitution.

49. The Court considers that the proposed moving of Article 145 of the Constitution to the Chapter I (Basic Provisions) does not appear to diminish any of the rights and freedoms set forth in Chapter II of the Constitution.

Proposed Amendment 7

50. Amendment 7 proposes that Article 146 of the Constitution be deleted.

51. Article 146 of the Constitution reads as follows:

a. Article 146 [International Civilian Representative]

b. Notwithstanding any provision of this Constitution:

1. The International Civilian Representative and other international organizations and actors mandated under the Comprehensive Proposal for the Kosovo Status Settlement dated 26 March 2007 have the

mandate and powers set forth under the said Comprehensive Proposal, including the legal capacity and privileges and immunities set forth therein.

2. All authorities in the Republic of Kosovo shall cooperate fully with the International Civilian Representative, other international organizations and actors mandated under the Comprehensive Proposal for the Kosovo Status Settlement dated 26 March 2007 and shall, inter alia, give effect to their decisions or acts.

52. The Court considers that the proposed deletion of Article 146 of the Constitution does not appear to diminish any of the rights and freedoms set forth in Chapter II of the Constitution.

Proposed Amendment 8

53. Amendment 8 proposes that Article 147 of the Constitution be deleted.

54. Article 147 of the Constitution reads as follows:

a. Article 147 [Final Authority of the International Civilian Representative]

b. Notwithstanding any provision of this Constitution, the International Civilian Representative shall, in accordance with the Comprehensive Proposal for the Kosovo Status Settlement dated 26 March 2007, be the final authority in Kosovo regarding interpretation of the civilian aspects of the said Comprehensive Proposal. No Republic of Kosovo authority shall have jurisdiction to review, diminish or otherwise restrict the mandate, powers and obligations referred to in Article 146 and this Article.

55. The Court considers that the proposed deletion of Article 147 of the Constitution does not appear to diminish any of the rights and freedoms set forth in Chapter II of the Constitution.

Proposed Amendment 9

56. Amendment 9 proposes that Article 148 of the Constitution be deleted.

57. Article 148 of the Constitution reads as follows:

a. Article 148 [Transitional Provisions for the Assembly of Kosovo]

1. For the first two (2) electoral mandates, the Assembly of Kosovo shall have twenty (20) seats reserved for representation of Communities that are not in the majority in Kosovo, as follows: Ten (10) seats shall be allocated to the parties, coalitions, citizens' initiatives and independent candidates having declared themselves representing the Kosovo Serb Community and ten (10) seats shall be allocated to other Communities as follows: the Roma community, one (1) seat; the Ashkali community, one (1) seat; the Egyptian community, one (1) seat; and one (1) additional seat will be awarded to either the Roma, the Ashkali or the Egyptian community with the highest overall votes; the Bosniak community, three (3) seats; the Turkish community, two (2) seats; and the Gorani community, one (1) seat. Any seats gained through elections shall be in addition to the ten (10) reserved seats allocated to the Kosovo Serb Community and other Communities respectively.

> Notwithstanding paragraph 1 of this Article, the mandate existing at the time of entry into force of this Constitution will be deemed to be the first electoral mandate of the Assembly, provided that such mandate continues for a period of at least two (2) years from the date of entry into force of this Constitution.

58. The Court considers that the proposed deletion of Article 148 of the Constitution does not appear to diminish any of the rights and freedoms set forth in Chapter II of the Constitution.

Proposed Amendment 10

59. Amendment 10 proposes that Article 149 of the Constitution be deleted.

60. Article 149 of the Constitution reads as follows:

> **a. Article 149 [Initial Adoption of Laws of Vital Interest]**
>
> b. Notwithstanding the provisions of Article 81 of this Constitution, the laws of vital interest enumerated therein shall be initially adopted by the majority vote of the deputies of the Assembly present and voting.

61. The Court considers that the proposed deletion of Article 149 of the Constitution does not appear to diminish any of the rights and freedoms set forth in Chapter II of the Constitution.

Proposed Amendment 11

62. Amendment 11 proposes that Article 150 of the Constitution be deleted.

63. Article 150 of the Constitution reads as follows:

a. Article 150 [Appointment Process for Judges and Prosecutors]

1. The comprehensive, Kosovo-wide review of the suitability of all applicants for permanent appointments, until the retirement age determined by law, as judges and public prosecutors in Kosovo shall continue to be carried out in accordance with Administrative Direction 2008/02 and shall not be affected by the termination of the United Nations Mission in Kosovo (UNMIK)'s mandate or the entry into force of this Constitution.
2. All successful candidates who have been appointed or reappointed as judges and prosecutors by the Special Representative of the Secretary General (SRSG) as part of the Appointment Process shall continue to serve in their posts until the natural expiration of their appointment, or until such time as they are dismissed in accordance with law.

3. The Independent Judicial and Prosecutorial Commission shall submit recommendations on candidates for appointment or reappointment as judges and prosecutors in writing to the Kosovo Judicial Council, which shall exercise final authority to propose to the President of Kosovo candidates for appointment or reappointment as judges and prosecutors.

4. All successful candidates who have been appointed or reappointed as judges and prosecutors by the President of Kosovo on the proposal of the Kosovo Judicial Council as part of the Appointment Process shall continue to serve in their posts until the natural

expiration of their appointment, or until such time as they are dismissed in accordance with law.

5. Notwithstanding Article 105 of this Constitution, the mandate of all judges and prosecutors successfully completing the appointment process set forth in this Article and who have exercised the function for at least two years prior to appointment pursuant to this article is permanent until the retirement age as determined by law or unless removed in accordance with law.

64. The Court considers that the proposed deletion of Article 150 of the Constitution does not appear to diminish any of the rights and freedoms set forth in Chapter II of the Constitution.

Proposed Amendment 12

65. Amendment 12 proposes that Article 151 of the Constitution be deleted.

66. Article 151 of the Constitution reads as follows:

a. Article 151 [Temporary Composition of Kosovo Judicial Council]

b. Until the end of the international supervision of the implementation of the Comprehensive Proposal for Kosovo Status Settlement, dated 26 March 2007, the Kosovo Judicial Council shall be composed as follows:

2. Five (5) members shall consist of the Kosovan members of the Independent Judicial and Prosecutorial Commission who have been vetted by the Independent Judicial and Prosecutorial Commission as part of Phases 1 and 2 of the Appointment Process, in accordance with

Administrative Direction 2008/02. Of these five (5) members, one (1) judge and one (1) prosecutor, randomly selected, shall serve on the Kosovo Judicial Council until the natural expiration of their existing mandates, at which time they shall be replaced by one (1) judge and one (1) prosecutor vetted by the Independent Judicial and Prosecutorial Commission and elected by their peers following methods intended to ensure the widest representation of the judiciary and prosecutorial service. The remaining two (2) judges and one (1) prosecutor, from among the five Kosovan Independent Judicial and Prosecutorial Commission members, shall serve on the Kosovo Judicial Council for an additional one (1) year term after the natural expiration of their existing mandates, at which time they shall be replaced by the same procedure as their former Independent Judicial and Prosecutorial Commission colleagues. In the event that an entity responsible for matters related to the appointment, disciplining and dismissal of prosecutors were established, all five remaining members of the Kosovo Judicial Council shall be judges.

3. The remaining eight (8) members of the Council shall be elected by the Assembly of Kosovo as set forth by this Constitution, except that two (2) out of the four (4) members elected by deputies holding seats attributed during the general distribution of seats shall be international members selected by the International Civilian Representative on the proposal of the European Security and Defense Policy Mission. One of the international members shall be a judge.

67. The Court considers that the proposed deletion of Article 151 of the Constitution does not appear to diminish any of the

rights and freedoms set forth in Chapter II of the Constitution.

Proposed Amendment 13

68. Amendment 13 proposes that Article 152 of the Constitution be deleted.

69. Article 152 of the Constitution reads as follows:

a. Article 152 [Temporary Composition of the Constitutional Court]

b. Until the end of the international supervision of the implementation of the Comprehensive Proposal for Kosovo Status Settlement, dated 26 March 2007, the Constitutional Court shall be composed as follows:

1. Six (6) out of nine (9) judges shall be appointed by the President of the Republic of Kosovo on the proposal of the Assembly.

2. Of the six (6) judges two (2) judges shall serve for a non-renewable term of three (3) years, two (2) judges shall serve for a non-renewable term of six (6) years, and two (2) judges shall serve for a non-renewable term of nine (9) years. Mandates of initial period judges shall be chosen by lot by the President of the Republic of Kosovo immediately after their appointment.

4. Of the six (6) judges, four (4) shall be elected by a two-thirds (2/3) vote of the deputies of Assembly present and voting. Two (2) shall be elected by majority of the deputies of the Assembly present and voting including the consent of the majority of the deputies of the

Assembly holding seats reserved or guaranteed for representatives of Communities that are not in the majority in Kosovo.

5. Three (3) international judges shall be appointed by the International Civilian Representative, upon consultation with the President of the European Court of Human Rights. The three (3) international judges shall not be citizens of Kosovo or any neighboring country.

6. The International Civilian Representative shall determine when the mandates of the international judges expire and the judges shall be replaced as set forth by the Constitution.

70. The Court considers that the proposed deletion of Article 152 of the Constitution does not appear to diminish any of the rights and freedoms set forth in Chapter II of the Constitution.

Proposed Amendment 14

71. Amendment 14 proposes that Article 153 of the Constitution be deleted.

72. Article 153 of the Constitution reads as follows:

a. Article 153 [International Military Presence]

b. Notwithstanding any provision of this Constitution, the International Military Presence has the mandate and powers set forth under the relevant international instruments including United Nations Security Council Resolution 1244 and the Comprehensive Proposal for the Kosovo Status Settlement dated 26

March 2007. The Head of the International Military Presence shall, in accordance with the Comprehensive Proposal for the Kosovo Status Settlement dated 26 March 2007, be the final authority in theatre regarding interpretation of those aspects of the said Settlement that refer to the International Military Presence. No Republic of Kosovo authority shall have jurisdiction to review, diminish or otherwise restrict the mandate, powers and obligations referred to in this Article.

73. The Court considers that the proposed deletion of Article 153 of the Constitution does not appear to diminish any of the rights and freedoms set forth in Chapter II of the Constitution.

Proposed Amendment 15

74. Amendment 15 proposes that Article 154 of the Constitution be deleted.

75. Article 154 of the Constitution reads as follows:

a. Article 154 [Kosovo Protection Corps]

b. The Kosovo Protection Corps shall be dissolved within one year after entry into force of this Constitution. Until such dissolution, the International Military Presence, in consultation with the International Civilian Representative and the Republic of Kosovo, shall exercise executive authority over the Kosovo Protection Corps and shall decide on the schedule of its dissolution.

76. The Court considers that the proposed deletion of Article 154 of the Constitution does not appear to diminish any of the

rights and freedoms set forth in Chapter II of the Constitution.

Proposed Amendment 16

77. Amendment 16 proposes that Article 155 (Citizenship) of the Constitution be moved to Chapter I- Basic Provisions.

78. Article 155 of the Constitution reads as follows:

a. Article 155 [Citizenship]

1. All legal residents of the Republic of Kosovo as of the date of the adoption of this Constitution have the right to citizenship of the Republic of Kosovo.

2. The Republic of Kosovo recognizes the right of all citizens of the former Federal Republic of Yugoslavia habitually residing in Kosovo on 1 January 1998 and their direct descendants to Republic of Kosovo citizenship regardless of their current residence and of any other citizenship they may hold.

79. The Court considers that the proposed moving of Article 155 of the Constitution to the Chapter I (Basic Provisions) does not appear to diminish any of the rights and freedoms set forth in Chapter II of the Constitution.

Proposed Amendment 17

80. Amendment 17 proposes that Article 156 (Refugees and Internally Displaced Persons) to be deleted.

81. Article 156 of the Constitution reads as follows:

a. Article 156 [Refugees and Internally Displaced Persons]

b. The Republic of Kosovo shall promote and facilitate the safe and dignified return of refugees and internally displaced persons and assist them in recovering their property and possession.

82. The Court considers that the proposed deletion of Article 156 of the Constitution the Court could diminish some rights and freedoms set forth in Chapter II of the Constitution.

83. In fact, Article 22 of the Constitution adopts, by reference several international conventions. It specifically provides, in part:

a. "Article 22 [Direct Applicability of International Agreements and Instruments]

b. Human rights and fundamental freedoms guaranteed by the following international agreements and instruments are guaranteed by this Constitution, are directly applicable in the Republic of Kosovo and, in the case of conflict, have priority over provisions of laws and other acts of public institutions:

84. Universal Declaration of Human Rights;

85. European Convention for the Protection of Human Rights and Fundamental Freedoms and its protocols.

86. Articles 13 and 14 of the Universal Declaration of Human Rights (UDHR) specifically provides as follows:

a. Article 13 of the UDHR

b. "(1) Everyone has the right to freedom of movement and residence within the borders of each state.

(2) Everyone has the right to leave any country, including his own, and to return to his country."

c. Article 14

d. "(1) Everyone has the right to seek and to enjoy in other countries asylum from persecution.

87. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations."

88. imilarly, Article 2 of Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedom (ECHR) guarantees freedom of movement. It reads as follows:

a. Article 2 of Protocol No. 4 to the ECHR

b. "Freedom of movement

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

2. Everyone shall be free to leave any country, including his own.

3. No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the

maintenance of ordre public, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

4. The rights set forth in paragraph 1 may also be subject, in particular areas, to restrictions imposed in accordance with law and justified by the public interest in a democratic society.

89. Without Article 156 the positive obligation that the Republic of Kosovo has to enforce the human rights guaranteed in Article 13 and 14 UDHR could be significantly diminished. Without the positive support of the Government, as now required by Article 156 of the Constitution, to guarantee the human right of freedom of movement set forth, inter alia, in the UDHR and ECHR this right could easily be ignored or diminished.

90. That would be contrary to Article 1 of the ECHR that obliges the States to "secure everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention."

91. Article 35 of the Constitution guarantees citizens and foreigners of the right to free movement both within and in and out of the Republic of Kosovo. It specifically provides:

a. "Article 35 [Freedom of Movement]

1. Citizens of the Republic of Kosovo and foreigners who are legal residents of Kosovo have the right to move freely throughout the Republic of Kosovo and choose their location of residence.

2. Each person has the right to leave the country. Limitations on this right may be regulated by law if they are necessary for legal proceedings, enforcement of a court decision or the performance of a national defence obligation.

3. Citizens of the Republic of Kosovo shall not be deprived the right of entry into Kosovo…"

92. Article 156 places an positive obligation on the Republic of Kosovo to assist refugees and internally displaced persons in exercising their right of free movement. Without this constitutional mandate on the Republic of Kosovo to positively assist those persons in exercising that right they may not be able to actually exercise that right.

93. Article 46 of the Constitution guarantees that no one will be arbitrarily deprived of property. It provides:

a. "Article 46 [Protection of Property]

1. The right to own property is guaranteed.

2. Use of property is regulated by law in accordance with the public interest.

3. No one shall be arbitrarily deprived of property. The Republic of Kosovo or a public authority of the Republic of Kosovo may expropriate property if such expropriation is authorized by law, is necessary or appropriate to the achievement of a public purpose or the promotion of the public interest, and is followed by the provision of immediate and adequate compensation to the person or persons whose property has been expropriated.

4. Disputes arising from an act of the Republic of Kosovo or a public authority of the Republic of Kosovo that is alleged to constitute an expropriation shall be settled by a competent court."

94. The Court recalls that protection of property is also guaranteed by Article 1 protocol No. 1 to the Convention that reads:

a. "Protection of property

b. Every natural or legal person is entitled to the peaceful enjoyment of his possessions.

c. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

d. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

95. Article 156 places an positive burden on the Republic of Kosovo to assist refugees and internally displaced persons in exercising their right to not have their property arbitrarily taken from them. Without this constitutional mandate on the Republic of Kosovo to positively assist those persons in exercising that right they may not be able to actually exercise that right.

96. For all these reasons, the Court confirms that that proposed amendment 17 appears to diminish the rights and freedoms set forth in Chapter II of the Constitution as specified above

Proposed Amendment 18

97. Amendment 18 proposes that Article 157 of the Constitution be deleted.

98. Article 157 of the Constitution reads as follows:

> **a. Article 157 [Auditor-General of Kosovo]**
>
> b. Until the end of the international supervision of the implementation of the Comprehensive Proposal for Kosovo Status Settlement, dated 26 March 2007, the Auditor-General of the Republic of Kosovo shall be an international appointed by the International Civilian Representative.

99. The Court considers that the proposed deletion of Article 157 of the Constitution does not appear to diminish any of the rights and freedoms set forth in Chapter II of the Constitution.

Proposed Amendment 19

100. Amendment 19 proposes that Article 158 of the Constitution be deleted.

101. Article 158 of the Constitution reads as follows:

> **a. Article 158 [Central Banking Authority]**
>
> b. Until the end of the international supervision of the implementation of the Comprehensive Proposal for Kosovo Status Settlement, dated 26 March 2007, the Governor of the Central Bank of the Republic of Kosovo shall be appointed by the President of the Republic of Kosovo following consent by the International Civilian Representative.

102. The Court considers that the proposed deletion of Article 158 of the Constitution does not appear to diminish any of the rights and freedoms set forth in Chapter II of the Constitution.

Proposed Amendment 20

103. Amendment 20 proposes that Article 159 of the Constitution be deleted.

104. Article 159 of the Constitution reads as follows:

> **a. Article 159 [Socially Owned Enterprises and Property]**
>
> 1. All enterprises that were wholly or partly in social ownership prior to the effective date of this Constitution shall be privatized in accordance with law.
>
> 2. All socially owned interests in property and enterprises in Kosovo shall be owned by the Republic of Kosovo.

105. The Court considers that the proposed deletion of Article 159 of the Constitution does not appear to diminish any of the rights and freedoms set forth in Chapter II of the Constitution.

Proposed Amendment 21

106. Amendment 21 proposes that Article 160 of the Constitution be deleted.

107. Article 160 of the Constitution reads as follows:

> **a. Article 160 [Publicly Owned Enterprises]**

1. The Republic of Kosovo shall own all enterprises in the Republic of Kosovo that are Publicly Owned Enterprises. All obligations related to such ownership rights shall be the obligations of the Republic of Kosovo. The Government of Kosovo may privatize, concession or lease a Publicly Owned Enterprise as provided by law.

2. The ownership rights in a Publicly Owned Enterprise that provides services only in a specific municipality or in a limited number of municipalities shall be the ownership rights of the concerned municipality or municipalities. Obligations related to such ownership rights shall be the obligations of the concerned municipality or municipalities. The Assembly of Kosovo shall, by law, identify such Publicly Owned Enterprise and the concerned municipality or municipalities having ownership rights and related obligations with respect thereto. If authorized by law, the concerned municipality or municipalities may privatize, concession or lease such a Publicly Owned Enterprise.

108. The Court considers that the proposed deletion of Article 160 of the Constitution does not appear to diminish any of the rights and freedoms set forth in Chapter II of the Constitution.

Proposed Amendment 22

109. Amendment 22 proposes that Article 161 of the Constitution be deleted and new article shall be added as follows:

a. "The individuals appointed by the International Civilian Representative in accordance with the Comprehensive Proposal for the Kosovo Status Settlement, 26 March, 2007 whose appointments have not been terminated prior to the declaration of the end of supervised independence shall continue to carry out their functions in the institution for the specified term

of appointment. Kosovo shall accord to these individuals the same privileges and immunities as are enjoyed by diplomatic agents and their families under the Vienna Convention on Diplomatic Relations."

110. Article 161 of the Constitution reads as follows:

a. Article 161 [Transition of Institutions]

1. Except where the Constitution provides a different transition, all powers, responsibilities and obligations of the institutions foreseen by this Constitution are immediately vested in those institutions on the day of entry into force of this Constitution. The mandate of each institution as established prior to the entry into force of this Constitution remains intact and unchanged until its natural expiration or the next elections.

3. Until the first parliamentary elections following entry into force of this Constitution, the Presidency of the Assembly will remain in place with those powers foreseen under its existing mandate. As of the constitutive session of the first Assembly following the entry into force of this Constitution, the Presidency of the Assembly will be restructured to comply with the terms of this Constitution.
4. The provisions of Article 70.3(3) shall not apply until the constitutive session of the Assembly following the first parliamentary elections following the entry into force of this Constitution.

5. Until the establishment of the Kosovo Prosecutorial Council, its functions and responsibilities will be exercised by the Kosovo Judicial Council.

111. The Court considers that the proposed deletion of Article 161 of the Constitution and replacement with a new one does not appear to diminish any of the rights and freedoms set forth in Chapter II of the Constitution.

FOR THESE REASONS, BASED ON ARTICLE 113(9) OF THE CONSTITUTION, THE COURT UNANIMOUSLY DECIDES AS FOLLOWS:

I. The Referral containing the Government's Proposals for Amendments of the Constitution submitted by the President of the Assembly of the Republic on 12 April 2012 is admissible;

II. The Court confirms that out of 22 amendments contained in the Government's Proposals for Amendments of the Constitution submitted by the President of the Assembly of the Republic on 12 April 2012, only Amendment 17 appears to diminish the rights and freedoms set forth in Chapter II of the Constitution;

III. This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20 (4) of the Law, and

IV. This Decision is effective immediately.

Judge Rapporteur **President of the Constitutional Court**

Kadri Kryeziu Prof. Dr. Enver Hasani

KI 26/11 dated 15 June 2012- Constitutional Review of the Supreme Court Judgment Pkl-Kzz-93/09 dated 1 March 2010

Case KI 26/11, decision dated 25 November 2011
Keywords: Individual referral, assessment of constitutionality of Supreme Court judgment

The Applicant filed the referral in accordance with Article 113.7 and 21.4 of the Constitution, Articles 20, 22.7 and 22.8 of the Law no. 03/L-121 on the Constitutional Court of the Republic of Kosovo, on 15 January 2009.
On 25 February 2011, the Applicant filed the referral with the Constitutional Court of the Republic of Kosovo.
The same date, the President of the Court appointed Judge Snezhana Botusharova as Reporting Judge, and the Review Panel composed of: Altay Suroy (Presiding), Kadri Kryeziu and Iliriana Islami.

On 20 July 2005, in the case P.no. 02/05, the District Court in Prizren found the Applicant guilty of committing the following criminal offences: sexual intercourse or unnatural sexual act by abusing his or her official position, as per Article 78, paragraph 1 of the Criminal Law of Kosovo, as amended by Article 1, paragraph 4 of the UNMIK Regulation no. 2003/1, amending the applicable law on criminal offences involving sexual violence; facilitating prostitution, as per Article 201, paragraph 3 of the PCCK; trafficking in persons, in co-perpetration, as per Article 2, paragraph 2 of the UNMIK Regulation no. 2001/04 on the prohibition of trafficking in persons in Kosovo, in conjuction with Article 22 of the Yugoslav Criminal Code, and trafficking in persons in co-perpetration, as per Article 139, paragraph 2 of the PCCK, in conjuction with Article 23 of the PCCK, and sentenced him to imprisonment of 12 years.
On 24 September 2007, the Applicant filed a complaint with the Supreme Court, which rejected such complaint as ungrounded on 1 June 2009.
The applicant, in his referral before the Constitutional Court alleges that there has been a violation of Article 31 of the Constitution, since the District Court in Prizren unjustly found him guilty. He alleges that the judgment of the District Court in Prizren is entirely

grounded upon the police report, which he rejects in its entirety. The applicant also claims that the police deprived him of the right to an attorney, and that he was not allowed to contact the Embassy as a foreign citizen, and that his rights to legal remedy were violated.
From the documents in the case files, the Court found that the Applicant was served the judgment of the District Court in Prizren, of 20 July 2005, and the Judgment of Supreme Court of 28 May 2007, before the entry into force of the Constitution, namely before 15 June 2008.
The referral was not filed with the Court within the deadline as per Article 49 of the Law.
The Court concluded that the presented facts of the case by the Applicant to the Constitutional Court "in no way justify the allegations of violation of constitutional rights", in compliance with rule 36, paragraph 2, items b and c of Rules of Procedure, and unanimously decided to reject the referral of the applicant as inadmissible.

Pristine, 21 May 2012
Ref. No. RK236 /12

RESOLUTION ON INADMISSIBILITY

in

Case No. KI 26/11

Applicant

Vladimir Ukaj

Constitutional Review of the Supreme Court Judgment Pkl-Kzz-93/09 of 1 March 2010

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Enver Hasani, President
Kadri Kryeziu, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Ivan Čukalović, Judge
Gjyljeta Mushkolaj, Judge and
Iliriana Islami, Judge

Applicant

1. The Applicant is Vladimir Ukaj born in Puke, Albania, currently serving the prison sentence in Dubrava prison.

2. The Applicant claims a violation of paragraphs 1, 2 and 4 of Article 31 [Right to Fair and Impartial Trial], Article 32 [Right to Legal Remedies] and Article 41 [Right to Access Public Documents] of the Constitution of the Republic of Kosovo (hereinafter: the "Constitution")

3. The Referral is based on Art. 113.7 of the Constitution; Articles 46, 47, 48 and 49 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter referred to as the Law), and Rule 56 (2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter referred to as the Rules of Procedure).

Challenged decision

4. The challenged decision is the Judgment Pkl-Kzz-93/09 issued by the Supreme Court of Kosovo on 1 March 2010, according to which the Applicant's request for Protection of Legality was dismissed as inadmissible.

Proceedings before the Court

5. On 25 February 2011 the Applicant submitted a referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the "Court").

6. On the same date the President of the Court appointed Judge Snezhana Botusharova as Judge Rapporteur and a Review Panel composed of Judges Altay Suroy (Presiding), Kadri Kryeziu and Iliriana Islami.

7. On 23 November 2011, after having considered the Report of the Judge Rapporteur, the Review Panel, made a recommendation to the full Court on the inadmissibility of the Referral.

Summary of the Facts

8. On 20 July 2005 in the case P.Nr. 02/05, the District Court in Prizren found the Applicant guilty because he committed the following criminal offences: Sexual intercourses or unnatural lechery through abuse of official position under Article 78, Paragraph 1 of CLK, as amended by Section 1.4 of UNMIK Regulation No.2003/1 amending the Applicable Law on Criminal Offices Including Sexual Violence, Facilitating Prostitutions under Article 201, Paragraph 3 of PCCK, Trafficking in Persons in co-perpetration under Section 2.2 of UNMIK Regulation No. 2001/04 on the Prohibition of Trafficking in Persons in Kosovo, in conjunction with Article 22 of CCY and Trafficking in persons in co-perpetration under Article 139, Paragraph 2 of PCCK, in conjunction with Article 23 of PCCK.

9. Consequently, pursuant to Article 71, Paragraph 1 of PCCK, the Applicant, is obliged to serve an aggregate punishment or twelve (12) years imprisonment.

10. The Applicant filled an appeal to the Supreme Court against the aforementioned judgment. On 28 May 2007 the Supreme Court by the judgment Ap-KZ 478/2005 fully rejected the Applicant's appeal. The Applicant was served with this judgment on 5 September 2007.

11. On 24 September 2007 the Applicant filed an appeal to the Supreme Court which was dismissed as inadmissible on 1 June 2009.

12. On 26 June 2009 the Applicant requested protection of legality. The Supreme Court decided on 1 March 2010 to dismiss the

request as inadmissible. The Applicant was served by the above mentioned Judgment on 19 March 2010.

Applicants Allegations

13. The Applicant alleges that there was a violation of Article 31 of the Constitution because the District Court unfairly found him guilty. He claims that the judgment of the District Court of Prizren P.nr 02/2005 of 20 July 2005 is entirely grounded on a police report which he entirely objects. The Applicant also claims that the police denied his right to a defence counsel and that he was not allowed to contact the Embassy as a foreign citizen.
14. The Applicant also alleges that he was charged that on 30 June 2004 he committed the criminal offence of trafficking of persons but on this date he was in Konispol and provided documents to confirm that.
15. The Applicant further claims that his right to legal remedies under Article 32 of the Constitution was violated. According to him, during the second instance proceedings, he was interrupted while giving his closing statement as the accused.

16. He also claims he has been denied the right of access to public documents contrary to Article 41 of the Constitution as a copy of the record from the second instance proceedings was not provided.

Assessment of the admissibility of the referral

17. In order to be able to adjudicate the Applicant's Referral, the Court needs first to examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution, further specified in the Law on the Constitutional Court and the Rules of Procedure.

18. From the documents in the Court case file it appears that the Applicant was served with the District Court in Prizren Judgment of 20 July 2005 (P.Nr. 02/05) and the Supreme Court judgment of 28 May 2007 (Ap-KZ 478/2005) before the Constitution entered into force, i.e. before 15 June 2008.

19. The Court must, thus, first establish, whether the matters raised in the Referral "fall under jurisdiction". In this respect, the Court considers that the public authorities of the Republic of Kosovo can only be required to answer to facts and acts which occurred subsequently to the entry into force of the Constitution. Accordingly, the Court cannot deal with the a Referral relating to events that occurred before the entry into force of the Constitution (see, the Court's Resolution on Inadmissibility in Case No 18/10, Denic *et al* of 17 August 2011*)*.

20. Furthermore, the Court refers to Article 49 (Deadlines) of the Law, which stipulates:

    a. *"The referral should be submitted within a period of four (4) months. The deadline shall be counted from the day upon which the claimant has been served with a court decision. In all other cases, the deadline shall be counted from the day when the decision or act is publicly announced."*

21. The Court notes that the Applicant challenges the Supreme Court Judgment Pkl-Kzz-93/09 of 1 March 2010 which was served to him on 19 March 2010.

22. As mentioned above, the Referral was submitted on 25 February 2011, which is almost a year after the Supreme Court Judgment of 1 March 2010 was served to the Applicant.

23. As a result, the Referral was not submitted with the Court within the time limit prescribed by Article 49 of the Law.

24. The Court also notes that even assuming that the Referral was submitted within the legal time limit prescribed by Article 49 of the Law, the Applicant did not prima facie justify his Referral. Indeed the facts of the case that are presented by the Applicant to the Constitutional Court "do not in any way justify the allegation of a violation of constitutional rights" contrary to Rule 36.2 (b) and (c) of the Rules of the Procedure.

25. It follows that the Applicant's Referral should be rejected as inadmissible, pursuant to Article 113.7 of the Constitution.

FOR THESE REASONS

The Constitutional Court pursuant to Article 113.7 of the Constitution, Article 49 of the Law and Rule 36 of the Rules of the Procedure unanimously:

DECIDES

I. TO REJECT the Referral as Inadmissible;

II. This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20 (4) of the Law; and

III. This Decision is effective immediately.

Judge Rapporteur **President of the Constitutional Court**

Snezhana Botusharova Prof. Dr. Enver Hasani

KI 146/11 dated 15 June 2012- Request for implementation of two UNMIK Regulations No. 2001/35 and 2005/20

Case KI 146/11, decision dated 9 May 2012
Keywords: individual referral, exhaustion of all effective legal remedies, pension, supplementary pension fund, ratione materiae

The Applicant filed the Referral pursuant to Article 113.7 of the Constitution of Kosovo asking from the Constitutional Court full implementation of UNMIK Regulation No. 2005/20 Amending UNMIK Regulation No. 2001/35 on Pensions in Kosovo and implementation of the order for supplementary pension fund (supplementary-additional) in Anex B BPK-A (is the Directorate for banking and payment transactions in Kosovo) dated 24.4.2006 and fulfillment and implementation, in their entirety, of the PTK Board of Director's Decision Nos. 05-987/06 and 07/06.
According to the Applicant, he is still pending two cases at the Municipal Court in Prishtina on the claim suit filed by the Applicant, Pl. 377/2011, and also at the District Court in Prishtina on the appeal filed by the PTK.

Deciding on the Applicant's, Isak Berisha's, Referral, the Constitutional Court, after reviewing the proceedings in their entirety, concluded that individuals may initiate proceedings if their rights and freedoms guaranteed by this Constitution have been violated by acts of public authorities, but only after exhausting all other legal remedies prescribed by law.
Also, the Court notices: *"implementation of two UNMIK Regulations, Nos. 2001/35 and 2005/20"* does not fall under jurisdiction of the Constitutional Court, therefore such Referral is *ratione materiae* incompatible with the Constitution since within the jurisdiction.

Pristine, 21 May 2012
No. Ref.: RK242/12

RESOLUTION ON INADMISSIBILITY

in

Case No. KI 146/11

Applicant

Isak Berisha

Request for implementation of two UNMIK Regulations No. 2001/35 and 2005/20

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Enver Hasani, President
Kadri Kryeziu, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Ivan Čukalović, Judge
Gjyljeta Mushkolaj, Judge and
Iliriana Islami, Judge

Applicant

1. The Applicant is Isak Berisha from Prishtina.

Applicant's request

2. The Applicant is requesting from the Constitutional Court "*...the implementation of two UNMIK Regulations No. 2001/35 and 2005/20, and particularly the implementation of the*

Direction on supplementary pension fund (supplementary-additional). UNMIK Regulation No. 2001/35 was signed by Hans Hakerup, Special Representative of the Secretary General, and UNMIK Regulation No. 2005/20 was signed by Soren Jasen-Petersen, Special Representative of the Secretary General."

Subject matter

3. The Applicant does not specify any Articles of the Constitution. He considers the non-implementation of Regulations as a violation of his rights, and from the Referral it may be concluded that the subject matter is a legal dispute between the Applicant and the Post-Telecommunication of Kosovo (hereinafter: PTK) which occurred due to the non-payment of the supplementary pension insurance, which according to the Applicant's allegations is 48000 €.

Legal basis

4. The Referral is based on Art. 113.7 and 21.4 of the Constitution, Art. 20, 22.7 and 22.8 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo of 16 December 2008 (hereinafter: „Law") and Rule 56 paragraph 2 of Rules of Procedure.

Proceedings before the Constitutional Court

5. On 11 November 2011, the Applicant submitted a Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the „Court").

6. The Applicant requests from the Constitutional Court to take into consideration the protection of his identity without giving the reasons as to why he needs such protection.

7. On 27 January 2012, the Constitutional Court notified the Applicant and the Municipal Court in Prishtina on initiated proceedings concerning the constitutional review of the Judgment in case No. KI-146-11.

8. On 22 February 2012, the Constitutional Court notified the District Court in Prishtina that proceedings on constitutional review, regarding case KI-146-11, have been initiated.

9. On 9 May 2012, after reviewing the report of the Judge Rapporteur Snezhana Botusharova the Review Panel composed of Judges: Almiro Rodrigues (Presiding), Kadri Kryeziu and Enver Hasani., proposed to the full court inadmissibility of the Referral.

Summary of Facts

10. The Applicant was in an employment relationship with PTK, until he was retired by decision No. 3280/07 of 8 August 2007.

11. While employed by the PTK, the Applicant joined the Supplementary pension fund of PTK, which was established by the Director of the PTK by decision No. 01-4083/02 of 29 July 2002. Under this decision, item IV provides that the amount of the Supplementary pension fund, which is completely funded by PTK, is determined by 10.1% of monthly gross salary for all the employees of the PTK. The owners of this fund are all employees. In case of death of the employee, before meeting the criteria for retirement, his/her heir will inherit the full amount of collected savings. Each employee may designate his heir who will inherit savings. In case the employee is declared invalid, then his savings may be used for pension.

12. The amount of supplementary pension insurance cannot be used until the user of this fund turns 65 years of age, or otherwise can be used due to early retirement because of illness, or other circumstances, if he meets the criteria of 35 years of service.

13. The costs of this fund had seriously jeopardized the value of PTK in the long term. For these reasons, the Fund of PTK was closed on 31 December 2005 with the approval of the Central Banking Authority of Kosovo (hereinafter: the CBK).

14. The obligations toward the employees arising from the established supplemental insurance were transferred to three pension funds whereby every employee was entitled at his own will to choose one of the following pension funds:

15. AKISPP – American-Kosovar Insurance of Supplementary Personal Pensions
16. SKFKP-Slovenian-Kosovar Fund for Kosovo Pensions
17. KPST - Kosovo Pension Savings Trust

18. From the submitted documentation can be assumed that the Applicant has chosen as his pension fund the KPST - Kosovo Pension Savings Trust.

19. After retiring, the Applicant, on his behalf and as a member of Board of Directors of PTK's independent trade union, addressed a written request to the persons in charge at the PTK requesting from PTK to settle obligations resulting from the establishment of Supplementary Pension Insurance.

20. In one of the responses, on behalf of the PTK, the Special Manager Suzana Vokshi explaining the rights of the Applicant regarding the Supplementary Pension Fund of PTK (hereinafter: the PTK Fund), the fund to which the Applicant was a member up to 31 December 2005, states the following :

    a. *Based on the information presented below and according to the laws of the PTK Fund, the value of your rights at the PTK Fund up to 31 December 2005 has the value of 22,921.3 Euros (in this amount it is not included the interest of 4% from 1 January 2006 until the transferring date of the assets in the new pension scheme). The taxes from the transferred assets will be separated in accordance with the mandatory laws in force.*

21. Furthermore, the Applicant filed a claim with Municipal Court in Prishtina, requesting that PTK pay to him the service award in the amount of two basic salaries.

22. Deciding on the Applicant's claim, the Municipal Court in Prishtina, by Judgment C. No. 770/2009 of 23 February 2011, approved Applicant's claim and by this Judgment obliged the PKT to pay to the Applicant an amount of 3499,22 € as service award, an amount of 190,87€ as pension contribution, and

330,85 € for the income tax, and all that within 7 days from the day the Judgment becomes final.

23. According to the Applicant, the PTK appealed to the District Court of Prishtina against the Judgment of the Municipal Court in Prishtina. The reference number of the case is Pl. 377/2011, and according to the Applicant's allegations the case "is in court proceeding before the District Court".

24. On 1 August 2011, the Applicant filed a new claim with the Municipal Court in Prishtina, registered under No. C1756/2011, requesting that, according to the pension scheme, PTK paid him the amount of 48.000€, and all that based on a study conducted by firm Deloitte and Touche This case is pending before the Municipal Court.

Applicant's allegations

25. The Applicant addressed to the Constitutional Court with the following requests:

a. *"I request full implementation of provisions of the UNMIK Regulation No.2005/20 on amendment of the Regulation No. 2001/35 on pensions in Kosovo, and implementation of the Direction on supplementary pension fund (supplementary-additional) Annex „B" BPK-A (Kosovo's Banking and Payments Administration), of 24 April 2006, to fulfill and fully implement decisions of the PTK board of Directors No. 05-987/06 and 07/06..."*

b. *" I plea to the Constitutional Court of the Republic of Kosovo, to demand the registry of beneficiaries from the Supplementary Pension Fund from the Post and Telecommunications of Kosovo, from Managing Director Mr. Shyqyri Haxha and Besnik Jani and from Mr. Gani Gerguri Governor of the Central Bank of Kosovo, and from Suzana Vokshi, Special Manager who have the registry of the beneficiaries from the Supplementary Pension Fund."*

Assessment of the admissibility of the referral

26. In order to be able to adjudicate the Applicant's Referral, the Court needs first to examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution. In this regard, the Court refers to Article 113.7 of the Constitution, which provides the following:

> a. *"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."*

27. The Court wishes to emphasize that the rationale for the exhaustion rule is to afford the authorities concerned, including the courts, the opportunity to prevent or put right the alleged violation of the Constitution. The rule is based on the assumption that Kosovo's legal order will provide an effective remedy for the violation of the constitutional rights (see *mutatis mutandis*, ECHR, Selmouni v. France, no. 25803/94. Decision of 28 July 1999). However, it is not necessary for the constitutional rights to be expressly raised in the proceedings concerned. As long as the issue was raised implicitly or in substance, the exhaustion of remedies requirement is satisfied (see, mutatis mutandis, ECHR, Azinas v. Cyprus, no. 56679/00, decision of 28 April 2004).

28. This Court used the same reasoning when it rendered Resolution on Inadmissibility of 27 January 2010 on the basis of non-exhaustion of all legal remedies in the case of AAB-RIINVEST University L.L.C, Prishtina vs. Government of the Republic of Kosovo, case no. KI. 41/09 and Resolution of 23 March 2010 in the case of Mimoza Kusari-Lila vs. Central Election Commission, case no. KI 73/09.

29. Taking into consideration that based on the documentation submitted to the Constitutional Court by the Applicant, the Judgment of the Municipal Court in Prishtina C. no. 770/2009 of 23 February 2011 is not final and upon the appeal of PTK there is a proceeding before the District Court in Prishtina under no. Pl. 377/2011 which is still pending, and taking into consideration that the Applicant has filed a new lawsuit with the Municipal Court on 1 August 2011, registered under no. C 1756, which is also

unfinished. Consequently, the Applicant has not exhausted all legal remedies provided by law in order to be able to file a Referral with the Constitutional Court.

30. It results that the Referral is not admissible for consideration pursuant to Article 113.7 and Rule 36 (1a) of the Rules of Procedure which provides: "*The Court may only deal with Referrals if: a) all effective remedies that are available under the law against the Judgment or decision challenged have been exhausted…".*

31. Further, as to the Applicant's insisting that the Constitutional Court adjudicate on the merits of his request for implementation of two UNMIK Regulations no. 2001/35 and 2005/20, the Court notes that the Constitutional Court is not an ordinary court to decide on disputes in the first instance, which is in the competence of ordinary courts, before which the Applicant has indeed initiated the proceedings.

32. The Constitutional Court also notes that "the implementation of two UNMIK Regulations no. 2001/35 and 2005/20" does not fall within the jurisdiction of the Constitutional Court, therefore such request is not compatible with Constitutional Court's *ratione materiae* as the Constitutional Court has jurisdiction over proceedings concerning alleged violations of the Constitution.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 20 of the Law, Rule 56 (2) and Rules 36 (1.a) and 36 (3.f) of the Rules of Procedure, on 9 May 2012, unanimously

DECIDES

I. TO REJECT the Referral as Inadmissible;

II. This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20 (4) of the Law; and

III. This Decision is effective immediately.

Judge Rapporteur **President of the Constitutional Court**

Snezhana Botusharova Prof. Dr. Enver Hasani

KO 123/10 dated 11 June 2012- Constitutional Review of the Judgement Nr.C.nr. 183/2009 of the District Commercial Court in Prishtina dated 17 June 2009

Case KO 123/10, decision dated 18 May 2012.
Keywords: Municipality of gjakova, constitutional review of judgment.

The applicant filed a Referral based on the Article 113.7 and 21.4 of the Constitution, Articles 20, 22.7 and 22.8 of the Law no. 03/L-121 on the Constitutional Court of Kosovo, of 15 January 2009.

The applicant filed his referral to the Constitutional Court on 9 December 2010.

The subject matter of this Referral is the claim which the Institute for Protection of Monuments from Tirana has filed against the Directorate for Culture, Youth and Sports of the Municipality of Gjakova, for payment of debt in the amount of 16.206,00 Euros.

The District Commercial Court in Prishtina has by judgment determined that the Institute for Protection of Monuments in Tirana, and the Directorate for Culture, youth and Sports of the Municipality of Gjakova had entered into contractual relations, in preparing technical investment documentation no. 18, by which the claimant was obliged to draft a conservation project for the "Ura e Taliqit" [Taliqi Bridge] in Gjakova, for the respondent, and the Contract on preparation of technical investment documentation no. 19, by which the claimant was obliged to draft a conservation project for the "Ura e Tabakut" [Tabak Bridge] in Gjakova, for the purposes of the respondent. The claimant performed on its obligations as per contract to the respondent, while the respondent failed to perform on its contractual obligation in terms of payment of agreed price, although the Board of Directors of the Municipality of Gjakova rendered a decision on 10 May 2004 to execute payment for completed works to the claimant.
The Applicant claims that the judgment of the District Commercial Court in Prishtina contains serious violations of the Law on Public Finance management and Accountability no. 03/L-048, specifically Article 68. (paragraphs 1, 2, 3 and 4).

The Court notes that the judgment of the District Commercial Court was rendered on 17th of June 2009, and served on the Applicant on 18th of July 2009, while the Applicant only filed its Referral with the Constitutional Court on 9th of December 2010.
Based on the above, the Referral is found to have been filed beyond the deadline provided by Article 49 of the Law on the Constitutional Court.
Therefore, pursuant to Article 113.4 and Article 113.7, and in accordance with Article 49 of the Law, the Constitutional Court unanimously decided to reject the referral as inadmissible.

Pristine, 21 May 2012
Ref. No.: RK 239/12

RESOLUTION ON INADMISSIBILITY

in

Case No. KO 123/10

Applicant

Municipality of Gjakova

Constitutional Review of the Judgement Nr.C.nr. 183/2009 of the District Commercial Court in Prishtina dated 17 June 2009

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Enver Hasani, President
Kadri Kryeziu, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Ivan Čukalović, Judge
Gjyljeta Mushkolaj, Judge and
Iliriana Islami, Judge

The Applicant

1. The referral was submitted by the Municipality of Gjakova. In the proceedings before the Constitutional Court, the Municipality is represented by Mr. Afrim Radoniqi, legal representative of the Municipality of Gjakova.

Challenged Decision

2. The Applicant challenges the Judgement Nr.C.nr. 183/2009 of the District Commercial Court in Prishtina dated 17 June 2009, served on the Applicant on 18 July 2009.

Subject Matter

3. The subject matter of the this Referral concerns the lawsuit submitted by the Institute for the Protection of Monuments – Tirana against the Directorate of Culture, Youth and Sports of the municipality of Gjakova, for the compensation of the debt in the amount of 16,206.00 Euros.

Legal Basis

4. Article 113.4 and Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter referred to as: the Constitution), Articles 20 and 49 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter referred to as: the Law) and Rule 56 of the Rules of Procedure of the Constitutional Court (hereinafter referred to as: Rules of Procedure).

Proceeding before the Court

5. On 9 December 2010 the Applicant submitted the Referral to the Court.

6. On 27 January 2011 the Constitutional Court notified the District Commercial Court in Prishtina, regarding the submission of the above referral. On 4 February 2011, the District Commercial Court in Prishtina has submitted to the Court the Applicant's case file.

7. On 13 May 2011 after having considered the Report of the Judge Rapporteur, Gjyljeta Mushkolaj, the Review Panel, composed of Judges Snezhana Botusharova (Presiding), Enver Hasani and Kadri Kryeziu made a recommendation to the full Court on the inadmissibility of the Referral.

Summary of the facts and allegations as presented by the Applicant

8. The Institute for the Protection of Monuments – Tirana submitted a complaint against the Directorate of Culture, Youth and Sports of the municipality of Gjakova, for the compensation of the debt in the amount of 16,206.00 Euros.

9. The District Commercial Court in Prishtina thorough Judgment C. No. 183/2009, found that the Institute for the Protection of Monuments – Tirana and the Directorate of Culture, Youth and Sports of the municipality of Gjakova have had contractual relations, for the preparation of the technical-investment documentation No. 18, by which the plaintiff has been obliged to draft the project for the conservation of "Taliqi's Bridge" in Gjakova on account of the respondent, and Contract on the preparation of the technical-investment documentation No. 19,

by which the plaintiff has been obliged to draft the project for the conservation of "Tabaku's Bridge" in Gjakova. The plaintiff has fulfilled its contractual obligations to the respondent, whereas the respondent has not fulfilled the obligation concerning the payment of the contracted price, even though the Board of Directors of the municipality of Gjakova decided by Decision of 10 May 2004 to pay the plaintiff for the work that had been carried out.

10. On 21 May 2009 Judgment II.C.nr.183/2009 the District Commercial Court has obliged the Directorate of Culture, Youth and Sports of the Municipality of Gjakova to submit an answer to the lawsuit and according the documents submitted, no reply was submitted.

11. On the same day, the District Commercial Court issued a summons for appearance in the preparatory session to be held on 17 June 2009. However, Judgment C.nr.183/2009 does not mention whether the respondent was present in this session.

12. On 6 August 2009, the respondent submitted an appeal against Judgment C. nr. 183/2009, dated 17 June 2009, not respecting the determined legal time limit for the submission of the appeal. Through Judgment of 12 August 2009, the District Commercial Court in Prishtina rejected the appeal as out of time.

13. The Applicant claims that Judgment C.nr.183/2009, dated 17 June 2009, of the District Commercial Court in Prishtina, contains grave violations of the Law on Public Financial Management and Accountability No. 03/L-048, respectively Article 68 (1, 2, 3 and 4).

14. Consequently, the Municipality of Gjakova claims that the District Commercial Court in Prishtina has not implemented the said provisions of Article 68 and by not taking into account the request of the Municipality, dated 26 May 2009, to suspend this issue for a period of 180 days.

Assessment of the admissibility of the Referral

15. In order to be able to adjudicate the Applicant's Referral, the Court needs first to examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution, the Law and the Rules of Procedure.

16. The fulfilment of all requirements cumulatively is essential to submit an issue with the Constitutional Court in a legal manner.

17. The Court refers to Article 113.1 of the Constitution, which stipulates:

18. "The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties."

19. Article 113.4 of the Constitution, stipulates that:

> *"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*."

20. The Court notes that referral submitted by the Municipality of Gjakova does not *"contest the constitutionality of laws or acts of the Government"*, but the Judgment of a Regular Court, and as such is inadmissible.

21. The Court also notes that in accordance with *Article 21 of the Constitution* :

22. *"Fundamental rights and freedoms guaranteed by the Constitution are also valid for legal persons to the extent applicable"*.

And Article 5 of the Law No. 03/L-040 on Local Self-Government that prescribes that:

23. *"A Municipality shall be legal person. As a legal person, each municipality shall have the legal capacity to, inter alia: sue and be sued in the courts".*

24. In this connection, the Court refers to Article 113 (7) of the Constitution, which provides:

> *"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";*

25. Even assuming that Municipality is entitled to submit this Referral before the Constitutional Court, other admissibility requirements laid down in the Constitution, the Law and the Rules of Procedure have to be fulfilled.

26. In that respect the Court refers to Article 49 of the Law, which stipulates:

> *"The referral should be submitted within a period of four (4) months. The deadline shall be counted from the day upon which the claimant has been served with a court decision... "*

27. The Court notes that the Judgement of the District Commercial Court was taken on 17 June 2009 and was served on the Applicant on 18 July 2009 whereas the Applicant submitted the Referral with the Constitutional Court on 9 December 2010.

28. Consequently, the Referral was submitted out of time limit prescribed by Article 49 of the Law on Constitutional Court.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.4 and 113.7 of the Constitution as well as Article 49 of the Law, unanimously,

DECIDES

I. TO REJECT the Referral as Inadmissible.

II. This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20 (4) of the Law.

III. This Decision is effective immediately.

Judge Rapporteur **President of the Constitutional Court**

Dr. Gjyljeta Mushkolaj Prof. Dr. Enver Hasani

KI 110/10 dated 15 June 2012- Constitutional Review of the decision of the Independent Oversight Board of the Republic of Kosovo dated 3 February

Case KI 110/10, dated 20 May 2011
Keywords: individual referrals, assessment of constitutionality of decision of the Independent Oversight Board

The Applicant filed a referral in accordance with Article 113.7 and 21.4 of the Constitution, Articles 20, 22.7 and 22.8 of the Law no. 03/L-121 on the Constitutional Court of the Republic of Kosovo, of 15 January 2009.
The applicant filed the referral with the Court on 29 October 2010.
The President of the Court, on 16 December 2010, by decision no. GJR. 110/10, appointed Judge Snezhana Botusharova as Reporting Judge. On the same date, the President, by decision no. KSH. 110/10, appointed the Review Panel, composed of: Altay Suroy (Presiding), Kadri Kryeziu and Gjyljeta Mushkolaj.
In his referral, the Applicant claims that there has been a violation of his rights to work, as guaranteed by the Constitution, since the Municipality of Junik, on 20 July 2009, rendered a decision rejecting the complaint of the Applicant, and found that the applicant had "violated the Administrative Order no. 2003/2 implementing Directive no. 2001/36 on Civil Service of Kosovo, namely Article 30, paragraph 1, item j), "*Violent, threatening or abusive behaviour or language at the work place*".
Upon review of the Referral, the Court found that the Applicant had failed to raise or claim such alleged violations with the Supreme Court of the Republic of Kosovo.
The Court found that the Applicant had not exhausted all legal remedies available by applied legislation, as provided upon by Article 113, paragraph 7 of the Constitution.

Based on such reasons, the Constitutional Court, pursuant to Article 113, paragraph 7 of the Constitution, Article 20 of the Law on the Constitutional Court, and Rule 36 of the Rules of Procedure, on 20 May 2011, unanimously decided to REJECT the referral as inadmissible.

Pristine, 21 May 2012

Ref. No.: RK 235/12

RESOLUTION ON INADMISSIBILITY

in

Case No. KI 110/10

Applicant

Ismet Hebibi

Constitutional Review of the decision of the Independent Oversight Board of the Republic of Kosovo dated 3 February 2010

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Enver Hasani, President
Kadri Kryeziu, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Ivan Čukalović, Judge
Gjyljeta Mushkolaj, Judge and
Iliriana Islami, Judge

Applicant

1. The Applicant is Ismet Hebibi, residing in Junik,

Challenged decision

2. The Applicant challenges the decision of the Municipality of Junik dated 20 July 2009 and the decision of the Independent Oversight Board of the Republic of Kosovo (hereinafter: IOBK) dated 3 February 2010.

Subject matter

3. The Applicant alleges that his right to work as guaranteed by the Constitution has been violated.

4. The Applicant requests from the Constitutional Court to be returned to work and order compensation of salary.

Legal basis

5. Article 113.7 of the Constitution, Articles 20 and 22 and 47 (2) of the Law on the Constitutional Court and Rule 36 (1) (a) of the Rules of Procedure of the Constitutional Curt of the Republic Court of the Republic of Kosovo.

Proceedings before the Court

6. On 29 October 2010 the Applicant submitted the Referral to the Court. In his Referral the Applicant requested not to have his identity revealed in the decision of this Court.

7. On 16 December 2010, the President, by Order no. GJR. 110/10, appointed Judge Snezhana Botusharova as Judge Rapporteur. On the same date, the President, by Order no. KSH. 110/10, appointed the Review Panel composed of Judge Altay Suroy (Presiding), Judge Kadri Kryeziu and Judge Gjyljeta Mushkolaj.

8. On 20 May 2011, after having considered the Report of the Judge Rapporteur, the Review Panel made a recommendation to the full Court on the inadmissibility of the Referral.

9. On 20 January 2011 the Constitutional Court notified the IOBK regarding the submission of the above referral. On 27 January 2011, the IOBK has submitted to the Court the Applicant's case file.

Summary of the facts and allegations as presented by the Applicant

10. The Applicant was employed at the Medical Center "Dr. Ali Hoxha" in Deçan as an Ophthalmologist.

11. On 04 June 2009 through decision no. 05/379 of the Municipality of Junik by a disciplinary measure terminated the labour relation with the Applicant. The Applicant appealed this Decision on 18 June 2009.

12. On 20 July 2009 Municipality of Junik through decision no. 01-01-2009 rejected the Applicant's appeal and found that "the Applicant has violated Administrative Directive No. 2003/2 implementing Regulation no. 2001/36 on the Civil Service of Kosovo, namely Article 30 (1) (j), violent behaviour, threatening and insult in the working place".

13. On 29 December 2009, the Applicant complained to the IOBK against the decisions of the Municipality of Junik.

14. On 03 February 2010, the IOBK rejected the Applicants claim as out of time stating that "the Applicant's claim should have been submitted to the IOBK within a deadline of thirty (30) days…".

15. The Applicant has stated in his referral that he has not used the opportunity to challenge the decision of the IOBK before the Supreme Court for the reason that "the Supreme Court respects deadlines and thus would reject the Applicant's case as out of time".

Assessment of the admissibility of the Referral

16. In order to be able to adjudicate the Applicants' Referral, it is necessary to first examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution as further specified in the Law and the Rules of Procedure.

17. In this relation, the Court refers to Article 113.7 of the Constitution, which states that:

    a. *"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"*

    b. and to Article 47.2 of the Law, stipulating that:

    c. *"The individual may submit the referral in question only after he/she has exhausted all legal remedies provided by the law*"

18. The Court wishes to emphasize that the rationale for the exhaustion rule is to afford the authorities concerned, including the courts, the opportunity to prevent or put right the alleged violation of the Constitution, invoked by the Applicant before those instances. The rule is based on the assumption that the Kosovo legal order will provide an effective remedy for the violation of constitutional rights. (see, mutatis mutandis, ECHR, Selmouni v. France, no. 25803/94, decision of 28 July 1999). However, it is not necessary for the constitutional rights to be explicitly raised in the proceedings concerned. As long as the issue was raised implicitly or in substance, the exhaustion of remedies is satisfied (see, mutatis mutandis, ECHR, Azinas v. Cyprus, no. 56679/00, decision of 28 April 2004).

19. This Court applied the same reasoning when it issued Resolution on Inadmissibility in the Case of Veli Sermaxhaj KI 49/09 dated December 2010.

20. It is clear from the Applicant's submissions that he never raised or pursued the alleged violations before the Supreme Court of the Republic of Kosovo.

21. It finds that the Applicant has not exhausted all legal remedies available to him under the applicable law as required by Article 113.7 of the Constitution.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113(7) of the Constitution, Article 20 of the Law on the Constitutional Court, and Rule 36 of the Rules of Procedure, on 20 May 2011, unanimously,

DECIDES

I. TO REJECT the referral as inadmissible.

II. TO REJECT the request on his identity not to be disclosed as ungrounded.

III. This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20.4 of the Law.

IV. The Decision is effective immediately.

Judge Rapporteur **President of the Constitutional Court**

Snezhana Botusharova Prof. Dr. Enver Hasani

KI 66/11 dated 15 June 2012- Constitutional Review of Supreme Court Judgment, Pn-Kr 56/2006, Supreme Court Judgment Ap. No. 52/2004 and District Court of Pristina Judgment P. Nr. 94/01

Case KI 66/11, decision dated 21 May 2012
Keywords: sentence of imprisonment, right to fair trial, individual referral, request for protection of legality, provisional criminal procedure code of Kosovo, ratione temporis.

The applicant filed the referral pursuant to Article 113.7 of the Constitution of Kosovo, thereby claiming that his constitutional rights were violated by the judgment of the Supreme Court of Kosovo, which upheld the sentence of imprisonment of the Applicant as rendered by the District Court in Prishtina. The applicant claimed, without quoting any specific constitutional provision, that his constitutional rights were violated by the sentence grounded upon inexistent evidence and false proof.

The Court found that the referral of applicant was inadmissible, pursuant to Rule 36 (3) (h) of the Rules of Procedure. Quoting its case law in the *case KI 25/09 Shefqet Haxhiu v. Workers Organization of the "Battery Industry"* and the decision of the ECtHR in the case of *Blećić v. Croatia*, the Court further noted that the referral was ratione temporis incompliant with the Constitution. Due to the reasons provided above, the Court decided to find the referral of Applicant as inadmissible.

Pristine, 21 May 2012
Ref. No.: RK 238/12

RESOLUTION ON INADMISSIBILITY

in

Case No. KI 66/11

Applicant

Astrit Shabani

Constitutional Review of Supreme Court Judgment, Pn-Kr 56/2006, Supreme Court Judgment Ap. No. 52/2004 and District Court of Pristina Judgment P. Nr. 94/01

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Enver Hasani, President
Kadri Kryeziu, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Ivan Čukalović, Judge
Gjyljeta Mushkolaj, Judge and
Iliriana Islami, Judge

The Applicant

1. The Applicant is Astrit Shabani of Mramor, Municipality of Pristina. The Applicant is currently serving a sentence of imprisonment in Dubrava Prison, Istog.

Subject Matter

2. The Applicant alleged, without specifying a provision of the Constitution, that his right to fair trial has been violated by virtue of a conviction based on nonexistent evidence and evidence which was tampered with [Article 31 of the Constitution of the Republic of Kosovo]. The applicant also alleged, without specifying a provision of the Constitution, that his sentence violates the principles of legality and proportionality in criminal cases [Article 33 of the Constitution of the Republic of Kosovo].

Legal Basis

3. The Referral is based on Art. 113.7 of the Constitution, Article 20 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter referred to as the Law), and Rule 56 (2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter referred to as the Rules of Procedure).

Procedure before the court

4. On 16 May 2011, the Applicant filed a Referral with the Constitutional Court.

5. On 17 August 2011, the President of the Constitutional Court appointed Judge Snezhana Botusharova as Judge Rapporteur and a Review Panel composed of Judges Robert Carolan (presiding), Dr. Altay Suroy, and Dr. Iliriana Islami.

6. On 20 March 2012 the Review Panel considered the Preliminary Report of the Judge Rapporteur and made a

recommendation to the Court on the inadmissibility of the Referral.

Summary of the facts of the case

7. On 14 August 2003 the District Court of Pristina in judgment P. Nr. 94/01 found the Applicant guilty of murder, per Article 30, Paragraph 2 of the Criminal Law of Kosovo in connection with Article 22 of the Criminal Code of the Federal Republic of Yugoslavia as made applicable by UNMIK Regulation 1999/24. The Applicant was sentenced to 20 years imprisonment.

8. The Applicant filed an appeal to the Supreme Court within the legal time limit on the following grounds: essential violations of the Law on Criminal Procedure, incorrect and incomplete establishment of the facts and imposition of a wrongful sentence. The Applicant requested that the Supreme Court nullify the verdict of the District Court and return the case to the lower court for retrial or acquit and release the applicant, or that a reduced sentence be imposed.

9. On 2 August 2005 the Office of the Public Prosecutor of Kosovo recommended that the Supreme Court amend the enacting clause of the verdict in order to reflect the applicability of UNMIK Regulation 2000/59 and reject the appeal of the Applicant as unfounded.

10. On 21 November 2005 the Supreme Court in judgment Ap. 52/2004 partially approved the Applicant's appeal and modified his sentence to 18 years imprisonment. The Supreme Court rejected the remainder of the Applicant's appeal as unfounded.

11. On 6 April 2006 the Applicant submitted a request for protection of legality against Supreme Court judgment Ap. 52/2004 and District Court of Pristina judgment P. Nr. 94/01, alleging violations of UNMIK Regulation No. 2000/59 and the Provisional Criminal Procedure Code of Kosovo.

12. On 7 November 2006 the Supreme Court in judgment Pn-Kr 56/2006 rejected the Applicant's request for protection of legality as unfounded.

13. In his Referral the Applicant stated he filed requests with the Supreme Court on the following dates: 10 June 2009, 31 July 2009 and 3 September 2009. However, copies of these requests are not included in the Referral, nor is there anything to indicate in the Referral that these requests were based on a proper remedy available to the Applicant.

Assessment of the admissibility of the referral

14. As to the present Referral, the Court notes that the original decision of the Supreme Court is dated 21 November 2005 and the rejection of the Request for Protection of Legality was rejected by the Supreme Court on 7 November 2006, whereas the Referral was submitted to the Constitutional Court on 16 May 2011. This means that the Referral relates to the events prior to 15 June 2008, when the Constitution entered into force. It follows that the Referral is out of time, and therefore incompatible *ratione temporis* with the provisions of the Constitution and the Law (see Resolution on Inadmissibility of the Constitutional Court, Case KI 25/09 Shefqet Haxhiu v Workers Organization "Industria e akumulatoreve", of 21 June 2010, and Blecic v Croatia, Application no. 59532/00, ECtHR Judgment of 29 July 2004).

15. Furthermore, Rule 36 (3) h) of the Rules foresees that "a Referral may also be deemed inadmissible" if "the Referral is incompatible *ratione temporis* with the Constitution". Therefore, the Court considers that the Referral is out of time "ratione temporis".

FOR THESE REASONS

The Court, following deliberations on 20 March 2012, pursuant to Articles 113.7 of the Constitution, Articles 20 of the Law and Rule 56.2 of the Rules,

DECIDES

I. Unanimously TO REJECT the Referral as inadmissible;

II. By a majority to find that the reason for inadmissibility is incompatible with the Constitution *ratione temporis;*

III. This Decision is to be notified to the Applicant; and

IV. This Decision shall be published in accordance with Article 20(4) of the Law and is effective immediately.

Judge Rapporteur **President of the Constitutional Court**

Snezhana Botusharova Prof. Dr. Enver Hasani

KI 114/11 dated 15 June 2012 - Constitutional review of the Judgment of the Supreme Court of Kosovo Mlc.br.2/2009 dated 5 April 2011

Case KI 114/11, decision dated 4 May 2012
Keywords: individual Referral, right to property, manifestly ill-founded, protection of property

The Applicant filed the Referral pursuant to Article 113.7 of the Constitution of Kosovo, challenging the Judgment of the Supreme Court of Kosovo Mlc. no. 2/2009 of 5 April 2011, which has been served on the Applicant on 17 May 2011, which approved the request for protection of legality filed by the Public Prosecutor of Kosovo and modified the Judgments of the District Court in Prizren Ac. no. 338/2008 of 6 October 2008 and of the Municipal Court in Rahovec/Orahovac, C. no. 45/2007 of 2 June 2008, and it rejected as unfounded Applicant's claim, by which he had requested the confirmation of ownership right over the immovable property registered as cadastral plot no. 835/3 at the place called „Rakita" based on possession list no. 97, KZ Xërxe/Zrze, with area of 0,57.13 ha.

Deciding on the Referral of Applicant Velia Kryeziu, the Constitutional Court, after examining the proceedings in their entirety, did not find that the relevant proceedings before the regular courts, Municipal Court in Rahovec/Orahovac, District Court in Prizren and the Supreme Court of Kosovo, were in any manner unfair or arbitrary. Therefore the Court concluded that the Referral was manifestly ill-founded in accordance with Rule 36 (2b) of the Rules of Procedure, as the presented facts do not in any way justify the allegation of a violation of constitutional rights.

Pristine, 21 May 2012
Ref. No.: RK241/12

RESOLUTION ON INADMISSIBILITY

in

Case no. KI 114/11

Applicant

Veli Kryeziu

Constitutional review of the Judgment of the Supreme Court of Kosovo Mlc.br.2/2009 of 5 April 2011

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Enver Hasani, President
Kadri Kryeziu, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Ivan Čukalović, Judge
Gjyljeta Mushkolaj, Judge and
Iliriana Islami, Judge.

The Applicant

1. The Applicant is Veli Kryeziu from village Xërxe/Zrze, Municipality of Rahovec/Orahovac.

Challenged decision

2. Challenged decision is the Judgment of the Supreme Court of Kosovo Mlc. no. 2/2009 of 5 April 2011, served on the Applicant

on 17 May 2011, by which the request of the Public Prosecutor of Kosovo for protection of legality was approved and the Judgments of the District Court in Prizren Ac.no.338/2008 of 6 October 2008 and Municipal Court in Rahovec/Orahovac, C. no.45/2007 of 2 June 2008 were modified, and it was rejected as unfounded the claim of the Applicant by which he requested the confirmation of the ownership right over the immovable property registered as cadastral plot no. 835/3 at the place called „Rakita" according to possession list no. 97 CZ Xërxe/Zrze, with area 0,57.13 ha.

Subject matter

3. The subject matter is the Judgment of the Supreme Court of Kosovo Mlc. no. 2/2009 of 5 April 2011, by which according to Applicant's allegation „*his right to protection of property provided for in Article 46 paragraph 1 of the Constitution of the Republic of Kosovo has been violated*" due to the legal property dispute between the Applicant and the Municipality of Rahovec/Orahovac regarding the confirmation of the ownership right over the immovable property registered as a cadastral plot no. 835/3 at the place called "Rakita".

Legal basis

4. The Referral is based on Articles 113.7 and 21.4 of the Constitution, Articles 20, 22.7 and 22.8 of the Law no. 03/L-121 on the Constitutional Court of Republic of Kosovo of 16 December 2008 (hereinafter: the Law) and Rule 56 paragraph 2 of the Rules of Procedure.

Proceedings before the Court

5. The Applicant filed a Referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) on 11 August 2011.

6. On 21 October 2011, the Constitutional Court notified the Applicant, the Municipal Court in Rahovec/Orahovac, the District Court in Prizren and the Supreme Court of Kosovo that a proceeding of constitutional review of decisions related to case KI 114/11 has been initiated.

7. On 04 May 2012, after considering the report of the Judge Rapporteur Snezhana Botusharova, the Review Panel composed of Judges Robert Carolan (Presiding), Almiro Rodrigues and Prof. Dr. Enver Hasani, made a recommendation to the full Court on the inadmissibility of the Referral.

Summary of the facts

8. Ali Kryeziu, namely Applicant's father, was the owner of an immovable property with area 0.57.13 ha, at a place called "Rakita", currently registered in the Immovable Property Rights Registry as cadastral plot no. 835 CZ Xërxe/Zrze. The said area of land was the property of Ali Kryeziu while he was alive, and after he passed away, it was the property of his son, Veli Kryeziu.

9. Based on the descriptive cadastre of 1952, this area of land was registered as part of the cadastral plot no. 21 in the name of Ali Kryeziu.

10. Based on aerial photogrammetric photograph which entered into force 1959, exposed for public view in 1965, which entered into force in 1967, the disputed plot received a new number as a part of the plot no. 835/1. During the presentation of the data to the public for viewing them which was conducted in 1965, every parcel which an owner did not register as his property was registered as a socially owned property. The disputed plot no. 835/3 as a part of plot no. 835/1, taking into consideration that the owner did not appear to register it as its property, was registered by the Commission as a socially owned property in the Registry ABC no. 130 CZ Xërxe/Zrze in the name of MA Rahovec/Orahovac.

11. Upon the introduction into force of the technical cadastre on 1 January 1969, the disputed plot was registered as a socially owned property of MA Rahovec/Orahovac, plot no. 835/3 with area 0.57.13 ha, the data remained the same in possession list no.97 CZ Xërxe/Zrze, whereas the ownership was registered as a socially owned property in the name of MA Rahovec/Orahovac until 1999, when by a decree of the Provisional Government of Kosovo no. 1/1999 under possession list no. 97 it changes the title into a state owned property of MA Rahovec/Orahovac.

12. At the time of the aerial photogrammetric photograph the owner of the said area of land was not at home, thus on the occasion of the exposition of the photograph's data in public view, he was not able to appear as the owner of this disputed immovable property. As a result the immovable property was registered as a socially

owned property. Having in mind that the neighboring cadastral plot, according to the cadastral description was registered in the name of Ali Kryeziu, Ali Kryeziu, and later on also his son, according to the Applicant's allegations, could not know that this disputed immovable property was registered as a socially owned property until the day a judicial dispute was initiated for the confirmation of the right of ownership.

13. Taking into consideration the fact that the plot no. 835/3, (the record based on later cadastral changes) without any legal basis provided by law for acquisition of property rights, but only based on aerial photogrammetric photograph which was presented to the public for viewing in 1965, was registered as a socially owned property, whereas its owner Ali Kryeziu had ownership right over this immovable property, and after he passed away, on the basis of inheritance – Veli Kryeziu – the Applicant who initiated a court proceeding for confirmation of the ownership right.

14. In view of all the foregoing, the Applicant initiated a court proceeding in the first instance before the Municipal Court in Rahovec/Orahovac, which established the abovementioned facts based on the report of the geodesy expert M. K., and the statements of witnesses I. K. and Sh. K. Based on the examined evidence and established facts, by Judgment of the Municipal Court in Rahovec/Orahovac C. no. 45/2007 of 2 June 2008 it was confirmed the ownership right to Veli Kryeziu over the cadastral plot no. 835/3 CZ Xërxe/Zrze.

15. Against this Judgment of the Municipal Court in Rahovec/Orahovac C. no. 45/2007 of 2 June 2008, an appeal was filed by the Public Attorney of the Municipality of Rahovec/Orahovac. Deciding upon the appeal of the Public Attorney, the District Court in Prizren by Judgment Ac. no. 338/2008 of 6 October 2008 rejected the appeal as unfounded and upheld the Judgment of the Municipal Court in Rahovec/Orahovac C. no. 45/2007 of 2 June 2008.

16. Against the Judgment of the District Court in Prizren Ac. no. 338/2008 of 6 October 2008 the Public Prosecutor of Kosovo filed a request for protection of legality. Deciding upon the request for protection of legality, the Supreme Court of Kosovo by Judgment Mlc. no. 2/2009 of 5 April 2011, approved the request

for protection of legality as grounded, and based on the same factual situation modified the Judgment of the Municipal Court in Rahovec/Orahovac C. no. 45/2007 of 2 June 2008 and the Judgment of the District Court in Prizren Ac. no. 338/2008 of 6 October 2008 and rejected the claim of the plaintiff Veli Kryeziu, by which he had requested the confirmation of the ownership right over cadastral plot no. 835/3 CZ Xërxe/Zrze. In the reasoning of the Judgment Mlc. no. 2/2009 of 5 April 2011, the Supreme Court stated the following:

a. *"The claimant (Applicant) is obliged to prove the existence of the legal facts on the basis of which the property right is or may be acquired**.** The claimant in his claim and in the sessions held at the first instance court has declared that he is the owner of the contested parcel based on inheritance from his predecessors, but he does not prove the way in which he or his predecessor acquired the contested parcel. The fact that the witnesses have declared that the claimant has inherited the contested parcel from his predecessor, does not present valid legal basis for confirmation of claimant's ownership right. The contested parcel since 1965 in the cadastral books is registered in the name of the respondent, and the claimant did not prove with facts that his predecessor or the claimant took some legal actions to have the contested property returned in possession, for this reason the revision of the respondent had to be approved as grounded and the judgments of the lower instance courts be modified and the claim of the claimant be rejected."*

17. After the settlement of the case with a final Judgment of the District Court in Prizren Ac. no. 338/2008 of 6 October 2008, and prior to its adjudication upon extraordinary legal remedy with the Supreme Court of Kosovo, the Applicant sold the immovable property at issue so that the said property today is registered in the Immovable Property Registry in the name of a later purchaser Agron Rexhep Morina.

Applicant's allegations

18. The Applicant challenges the Judgment of the Supreme Court of Kosovo Mlc. no. 2/2009 of 5 April 2011, requesting from the Constitutional Court the following:

> a. *"to declare the Judgment of the Supreme Court of Kosovo Mlc. no. 2/2009 of 05.04.2011 unlawful and to enable to me the protection of the right to ownership provided by Article 46 paragraph 1 of the Constitution of the Republic of Kosovo"*

Assessment of the admissibility of Referral

19. In order to be able to adjudicate the Applicant's Referral, the Court needs first to examine whether the Applicant has fulfilled all admissibility requirements laid down in the Constitution as further specified in the Law and the Rules of Procedure.

20. Article 48 of the Law on Constitutional Court of the Republic of Kosovo stipulates:

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

21. Under the Constitution, the Constitutional Court is not a court of appeal when it reviews the decisions taken by ordinary courts. It is the role of the ordinary courts to interpret and apply the pertinent rules of both procedural and substantive law (see, *mutatis mutandis*, Garcia Ruiz v. Spain [GC), no. 30544/96, § 28, European Court on Human Rights [ECHRJ1999-1).

22. The Applicant has not substantiated his allegations nor has he provided any *prima facie* evidence which would point out to a violation of his constitutional rights (see Vanek vs. Slovak Republic, ECHR Court on admissibility, Application no. 53363/99 of 31 May 2005). The Applicant does not state in what manner Article 46 paragraph 1 of the Constitution supports his Referral, as it is stipulated in Article 113.7 of the Constitution and Article 48 of the Law.

23. In the present case, the Applicant has been provided numerous opportunities to present his case and to challenge the interpretation of the law, which he considers as being incorrect, before the Municipal Court in Rahovec/Orahovac, the District Court in Prizren and the Supreme Court of Kosovo. After having examined the proceedings in their entirety, the Constitutional Court did not find that the pertinent proceedings were in any way unfair or arbitrary (see *mutatis mutandis* Shub v. Lithuania, ECtHR Decision as to the Admissibility of Application no. 17064/06 of 30 June 2009.

24. As to the Applicant's complaint about alleged violation of Article 46 of the Constitution [Protection of Property], the Court recalls that this relates only to an existing property of a person.

25. Thus, the hope that a long-extinguished property right may be revived cannot be considered a "possession", nor can a conditional claim which lapses as a result of the non-fulfilment of the condition (see *Gratzinger and Gratzingerova v. the Czech Republic* (dec.) [GC], no. 39794/98, § 69, ECHR 2002-VII).

26. However, under certain conditions "legitimate expectations" of acquisition of "assets" may also enjoy the protection of Article 1 of Protocol 1. Thus, where the proprietary interest is in the nature of a claim it may be regarded that a person has "legitimate expectation" if there is a sufficient basis for interest in national law, for example where there is settled case-law of the domestic courts confirming it (see *Kopecký versus Slovakia* [GC], no. 44912/98, paragraph 52, ECHR 2004-IX). However, no legitimate expectation can be said to arise where there is a dispute as to the correct interpretation and application of domestic law and the applicant's submissions are subsequently rejected by the national courts (see *Kopecký*, quoted above, paragraph 50).

27. The Court recalls that in the present case there is a dispute as to the correct application and interpretation of applicable law and that the Supreme Court consequently rejected the claims of the Applicant.

28. Finally, the admissibility requirements have not been met in this Referral. The Applicant has failed to point to and support with evidence the allegation that the challenged decision has violated his constitutional rights and freedoms.

29. It therefore results that the Referral is manifestly ill-founded pursuant to Rule 36 (2b) of the Rules of Procedure which provides "*The Court shall reject a Referral as being manifestly ill-founded when it is satisfied that b) when the presented facts do not in any way justify the allegation of a violation of the constitutional rights".*

FOR THESE REASONS

The Constitutional Court of Kosovo, pursuant to Article 113.7 of the Constitution, Article 20 of the Law, Rule 56 (2) and Rule 36 (2b) of the Rules of Procedure, in the session held on 4 May 2012, by majority

DECIDES

I. TO REJECT the Referral as Inadmissible;

II. This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20 (4) of the Law; and

III. This Decision is effective immediately.

Judge Rapporteur **President of the Constitutional Court**

Snezhana Botusharova Prof. Dr. Enver Hasani

KI 130/11 dated 15 June 2012- Request for re-examination of the Resolution on Inadmissibility of the Constitutional Court of the Republic of Kosovo, KI 18/10, dated 12 April 2011

Case KI 130/11, decision dated 4 May 2012
Keywords: individual referral, inadmissible

The applicant filed a referral pursuant to Rule 36 (3.e) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo asserting that the Constitutional Court did not take into consideration a letter which was submitted to this Court on 12 May 2011.
The Court held that the Referral was inadmissible because the Applicant as to his allegations, they are the same allegations as made in the initial Referral, which have been dealt with by this Court in its Resolution on Inadmissibility in Case No. KI. 18/10, whereby it ruled that the Applicants' had not exhausted all available legal remedies. The Court is, therefore, barred from dealing with them here, pursuant to Rule 36(3) (e) of the Rules of Procedure. Further, the Court noted that one of the Applicant's allegation, was a new complaint regarding the excessive length of proceedings which does not fall within the scope of the initial Referral dealt with by the Court in Resolution on Inadmissibility in Case No. KI. 18/10. However, this does not preclude the Applicants' from submitting a new Referral complaining about the excessive length of proceedings.

Pristine, 21 May 2012
Ref. No.: RK237/12

RESOLUTION ON INADMISSIBILITY

in

Case No. KI 130/11

Applicant

Mr. Denic Mladen and Mr. Vitkovic-Denic Milorad

Request for re-examination of the Resolution on Inadmissibility of the Constitutional Court of the Republic of Kosovo, KI 18/10, dated 12 April 2011.

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Enver Hasani, President
Kadri Kryeziu, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Ivan Čukalović, Judge
Gjyljeta Mushkolaj, Judge and
Iliriana Islami, Judge

Applicants

1. The Applicants are Mr. Denic D. Mladen and Mr. Vitkovic-Denic D. Milorad, residing in Kraljevo, Serbia, represented by Mr. Vitkovic M. Branislav, a practicing lawyer in Kraljevo, Serbia, who submitted a first Application (Case No. KI 18/10) to the Constitutional Court of the Republic of Kosovo (hereinafter: the "Court") on 24 February 2010. The Case was rejected as inadmissible on 12 April 2011.

Challenged decision

2. With the present Referral, the Applicants request this Court to re-examine the Resolution on Inadmissibility of this Court in Case KI 18/10, of this Court, dated 12 April 2011, by which the Court declared inadmissible the Applicants' Referral for not having exhausted all legal remedies. The Resolution on Inadmissibility was served on the Applicants on 19 September 2011.

Subject matter

3. In this request for re-examination of the Resolution on Inadmissibility, the Applicants' complain that this Court did not take into consideration a letter which was submitted to this Court on 12 May 2011.

Legal basis

4. Rule 36 (3.e) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the "Rules of Procedure").

Proceedings before the Court

5. On 3 October 2011, the Applicant submitted a request to this Court to re-examine the Resolution on Inadmissibility in Case KI 18/10 of this Court, dated 12 April 2011, and published on 19 September 2011.

6. On 18 January 2012, the President, by Decision No. GJR. 130/11, appointed Judge Snezhana Botusharova as Judge Rapporteur. On the same date, the President, by Decision No. KSH. 130/11, appointed the Review Panel composed of Judges Robert Carolan (Presiding), Altay Suroy and Almiro Rodrigues.

7. On 2 February 2012, the Court requested the Municipal Court in Pristina what the status of the proceedings was.

8. On 29 February 2012, the Municipal Court in Pristina replied that it was reviewing the Applicants' case; However, due to the complexity of the case, the large amount of cases pending before it and the difficulties in communicating with the Applicants' who reside in Serbia, the Municipal Court in Pristina had not had the possibility to hold a session.

9. On 4 May 2012, the Review Panel considered the Report of the Judge Rapporteur and made a recommendation to the Court on the Inadmissibility of the Referral.

Summary of facts

10. As to the Applicant's previous Case KI. No. 18/10, adjudicated on 12 April 2011, this Court found the Referral inadmissible on the ground that the Applicants had failed to show that they had exhausted all legal remedies as provided by applicable law, since they had not raised or pursued the alleged violations during the pending proceedings before the Municipal Court or before any higher instance courts. This decision was published on 19 September 2011.

11. On 12 May 2011, the Applicants had submitted a letter to this Court, claiming that Article 54 [Judicial Protection of Rights] of the Constitution has been violated because until today the Municipal Court in Pristina has not yet taken a decision in their case within a reasonable time.

Assessment of the admissibility of the Referral

12. In the Applicants' request for re-examination, they allege that this Court did not take into consideration a letter which was submitted by the Applicants' to this Court on 12 May 2011, whereby the Applicants had alleged that:

    a. "...
    b. Article 54 [Judicial Protection of Rights] of the Constitution has been violated because until today the Municipal Court in Pristina has not yet taken a decision in their case within a reasonable time;

    c. Article 143.1 [Comprehensive Proposal for the Kosovo Status Settlement] of the Constitution has been violated because the Supreme Court with its Judgment, No. Cml.-Gzz. br. 36/2007, of 13 December 2007, had not respected the provisions of the Comprehensive Proposal for the Kosovo Status Settlement (Ahtisaari Proposal), Annex VII, Article 2 para. 2.1 [Socially Owned Enterprises] and Article 3, para. 3.1 and 3.3 [KTA Claims Adjudication Process], which provides that the Special Chamber of the Supreme Court of Kosovo is competent to decide this matter and not the Supreme Court; and

d. Article 156 [Refugees and Internally Displaced Persons] of the Constitution has been violated because their wealth had not been returned to them.
e. ..."

13. In this respect, the Court refers to Rule 36 (3.e) of the Rules of Procedure which provides:

a. "...
b. A Referral may also be deemed inadmissible in any of the following cases: the Court has already issued a Decision on the matter concerned and the Referral does not provide sufficient grounds for a new Decision;
c. ..."

14. In this regard, the Court notes that as to allegation b) and c) are the same allegations as made in the initial Referral. These allegations have been dealt with by this Court in its Resolution on Inadmissibility in Case No. KI. 18/10, whereby it ruled that the Applicants' had not exhausted all available legal remedies.

15. The Court is, therefore, barred from dealing with them here, pursuant to Rule 36(3) (e) of the Rules of Procedure.

16. As to allegation a), the Court observes that it is a new complaint regarding the excessive length of proceedings which does not fall within the scope of the initial Referral dealt with by the Court in Resolution on Inadmissibility in Case No. KI. 18/10. However, this does not preclude the Applicants' from submitting a new Referral complaining about the excessive length of proceedings.

17. All the more, the Court notes that the Applicants' claim, which they are presently making before this Court concerning the excessive length of proceedings, has not been decided yet by the Municipal Court. Therefore, all arguments regarding the alleged excessive length of proceedings should be satisfied by the Applicants' before the Municipal Court in Pristina and if they are not satisfied, be raised in appeal before the higher instance Courts, including the Supreme Court.

18. It follows, that the Referral is inadmissible pursuant to Rule 36 (3.e) of the Rules of Procedure, however, as stated previously this does not preclude the Applicants from submitting a new Referral complaining about the excessive length of proceedings.

FOR THESE REASONS

The Constitutional Court, pursuant to Rule 36 (3.e) and Rule 56 (2) of the Rules of Procedure, on 4 May 2012, unanimously

DECIDES

I. TO REJECT the Referral as Inadmissible;

II. This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20 (4) of the Law; and

III. This Decision is effective immediately.

Judge Rapporteur **President of the Constitutional Court**

Snezhana Botusharova Prof. Dr. Enver Hasani

KI 18/12 dated 25 June 2012- Constitutional review of the Judgment of the Supreme Court of Kosovo A. no. 1285 / 2011 dated 30 December 2011

Case KI 18/12, decision dated 7 May 2012
Keywords: individual Referral, disability pension, manifestly ill-founded, equality before the law.

The Applicant filed a request for annulment of the Judgment of the Supreme Court of Kosovo no. 1285/2011 of 30 December 2011 which denied to the Applicant the right to disability pension. The Applicant alleges that this decision had violated her constitutional rights, without specifying the constitutional provisions that have been allegedly violated.

Deciding on the Referral of Applicant Remzije Arifi, the Constitutional Court, after having examined the proceedings in their entirety, did not find that the relevant proceedings before the Doctor's Committees of the first and second instance of the Ministry of Labour and Social Welfare and before the Supreme Court of Kosovo were in any manner unfair or arbitrary. The Court therefore concluded that the Referral was manifestly ill-founded in accordance with Rule 36 (2b) of the Rules of Procedure, as the presented facts do not in any way justify the allegation of a violation of constitutional rights.

Pristine, 21 May 2012
Ref.no.:RK240/12

RESOLUTION ON INADMISSIBILITY

in

Case no. KI 18/12

Applicant

Remzije Arifi

Constitutional review of the Judgment of the Supreme Court of Kosovo A. no. 1285 / 2011 of 30 December 2011

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Enver Hasani, President
Kadri Kryeziu, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Gjyljeta Mushkolaj, Judge and
Iliriana Islami, Judge.

The Applicant

1. The Applicant is Remzije Arifi from Lipjan, "Adem Jashari" Str. She is represented before the Constitutional Court by Rrahman Retkoceri, practicing lawyer from Lipjan.

Challenged decision

2. The challenged decision is the Judgment of the Supreme Court of Kosovo A. no. 1285/2011 of 30 December 2011, by which it was rejected the lawsuit filed against the Resolution no. 5062525 of 18 August 2011 of Ministry of Labor and Social Welfare (hereinafter: MLSW) – Department of Pension Administration (hereinafter DPA) which rejected the Applicant's request to recognize to her the right to disability pension.

Subject matter

3. The subject matter is the Judgment of the Supreme Court of Kosovo A. no. 1285/2011 of 30 December 2011, by which according to the Applicant's allegations *"...the fundamental*

rights and freedoms as provided by Article 24 (Equality before Law) of the Constitution of the Republic of Kosovo and the European Convention on Human Rights, Protocol 1 Article 6, have been violated."

Legal basis

4. The Referral is based on Articles 113.7 and 21.4 of the Constitution, Articles 20, 22.7 and 22.8 of the Law no. 03/L-121 on the Constitutional Court of the Republic of Kosovo of 16 December 2008 (hereinafter: the Law) and Rule 56 paragraph 2 of the Rules of Procedure.

Proceedings before the Court

5. On 28 February 2012 the Applicant filed a Referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 27 March 2012 the Constitutional Court notified the Applicant and the Supreme Court of Kosovo that a proceeding of constitutional review of decisions related to case KI 18/12.

7. On 7 March 2012, after considering the report of Judge Iliriana Islami, the Review Panel composed of Judges Almiro Rodrigues (Presiding), Kadri Kryeziu and Prof. Dr. Enver Hasani made a recommendation to the full Court on the inadmissibility of the Referral.

Summary of the facts

8. The Applicant requested from MLSW – DPA to recognize to her the right to disability pension. MLSW – DPA–Council of Appeals for Disability Pension in Prishtina by Resolution no. 5062525 of 23 November 2007 rejected the request of Remzije Arifi to recognize to her the right to disability pension.

9. Against the Resolution of MLSW–DPA no. 5062525 of 23 November 2007, the Applicant announced a lawsuit with the Supreme Court of Kosovo which acting upon the lawsuit of the Applicant by Judgment A. No. 109 / 2008 of 12 November 2008,

approved the lawsuit of the Applicant and annulled the Resolution of MLSW – DPA no. 5062525 of 23 November 2007.

10. Based on the new factual situation MLSW–DPA rendered a new Resolution no. 5062525 of 29 April 2010, recognizing to the Applicant the right to disability pension with an indication that it would reconsider the right to pension after one year.

11. In the reconsideration, following the examination conducted by the Doctor's Commission which is composed of medical experts in the respective fields, the assessment of the medical documentation and results from direct examination by the first instance committee and the opinion of the commission that the Applicant is not permanently and completely disabled, MLSW – DPA rendered a new Resolution no. 5062525 of 18 August 2011, rejecting Remzije Arifi's request for recognition of the right to disability pension.

12. Against the Resolution of MLSW – DPA no. 5062525 of 18 August 2011, the Applicant filed a lawsuit with the Supreme Court of Kosovo.

13. Deciding upon the lawsuit of the Applicant, the Supreme Court of Kosovo by Judgment A. No. 1285 / 2011 of 30 December 2011 rejected the lawsuit of the Applicant with the reasoning:

    a. *"Taking into consideration that the doctor's commissions that are authorized by law have found that the plaintiff does not suffer from total and permanent disability, and that the first instance body and the respondent in the proceeding that preceded the issuance of the challenged decision have complied with the provisions of administrative procedure, the Court hereby finds that the respondent, by rejecting the lawsuit of plaintiff, has correctly applied substantive law when it found that the plaintiff does not meet the criteria provided by Article 3 of the LDP to be granted the right to disability pension".*

Applicant's allegations

14. The Applicant requests from the Constitutional Court the following:

> a. *"...to assess the constitutionality and legality of Judgment of the Supreme Court of Kosovo, A. no. 1285/2011, of 30 December 2011 in the lawsuit filed by Mrs. Remzije Arifi from Lipjan."*

15. The Applicant considers that the her health condition did not get better with the passage of time, it has worsened instead and that the Doctor's Commissions of first and second instance acted in a biased manner and that by the Judgment of the Supreme Court of Kosovo A. no. 1285 / 2011 of 30 December 2011 *„...the fundamental rights and freedom provided by Article 24 (Equality before Law) of the Constitution of the Republic of Kosovo and the European Convention on Human Rights, Protocol 1 Article 6, have been violated."*

Assessment of the inadmissibility of Referral

16. In order to be able to adjudicate the Applicant's Referral, the Court must first examine whether they have fulfilled all admissibility requirements laid down in the Constitution and further specified in the Law and the Rules of Procedure.

17. Article 48 of the Law on the Constitutional Court of the Republic of Kosovo:

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

18. Under the Constitution, the Constitutional Court is not a court of appeal when it reviews the decisions taken by ordinary courts. It is the role of the ordinary courts to interpret and apply the pertinent rules of both procedural and substantive law (see, *mutatis mutandis*, Garcia Ruiz v. Spain [GC), no. 30544/96, § 28, European Court on Human Rights [ECHRJ1999-1).

19. The Applicant has not substantiated his allegations nor has he provided any *prima facie* evidence which would point out to a

violation of his constitutional rights (see Vanek vs. Slovak Republic, ECHR Court on admissibility, Application no. 53363/99 of 31 May 2005). The Applicant does not state in what manner Article 24 of the Constitution and Article 6 of ECHR support his Referral, as it is stipulated in Article 113.7 of the Constitution and Article 48 of the Law.

20. In the present case, the Applicant has been provided numerous opportunities to present his case and to challenge the interpretation of the law, which he considers as being incorrect, before the Doctor's Commissions of first and second instance of MLSW – DPA and the Supreme Court of Kosovo. After having examined the proceedings in their entirety, the Constitutional Court did not find that the pertinent proceedings were in any way unfair or arbitrary (see *mutatis mutandis* Shub v. Lithuania, ECtHR Decision as to the Admissibility of Application no. 17064/06 of 30 June 2009).

21. Finally, admissibility requirements have not been met in this Referral. The Applicant has failed to point to and support with evidence the allegation that the challenged decision has violated his constitutional rights and freedoms.

22. It follows that the Referral is manifestly ill-founded pursuant to Rule 36 (2b) of the Rules of Procedure which provides "*The Court shall reject a Referral as being manifestly ill-founded when it is satisfied that b) when the presented facts do not in any way justify the allegation of a violation of the constitutional rights".*

FOR THESE REASONS

The Constitutional Court of Kosovo, pursuant to Article 113.7 of the Constitution, Article 20 of the Law, Rule 56 (2) and Rule 36 (2b) of the Rules of Procedure, in the session held on 7 May 2012, unanimously

DECIDES

I. TO REJECT the Referral as Inadmissible;

II. This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20 (4) of the Law; and

III. This Decision is effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Dr. Iliriana Islami	Prof. Dr. Enver Hasani

KI 108/11 dated 10 July 2012- Constitutional Review of the Decision of the Supreme Court, PN. No. 372/2011, dated 13 July 2011

Case KI 108/11, decision dated 4 May 2012
Keywords: criminal case, general principles of the judicial system, individual referral, right to fair and impartial trial, right to legal remedies, violation of individual rights and freedoms, manifestly ill-founded, not authorized party

The applicant filed a referral pursuant to Article 113.7 of the Constitution of Kosovo asserting that his rights under Articles 31 [Right to Fair and Impartial Trial], 32 [Right to Legal Remedies] and 102 [General Principles of the Judicial System], of the Constitution and Article 6 [Right to a fair trial] in conjunction with Article 13 [Right to an effective remedy] of the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols, was infringed by the decisions of the Supreme Court, which concluded that an appeal against the court ruling on the confirmation of the indictment would only be allowed, if the indictment was dismissed, pursuant to Article 317(2) of the PCCP.
The Court held that the Referral was inadmissible because the Applicant failed to submit evidence that the relevant proceedings were in any way unfair or tainted by arbitrariness. Hence, the Court held that the Referral was manifestly ill-founded pursuant to Rule 36 (1.c) of the Rules of Procedure. Furthermore, as to the question of compatibility of laws, i.e. the PCCP, with the Constitution, the Court notes that only authorized parties under Article 113.2 of the Constitution are entitled to submit this question. Therefore, the Applicant is not an authorized party under Article 113.2 of the Constitution. However, the Applicant could raise the issue of compatibility of laws with the Constitution before the regular courts who is authorized under Article 113.8 of the Constitution to size the Constitutional Court.

Pristine, 22 May 2012
Ref. No.: RK244/12

RESOLUTION ON INADMISSIBILITY

in

Case No. KI 108/11

Applicant

Myrteza Dyla

Constitutional Review of the Decision of the Supreme Court, PN. No. 372/2011, dated 13 July 2011

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Enver Hasani, President
Kadri Kryeziu, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Ivan Čukalović, Judge
Gjyljeta Mushkolaj, Judge and
Iliriana Islami, Judge

Applicant

1. The Applicant is Mr. Myrteza Dyla, represented by Mr. Teki Bokshi, a practicing lawyer from Gjakova.

Challenged decision

2. The Applicant challenges the Decision of the Supreme Court, PN. No. 372/2011, of 13 July 2011, which was served on the Applicant on 22 July 2011.

Subject matter

3. The subject matter of the Referral is the assessment by the Constitutional Court of the Republic of Kosovo (hereinafter: the "Court") of the constitutionality of the Decision of the Supreme Court, PN. No. 372/2011 of 13 July 2011, by which, allegedly, his rights as guaranteed by the Constitution of the Republic of Kosovo (hereinafter: the "Constitution"), Articles 31 [Right to Fair and Impartial Trial], 32 [Right to Legal Remedies] and 102 [General Principles of the Judicial System], and by the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols, Article 6 [Right to a fair trial] in conjunction with Article 13 [Right to an effective remedy] have been violated.

Legal basis

4. Article 113.7 of the Constitution, Article 22 of the Law on the Constitutional Court of the Republic of Kosovo of 15 January 2009, (No. 03/L-121), (hereinafter: the "Law") and Rule 56 (2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the "Rules of Procedure").

Proceedings before the Court

5. On 8 August 2011, the Applicant submitted the Referral to the Court.

6. On 23 August 2011, the President, by Decision No. GJR. KI 108/11 appointed Judge Ivan Čukalovič as Judge Rapporteur. On the same date, the President, by Decision No. KSH. KI 108/11, appointed the Review Panel composed of Judges Robert Carolan (Presiding), Snezhana Botusharova and Gjyljeta Mushkolaj.

7. On 24 January 2011, the Court communicated the Referral to the Supreme Court and to the District Public Prosecutor of Peja. So far, no reply has been received from either of them.

8. On 4 May 2012, the Review Panel considered the Report of the Judge Rapporteur and made a recommendation to the Court on the Inadmissibility of the Referral.

Summary of facts

9. On 15 June 2011, a Judge of the District Court of Peja (hereinafter: the "Judge") confirmed the indictment of the District Public Prosecutor filed against the Applicant for having committed the criminal act of Article 339(3) in conjunction with Article 23 of the Criminal Code (hereinafter: "CCK") (Decision KA. no. 90/11). The Judge confirmed that there were sufficient grounds to confirm the indictment in order to ascertain the culpability or innocence of the Applicant in the main trial. The Applicant appealed against this decision to the Panel of Three Judges of the District Court of Peja (hereinafter: the "Panel").

10. On 27 June 2011, the Panel rejected the Applicant's appeal as inadmissible (Decision KA. no. 90/11) and concluded that an appeal against the ruling of the Judge in relation to the confirmation of the indictment could only be submitted by the Prosecutor and the injured party, when the indictment is dismissed pursuant to Article 317.2 of the CCK. The Applicant appealed against this decision to the Supreme Court.

11. On 13 July 2011, the Supreme Court rejected the Applicant's appeal as unfounded and concluded, on the same ground as the Panel, that an appeal against the ruling of the Judge in relation to the confirmation of the indictment could only be submitted by the Prosecutor and the injured party, when the indictment is dismissed pursuant to Article 317.2 of the CCK (Decision Pn. No. 372/2011).

Applicant's allegations

12. The Applicant alleges that:

a. the right to appeal has been violated because the Applicant could not appeal the ruling of the judge concerning the confirmation of indictment of 15 June 2011.

b. the right to access to court has also been violated by not giving the Applicant the possibility to appeal.

c. the principle equality of arms between the parties in the procedure has been violated.

d. the District Court and the Supreme Court has wrongly applied and interpreted the CCK because according to the Applicant there exist a right to appeal under CCK.

Assessment of the admissibility of the Referral

13. The Applicant alleges that his rights guaranteed by Articles 31 [Right to Fair and Impartial Trial], 32 [Right to Legal Remedies] and 102 [General Principles of the Judicial System] of the Constitution and Article 6 [Right to a fair trial] in conjunction with Article 13 [Right to an effective remedy] of ECHR have been violated.

14. As to the Applicant's complaints, the Court observes that, in order to be able to adjudicate his complaint, it is necessary to first examine whether he has fulfilled the admissibility requirements laid down in the Constitution as further specified in the Law and the Rules of Procedure.

15. In this respect, the Court emphasizes that, under the Constitution, it is not to act as a court of fourth instance, when considering the decisions taken by ordinary courts. It is the role of ordinary courts to interpret and apply the pertinent rules of both procedural and substantive law (see, *mutatis mutandis,* Garcia v. Spain [GC], no. 30544/96, para. 28, European Court of Human Rights [ECHR] 1999-I).

16. The Court can only consider whether the evidence has been presented in such a manner, and whether the proceedings in general, viewed in their entirety, have been conducted in such a way that the Applicants has had a fair trial (see among other

authorities, Report of the Eur. Commission of Human Rights in the case Edwards v. United Kingdom, App. No. 13071/87, adopted on 10 July 1991).

17. In the present case, the Applicant alleges that there is a violation of his rights as guaranteed by the Constitution since he is not allowed to appeal a decision of a judge confirming the indictment.

18. In this respect, the Court refers to Article 102.5 of the Constitution, which provides: *"The right to appeal a judicial decision is guaranteed unless otherwise provided by law."*. Article 317 (2) of the PCCP does not provide a right to the Applicant to appeal the confirmation of indictment. Notwithstanding, this the District Court and the Supreme Court took into consideration the complaint of the Applicant but ruled that no appeal is possible against the confirmation of indictment pursuant to Article 317 (2) of PCCP, which provides:

    a. *"The ruling of the judge to dismiss the indictment can be appealed by the prosecutor and the injured party to the three-judge panel."*

19. Furthermore, the Court notes that the confirmation of indictment do not prejudice the adjudication of the matter during the main trial pursuant to Article 317 (1) of PCCP, which provides:

    a. *"All rulings rendered by the judge in connection with the confirmation of the indictment shall be supported by reasoning but in such a way as not to prejudice the adjudication of the matters which will be considered in the main trial."*

20. As a matter of fact, the Applicant did not substantiate a claim on constitutional grounds and did not provide evidence that his rights and freedoms have been violated by that public authority. Therefore, the Constitutional Court cannot conclude that the relevant proceedings were in any way unfair or tainted by arbitrariness (see mutatis mutandis, Shub v. Lithuania, ECHR Decision on Admissibility of Application No. 17064/06 of 30 June 2009).

21. It follows that the Referral is manifestly ill-founded pursuant to Rule 36 (1.c) of the Rules of Procedure which provides: *"The Court may only deal with Referrals if: c) the Referral is not manifestly ill-founded."*

22. If this Court takes into consideration that the Applicant raises the question of compatibility of laws, i.e. the PCCP, with the Constitution, the Court notes that only authorized parties under Article 113.2 of the Constitution are entitled to submit this question. Therefore, the Applicant is not an authorized party under Article 113.2 of the Constitution. However, the Applicant could raise the issue of compatibility of laws with the Constitution before the regular courts who is authorized under Article 113.8 of the Constitution to cease the Constitutional Court.

23. Accordingly, the Referrals must be rejected as inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.2 of the Constitution, Rule 36 (1.c) and Rule 56 (2) of the Rules of Procedure, on 4 May 2012, unanimously

DECIDES

I. TO REJECT the Referral as Inadmissible;

II. This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20 (4) of the Law; and

III. This Decision is effective immediately.

Judge Rapporteur **President of the Constitutional Court**

Ivan Čukalović Prof. Dr. Enver Hasani

KI 16/12 dated 25 June 2012 - Constitutional Review of the Judgment of the Supreme Court, A. no. 1415/2011, dated 30 December 2011.

Case KI 16/12, decision dated 7 May 2012
Keywords: administrative procedure, health and social protection, identity disclosure, individual referral, violation of individual rights and freedoms, manifestly ill-founded,

The applicant filed a referral pursuant to Article 113.7 of the Constitution of Kosovo asserting that his rights under Article 51 [Health and Social Protection] was infringed by the Judgment of the Supreme Court, which concluded that the Department of Pension Administration rendered a decision on 22 March 2011, while the Applicant challenged the decision on 16 September 2011. In this respect, the Supreme Court held that the Appeals Committee, by dismissing the Applicant's appeal, has rightly applied the law when it concluded that the appeal was filed after the provided legal time limit. The Applicant further requested the Court not to disclose his identity.

The Court held that the Referral was inadmissible because the Applicant failed to submit evidence that the relevant proceedings were in any way unfair or tainted by arbitrariness. Hence, the Court held that the Referral was manifestly ill-founded pursuant to Rule 36 (1.c) of the Rules of Procedure. As to the Applicant's request for not having his identity foreclosed, the Court rejected it as ungrounded, because no supporting documentation and information was provided on the reasons for the Applicant not to have his identity foreclosed.

Pristine, 22 May 2012
Ref. No.: RK243/12

RESOLUTION ON INADMISSIBILITY

in

Case No. KI 16/12

Applicant

Gazmend Tahiraj

Constitutional Review of the Judgment of the Supreme Court, A. no. 1415/2011, dated 30 December 2011.

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Enver Hasani, President
Kadri Kryeziu, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Gjyljeta Mushkolaj, Judge and
Iliriana Islami, Judge.

Applicant

1. The Applicant is Mr. Gazmend Tahiraj from the village Terdec, Gllogoc.

Challenged decision

2. The Applicant challenges the Judgment of the Supreme Court, A. no. 1415/2011, of 30 December 2011, which was served on him on an unspecified date.

Subject matter

3. The Applicant alleges that the abovementioned decision violated his rights as guaranteed by the Constitution of the Republic of

Kosovo (hereinafter, the "Constitution"), namely Article 51 [Health and Social Protection].

4. Furthermore, the Applicant requests the Court not to have his identity foreclosed.

Legal basis

5. The Referral is based on Article 113.7 of the Constitution, Article 22 of the Law on the Constitutional Court of the Republic of Kosovo of 15 January 2009, (No. 03/L-121), (hereinafter, the "Law") and Rule 56 (2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter, the "Rules").

Proceedings before the Court

6. On 23 February 2012, the Applicant submitted the Referral with the Constitutional Court of the Republic of Kosovo (hereinafter, the "Court").

7. On 1 March 2012, the President appointed Judge Almiro Rodrigues as Judge Rapporteur and the Review Panel composed of Judges Robert Carolan (Presiding), Enver Hasani and Kadri Kryeziu.

8. On 5 March 2012, the Court communicated the Referral to the Supreme Court and to the Ministry of Labour and Social Welfare – Department of Pension Administration (hereinafter, the Department of Pension Administration).

9. On 7 May 2012, the Review Panel considered the Report of the Judge Rapporteur and made a recommendation to the Court on the Inadmissibility of the Referral.

Summary of facts

10. On 14 December 2004, the Department of Pension Administration approved the Applicant's request for disability pension pursuant to Law No. 2003/23 on Disability Pensions in Kosovo. This right to disability pension would be reviewed after three years from the date of gaining of this right.

11. On 16 September 2010, the Medical Commission reassessed the situation of the Applicant and the Department of Pension Administration, considering that the Applicant fulfills the requirements provided by Law No. 2003/23 on Disability Pensions, extended the right to disability pension.

12. On 15 February 2011, the Medical Commission reassessed again the situation of the Applicant and, on 22 March 2011, the Department of Pension Administration concluded that the Applicant does not fulfill the requirements provided by Law No. 2003/23 on Disability Pensions and, consequently, rejected the request to disability pension.

13. On 16 September 2011, the Applicant filed an appeal against that Decision with the Appeals Committee in the Department of Pension Administration.

14. On 20 October 2011, the Appeals Committee rejected the Applicant's appeal, because the Applicant had not respected the legal time limit for filing the appeal. In fact, the Applicant received the challenged decision on 22 March 2011, while he filed the appeal on 16 September 2011, i.e. more than 14 days from the day of service of the decision. The Applicant initiated an Administrative Conflict Procedure in the Supreme Court against that decision.

15. On 30 December 2011, the Supreme Court (Judgment A. no. 1415/2011) rejected the Applicant's claim as unfounded. The Supreme Court concluded that the Department of Pension Administration rendered a decision on 22 March 2011, while the Applicant challenged the decision on 16 September 2011. In this respect, the Supreme Court held that the Appeals Committee, by dismissing the Applicant's appeal, has rightly applied the law when it concluded that the appeal was filed after the provided legal time limit.

16. Furthermore, no supporting documentation and information was provided on the reasons for the Applicant to have his identity foreclosed.

Applicant's allegations

17. The Applicant alleges that the Supreme Court *"in a partial manner denied my right to disability pension".*

18. The Applicant, therefore, considers that the Supreme Court have violated Article 51 [Health and Social Protection] of the Constitution and Articles 1, 2, 3, 4 of the Law on Disability Pensions in Kosovo.

Assessment of the admissibility of the Referral

19. The Court observes that, in order to be able to adjudicate the Applicant's complaint, it is necessary to first examine whether he has fulfilled the admissibility requirements laid down in the Constitution and further specified in the Law and the Rules of Procedure.

20. Article 113. Section 1 and 7 of the Constitution provides:

    a. *"1. The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties. (...)*

6. 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".

21. On the other side, Rule 36 1 (c) of the Rules provides that *"The Court may only deal with Referrals if: c) the Referral is not manifestly ill-founded."*

22. First of all, the Applicant did not file the appeal with the Appeals Committee in the Department of Pension Administration in the legal time limit.

23. In fact, the Supreme Court concluded that the Applicant had not filed his appeal within the legal time limit foreseen by Article 10.1 on the Law on Disability Pension.

24. The principle of subsidiarity requires that the Applicant exhausts all procedural possibilities in the regular proceedings in order to prevent the violation of the constitution or, if any, to remedy such violation of a fundamental right. Thus, the Applicant actually failing to take some procedural step in the regular courts in accordance with the established deadline is liable to have his case declared inadmissible, as it shall be understood as a waiver of the right to further proceedings on objecting the violation.

25. The Court also considers that a mere suspicion on the perspective of the matter is not sufficient to exclude an applicant from his obligations to appeal before the competent bodies in due time (see Whiteside v the United Kingdom, decision of 7 March 1994, Application no. 20357/92, DR 76, p.80).

26. As said above, the applicant's allegations amount to a complaint that the proceedings have been conducted *"in a partial manner"* and were unfair.

27. Moreover, it is not within the province of the Constitutional Court to substitute its own assessment of the facts for that of the regular courts and, as a general rule, it is for these courts to assess the evidence before them. The Constitutional Court's task is to ascertain whether the proceedings as a whole and in their entirety, including the way in which evidence was taken, were fair (see, mutatis mutandis, the Vidal v. Belgium judgment of 22 April 1992, Series A no. 235-B, pp. 32-33, para. 33).

28. In addition, the Court emphasizes that it is not the task of the Constitutional Court to deal with errors of fact or law (legality) allegedly committed by the Supreme Court, unless and in so far as they may have infringed rights and freedoms protected by the Constitution (constitutionality). Thus, the Court is not to act as a court of fourth instance, when considering the decisions taken by regular courts. It is the role of regular courts to interpret and apply the pertinent rules of both procedural and substantive law (see, mutatis mutandis, García Ruiz v. Spain [GC], no. 30544/96, para. 28, European Court on Human Rights [ECHR] 1999-I).
29. In sum, the Court can only consider whether the evidence has been presented in a fair manner, and whether the proceedings in general, viewed in their entirety, have been conducted in such a way that the Applicant has had a fair trial (see among other

authorities, Report of the Eur. Commission of Human Rights in the case Edwards v. United Kingdom, App. No. 13071/87, adopted on 10 July 1991).

30. Moreover, the Applicant merely disputes whether the Supreme Court entirely applied the applicable law and disagrees with the courts' factual findings with respect to his case. The Applicant did not show why and how the Supreme Court decided *"in a partial manner",* thus denying his right to disability pension.

31. As a matter of fact, the Applicant did not substantiate a claim on constitutional grounds and did not provide evidence that his rights and freedoms have been violated by that public authority. Therefore, the Constitutional Court cannot conclude that the relevant proceedings were in any way unfair or tainted by arbitrariness (see mutatis mutandis, Shub v. Lithuania, ECHR Decision on Admissibility of Application No. 17064/06 of 30 June 2009).

32. In all, it follows that the Referral is inadmissible because of no exhaustion of all legal remedies provided by law and, even if exhausted, it is manifestly ill-founded pursuant to Rule 36 (1.c) of the Rules of Procedure.

33. As to the Applicant's request for not having his identity foreclosed, the Court rejects it as ungrounded, because no supporting documentation and information was provided on the reasons for the Applicant not to have his identity foreclosed.

FOR THESE REASONS

The Constitutional Court, pursuant to Rule 36 (1.c) and Rule 56 (2) of the Rules of Procedure, on 7 May 2012, unanimously

DECIDES

I. TO REJECT the Referral as Inadmissible;

II. TO REJECT his request not to have his identity foreclosed;

III. This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20 (4) of the Law; and

IV. This Decision is effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Almiro Rodrigues	Prof. Dr. Enver Hasani

KI 127/11 dated 11 June 2012- Constitutional review of the Supreme Court Judgment, Rev. nr 219/2009, dated 10 June 2011

Case KI 127/2011, decision dated 4 May 2012
Keywords: administrative dispute, labour dispute, individual Referral, non-exhaustion of legal remedies, manifestly ill founded.

The Applicant submitted his Referral based on Article 113.7 of the Constitution, alleging that by the Judgment of the Supreme Court his constitutional rights guaranteed by Article 49.1, and Article 23 of the Universal Declaration of Human Rights in conjunction with Article 21.1 [General Principles] of the Constitution and Article 6 of ECHR.

Regarding this, the Court assesses that the Applicant has neither substantiated nor provided convincing evidence that the Supreme Court has arbitrarily violated his rights. The Court recalls that the assessment of the legality of decisions issued by lower instances is within the purview of the Supreme Court; it is the task of lower instance courts to completely and correctly determine the factual situation and implement the substantive law in conformity with the established circumstances of the case to avoid possible violations of rights guaranteed by the applicable legislation and the Constitution. Based on these reasons, the Court finds that Applicant's Referral does not fulfill the requirements of Article 46 of the Law and Rule 36.2 (b), and as such, it is manifestly ill-founded.

The Court also noticed that the Applicant has established a new contract with the Municipality of Gjilan, since the municipality is obliged to reinstate the Applicant to work pursuant to Resolution E. nr. 1/2009, of the Municipal Court in Gjilan, on the execution of Judgment C. Nr. 540/07, of 14 July 2008.

But, the Applicant has not proved that he has exhausted all available legal remedies with regards to the challenge of new contract concluded with the Municipality of Gjilan, before he filed Referral to the Constitutional Court. In sum, the Court concluded that the Applicant's Referral did not fulfill admissibility requirements pursuant to Articles 46 and 47.2 of the Law, and Rules 36.1 (a) and 36.2 (b) of the Rules of Procedure.

Pristine, 24 May 2012
Ref. No.: RK246/12

RESOLUTION ON INADMISSIBILITY

in

Case No. KI 127/11

Applicant

Ardian Hasani

Constitutional review of the Supreme Court Judgment, Rev. nr 219/2009, of 10 June 2011

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Enver Hasani, President
Kadri Kryeziu, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Ivan Čukalović, Judge
Gjyljeta Mushkolaj, Judge and
Iliriana Islami, Judge

Applicant

1. The Applicant is Mr. Ardian Hasani, residing in Gjilan.

Challenged decision

2. The challenged court decision is the Supreme Court Judgment, Rev. nr 219/2009, of 10 June 2011, which was served on the Applicant on 18 July 2011.

Subject matter

3. The subject matter of this Referral is the assessment by the Constitutional Court of the Republic of Kosovo (hereinafter referred to as the "Court") of the constitutionality of the Supreme Court Judgment concerning Decision nr 02/11 of the Chief Executive Officer of the municipality of Gjilan, by which Applicant's position was cut down and he was dismissed from work.

Legal basis

4. Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter referred to as the "Constitution"), Article 47 of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo, of 15 January 2009 (hereinafter referred to as the "Law") and Rule 56.2 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter referred to as the "Rules of Procedure"").

Proceedings before the Court

5. On 3 October 2011, the Applicant submitted the Referral with the Constitutional Court of the Republic of Kosovo.

6. On 7 October 2011, the President, by Decision Nr. GJR. 127/11, appointed Judge Gjyljeta Mushkolaj as Judge Rapporteur. On the same date, the President, by Decision Nr. KSH. 127/11, appointed the Review Panel composed of judges: 1. Almiro Rodriguez (Presiding), 2. Robert Carolan (member) and 3. Prof. Dr. Enver Hasani (member).

7. On 18 January 2012, the Constitutional Court notified the Applicant, the Supreme Court and the municipality of Gjilan on the registration of the Referral.

8. On 4 May 2012, the Review Panel considered the Report of the Judge Rapporteur and made a recommendation to the full Court on the Inadmissibility of the Referral.

Summary of facts in the administrative procedure

9. The Applicant concluded the Employment Contract nr. 02/111/272 with the Municipal Assembly of Gjilan on 30 March 2005, in the duration from 1 January 2005 to 31 December 2006. He was assigned to the position of the "Escort Officer" within the executive of the municipality.

10. On 4 January 2007, the municipality of Gjilan, respectively the Chief Executive Officer, issued Decision nr. 02/11 not to renew the employment contract based on Decision nr. 02/7001 of 13 September 2006, according to which the Inspection Division had been dissolved and its employees had been transferred to respective municipal directorates. The position of the "Escort Officer", as it is said in the Decision, had been cut down because "there were no basic conditions for the existence of such a position".

11. On 10 April 2007, the Independent Oversight Board for the Civil Service of Kosovo (IOBCSK), following the appeal filed by the Applicant, issued Decision nr. 02/77/2007, partially approving Applicant's appeal, annulling the Decision of the Chief Executive Officer, nr 02/11, of 4 January 2007, as a decision of the employment authority that was not competent to decide, and obliging the Acting Chief Executive Officer to review the said decision within 10 days and issue a decision on merits on this issue. This decision was final in the administrative proceedings, and it could not be appealed.

12. On 22 June 2007, in the repeated proceedings, the Acting Chief Executive Officer again cut down the position - Escort Officer, which was within the Department of the Executive – former Inspection Division. On 26 June 2007, the municipality of Gjilan notified IOBCSK and the Applicant on this decision.

Summary of facts in court proceedings

13. After having exhausted all legal remedies in administrative proceedings, the Applicant submitted a statement of claim with the Municipal Court in Gjilan against the municipality of Gjilan challenging the decision of the Acting Chief Executive Officer concerning the cutting down of the position and his dismissal from work.

14. On 14 July 2008, the Municipal Court in Gjilan issued Judgment C. nr 540/07, approving Applicant's statement of claim, annulling the Decision of the Chief Executive Officer, nr. 02/11 and 02/10, of 4 January 2007, and obliging the respondent, the municipality of Gjilan, to reinstate the Applicant to the workplace with all the rights deriving from the employment relationship, starting from 1 January 2007.

15. On 18 July 2008, the municipality of Gjilan, through its representative, used its right to appeal the Municipal Court Judgment, C. nr 540/07, of 14 July 2008, with the District Court in Gjilan, proposing the annulment of this decision.

16. On 26 November 2008, the District Court in Gjilan issued Judgment Ac. nr 328/2008, rejecting the appeal submitted by the representative of the municipality of Gjilan as ungrounded and confirming the Judgment of the District Court in Gjilan, C. Nr. 540/07, of 14 July 2008. Since the municipality of Gjilan was dissatisfied with this Judgment, it filed a revision with the Supreme Court of Kosovo.

Facts in the executive procedure

17. On 5 January 2009, the Applicant, in the capacity of the creditor, submitted a request for the execution of Judgment C. Nr. 540/07, of 14 July 2008, with the Municipal Court in Gjilan since the District Court, as a second instance, had rejected the appeal filed by the municipality of Gjilan.

18. On 12 January 2009, the Municipal Court in Gjilan issued Resolution E. nr. 1/2009, approving Applicant's proposal to allow the execution of Judgment, C. Nr. 540/07, of 14 July 2008, concerning his reinstatement to the workplace.

19. On 22 January 2009, the municipality of Gjilan submitted a request with the Municipal Court in Gjilan for the postponement of the execution of Resolution E. nr. 1/2009, of 12 January 2009, on accounts that it had filed a revision with the Supreme Court of Kosovo and it was waiting for their decision.

20. On 26 February 2009, the Municipal Court in Gjilan rejected the request of the municipality of Gjilan for the postponement of the execution of Resolution E. nr. 1/2009, of 12 January 2009.

21. Since the municipality was dissatisfied with the decision of the Municipal Court in Gjilan, it filed an appeal with the District Court in Gjilan, proposing the annulment of Resolution E. nr. 1/2009, of 12 January 2009, and the postponement of the execution until the Supreme Court reaches a decision on the revision.

22. On 16 April 2009, the District Court in Gjilan issued Resolution Ac. nr. 107/09, rejecting as ungrounded the proposal of the municipality of Gjilan for the postponement of the execution of Resolution E. nr. 1/2009, of 12 January 2009, and the request for the annulment of this decision. Since this court, as a final instance in the execution procedure, had rejected the proposal of the municipality for the postponement of the execution of first instance Resolution E. nr. 1/2009, of 12 January 2009, the Applicant then submitted a proposal with the Municipal Court in Gjilan for the compensation of lost personal incomes.

23. On 28 July 2008, the Municipal Court in Gjilan, based on Applicant's proposal for the compensation of personal incomes, issued Judgment C. nr. 278/07 on this issue and obliged the municipality of Gjilan to compensate his personal incomes on behalf of salaries, according to the calculations of the finance expert for the period of time: from 1 January 2007 to 31 December 2007, from 1 January 2008 to 31 December 2008 and from 1 January 2009 to 13 May 2009, within 15 days after this judgment becomes plenipotentiary.

24. On 9 December 2010, the municipality of Gjilan filed an appeal with the District Court in Gjilan, within the legal time limit, against the resolution of the Municipal Court in Gjilan.

Facts in the contested procedure

25. On 10 June 2011, the Supreme Court of Kosovo issued Resolution, Rev. nr. 219/2009, approving the revision filed by the municipality of Gjilan, amending the Judgment of the District Court in Gjilan, Ac. nr 328/08, of 21 November 2011, and the Judgment of the Municipal Court in Gjilan C. nr. 540/07, of 14 July 2008, and rejecting as ungrounded Applicant's statement of claim for the annulment of the Decision of the Chief Executive Officer, nr. 02/11, of 4 January 2007. This Court reasoned its decision on the fact that lower instance courts had correctly determined the factual situation, but they had erroneously applied the substantive law when they assessed that Applicant's statement of claim was ungrounded. The Supreme Court further stresses that since Applicant's employment contract was not extended, it implied that his employment relationship as a civil servant had been terminated pursuant to Article 35.1, item (b) of the Law on the Civil Service of Kosovo, due to the expiration of employment duration. The termination of Applicant's employment relationship was therefore lawful.

Summary of facts in the administrative procedure, following court proceedings

26. On 19 July 2011, after having received the Supreme Court judgment, Gjilan MA had notified the Applicant regarding this judgment and attached a copy of Judgment Rev. nr. 219/2009, of 10 June 2011, to the notification.

27. On 21 July 2011, based on the said judgment, the mayor issued Recommendation nr. 02/16-20291, which says: *"The Office for Personnel is recommended to terminate the Mr. Ardian Hasani's employment contract, who is assigned to the position of the caretaker of the town stadium within DCYS, pursuant to the Judgment of the Supreme Court of Kosovo, Rev. nr. 219/2009, dated 10 June 2011".*

28. On 25 July 2011, the municipality of Gjilan terminated Applicant's employment contracts in conformity with the Judgment of the Supreme Court of Kosovo, Rev. nr. 219/2009, of 10 June 2011, approving the revision filed by this municipality, and lower instance court judgments obliging the municipality to

reinstate the Applicant to the workplace with all the rights deriving from the employment relationship have been amended.

Applicant's allegations

29. The Applicant claims that the Supreme Court judgment has violated his following rights guaranteed by the Constitution and the international Conventions:

30. Article 49.1 of the Constitution;
31. Article 23 of the Universal Declaration on Human Rights in conjunction with Article 21.1 [General Principles] of the Constitution; and
32. Article 6 of the Convention.

33. The Applicant claims that the Supreme Court reached a biased decision because it did not consider the fact that the Chief Executive Officer of the municipality of Gjilan had issued a decision to cut down a position and dismiss him from work whilst his employment contract had expired on 31 December 2006 and this decision, according to the Applicant, is unlawful and contrary to Section 11.3 of UNMIK Regulation No. 2000/45 on Self-Government of Municipalities.

Assessment of the admissibility of the Referral

34. In order to be able to adjudicate the Applicant's Referral, the Constitutional Court needs first to examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution, further specified in the Law and the Rules of Procedure of the Court.

35. From the documents submitted with the Referral, the Constitutional Court notes that the Applicant has not fulfilled the admissibility requirements so that the Court could review the grounds of the Referral, because of the reasons we are going to mention in the following paragraphs.

36. The Court notes that Applicant's employment relationship had been terminated by Decision nr. 02/11, of 4 January 2007, of the Chief Executive Officer of the municipality of Gjilan, because of the cutting own of the position. Since the Applicant was not

satisfied with the said decision, he pursued the realization of his rights through administrative proceedings, and then he filed a statement of claim with the Municipal Court in Gjilan, which decided on his reinstatement to the workplace. Since the second instance had also confirmed the first instance Judgment, C. Nr. 540/07, of 14 July 2007, as just, the Applicant submitted a proposal for the execution of the said judgment. As it can be seen from the case file, the municipality of Gjilan objected its execution, but its objection was rejected by the Municipal Court in Gjilan. The resolution had become final according to the Law on executive procedure (LEP) and then the municipality had complied and implemented Judgment, C. Nr. 540/07, of 14 July 2008, and Resolution E. nr. 1/2009, of the Municipal Court, according to Applicant's proposal for the execution of Judgment, C. Nr. 540/07, which obliged the municipality to reinstate the Applicant to work, and it was done by the municipality. But, later, the first and second instance court decisions have been amended by the Supreme Court Judgment Rev. nr 219/2009, of 10 June 2011.

37. The Constitutional Court notes that the Applicant claims that the Supreme Court has violated rights guaranteed by the Constitution and international Conventions when it decided to annul his Contract nr. 02/111/272, by assessing as lawful the decision of the Chief Executive Officer to terminate the employment contract and not to extend it. It is obvious that the Supreme Court had decided pursuant to the revision filed by the municipality of Gjilan, and it reviewed the Decision of the Chief Executive Officer, nr. 02/11, and the decision of the Acting Chief Executive Officer, concerning the cutting down of the position – Escort Officer, which was within the executive of the municipality.

38. In this respect, the Court assesses that the Applicant has neither substantiated nor provided convincing evidence that the Supreme Court has arbitrarily violated his rights. The Court recalls that the assessment of the legality of decisions issued by lower instances is within the purview of the Supreme Court; it is the task of lower instance courts to completely and correctly determine the factual situation and implement the substantive law in conformity with the established circumstances of the case to avoid possible violations of rights guaranteed by the applicable legislation and the Constitution.

39. Further, the Court stresses that it is not the task of the Constitutional Court to deal with errors of fact or law (legality) allegedly committed by the Supreme Court, unless and in so far as they may have infringed rights and freedoms protected by the Constitution. So, the Court should not act as a court of fourth instance when considering decisions issued by regular courts. It is the task and obligation of regular courts to interpret and apply the pertinent rules of both procedural and substantive law (See, *mutatis mutandis*, García Ruiz v. Spain [GC], no. 30544/96, § 28, European Court of Human Rights [ECHR] 1999-I).

40. The Court can only consider whether the evidence has been presented in such a manner and the proceedings in general, viewed in their entirety, have been conducted in such a way that the Applicant had a fair trial (see among others authorities, Report of the European Commission on Human Rights in the case Edwards v. United Kingdom, App. No 13071/87, adopted on 10 July 1991).

41. In fact, the Applicant has not substantiated his claims on constitutional grounds and he did not provide evidence that his rights and freedoms have been violated by public authorities. So, the Constitutional Court cannot conclude that relevant proceedings were in any way unfair or tainted by arbitrariness (see *mutatis mutandis*, Shub v. Lithuania, ECHR Decision on Admissibility of Application No. 17064/06 of 30 June 2009).

42. Having said that, the Court finds that Applicant's Referral does not fulfill the requirements of Article 46 of the Law and Rule 36.2 (b), and as such, it is manifestly ill-founded.

43. However, the Court has noticed a new reality in Applicant's case, which was established between the Applicant and the municipality of Gjilan, since the municipality is obliged to reinstate the Applicant to work pursuant to Resolution E. nr. 1/2009, of the Municipal Court in Gjilan, on the execution of Judgment C. Nr. 540/07, of 14 July 2008.

44. Since the Applicant concluded a new employment Contract nr. 02 nr. 1029, on 29 December 2009, whereby he was assigned to the

duties of the Caretaker of Gjilan Stadium, from 1 January 2010 to 31 December 2012, he should have challenged the decision of the municipality of Gjilan concerning the annulment of the new employment Contract 02 nr. 1029, by initiating a labor dispute with the competent court against the municipality of Gjilan.

45. Based on this fact, it appears that the Applicant has not established that he has exhausted all legal remedies available to challenge the new employment contract concluded with the municipality of Gjilan.

46. The principle of subsidiarity requires that the Applicant should exhaust all procedural possibilities in regular proceedings in order to prevent violations of the Constitution or, if any, to remedy such violations of fundamental rights. Thus, by failing to take procedural steps in regular courts pursuant to determined time limits, the Applicant is, in fact, liable to have his case declared inadmissible.

47. In sum, the Court concludes that Applicant's Referral does not fulfill admissibility requirements pursuant to Articles 46 and 47.2 of the Law, and Rules 36.1 (a) and 36.2 (b) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 46 and 47.2 of the Law, and Rules 36.1 (a), 36.3 (h) and 56.2 of the Rules of Procedure, on 4 May 2012, unanimously

DECIDES

I. TO REJECT the Referral as inadmissible;

II. This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20.4 of the Law on the Constitutional Court; and

III. This Decision is effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Dr. Gjyljeta Mushkolaj	Prof. Dr. Enver Hasani

KI 90/11 dated 18 June 2012- Constitutional Review of the Judgment of the Supreme Court, Rev. no. 368/2008, dated 8 April 2011.

Case KI 90/11, decision dated 4 May 2012
Keywords: adjudication based on constitution and the law, individual referral, interim measures, property rights, right to fair and impartial trial, violation of individual rights and freedoms, manifestly ill-founded, universal principles,

The applicant filed a referral pursuant to Article 113.7 of the Constitution of Kosovo asserting that her individual rights and freedoms guaranteed by the Constitution was infringed by the Judgment of the Supreme Court, Rev. no. 368/2008, which rejected her request for revision as unfounded and held that there existed an oral agreement for the house to be built for the reason that the Applicant's husband's brother would also live there. Further, the Applicant requested the Court to impose interim measures.
The Court held that the Referral was inadmissible because the Applicant have failed to submit evidence that the relevant proceedings were in any way unfair or tainted by arbitrariness. Hence, the Court held that the Referral was manifestly ill-founded pursuant to Rule 36 (1.c) of the Rules of Procedure. Furthermore, as to the request for interim measure the Court held that taking into account that the Referral was found inadmissible, the Applicants are not entitled under Rule 54 (1) of the Rules of Procedure to request interim measures.

Pristine, 24 May 2012
Ref. No.: RK245/12

RESOLUTION ON INADMISSIBILITY

in

Case No. KI 90/11

Applicant

Xhemile Gashi

Constitutional Review of the Judgment of the Supreme Court, Rev. no. 368/2008, dated 8 April 2011.

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Enver Hasani, President
Kadri Kryeziu, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Ivan Čukalović, Judge
Gjyljeta Mushkolaj, Judge and
Iliriana Islami, Judge

Applicant

1. The Applicant is Mrs. Xhemile Gashi, residing in Pristina, represented by Mr. Gani Tigani, a practicing lawyer from Pristina.

Challenged decision

2. The Applicant challenges the Judgment of the Supreme Court, Rev. no. 368/2008, of 8 April 2011, which was served on the Applicant on 25 May 2011.

Subject matter

3. The subject matter of the Referral is the assessment by the Constitutional Court of the Republic of Kosovo (hereinafter: the "Court") of the constitutionality of the Judgment of the Supreme Court, Rev. no. 368/2008, by which, allegedly, her rights as guaranteed by the Constitution of the Republic of Kosovo (hereinafter: the "Constitution"), have been violated.

4. The Applicant complains in particular, that:

    a. the universal principle of legal security has been infringed;
    b. her property rights has been violated;
    c. the law has been applied retroactively.
    d. the general principle has been violated that courts should adjudicate based on the Constitution and the law; and
    e. her right to a fair and impartial trial has been violated

5. Furthermore, the Applicant requests the Court to impose interim measures stopping the execution of the Municipal Court Judgment C. no. 1593/07 of 29 November 2007, without providing any further reasons.

Legal basis

6. Article 113.7 of the Constitution, Articles 22 and 27 of the Law on the Constitutional Court of the Republic of Kosovo of 15 January 2009, (No. 03/L-121), (hereinafter, the "Law") and Rules 54, 55 and 56 (2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter, the "Rules of Procedure").

Proceedings before the Court

7. On 1 July 2011, the Applicant filed the Referral with the Court.

8. On 17 August 2011, the President, by Decision No. GJR. KI 90/11, appointed Judge Snezhana Botusharova as Judge Rapporteur. On the same date, the President, by Decision No. KSH. KI 90/11, appointed the Review Panel composed of Judges Almiro Rodrigues (Presiding), Enver Hasani and Iliriana Islami.

9. On 28 February 2012, the Referral was communicated to the Supreme Court.

10. On 4 May 2012, the Review Panel considered the Report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

11. On 12 February 1986, the Municipal Court in Pristina ruled that the Applicant in accordance with the Law on Inheritance shall be the heir of all the inheritance left by the deceased, Mr. B.G. (Applicant's husband) (Decision T. no. 6/86).

12. In 1986, the brother and mother of the Applicant's husband filed a claim with the District Court in Pristina as the first instance court requesting certification, half (1/2) of the property right from the Applicant, because the Applicant's husband by oral agreement had given half (1/2) of the property to them.

13. On 30 March 1989, the District Court in Pristina approved the claim and concluded that they (mother and brother) are owner of half (1/2) of the property and obliged the Applicant to recognize this right (Decision C. no. 763/86).

14. On 5 September 1989, the Supreme Court annulled the District Court decision and returned the case to the Municipal Court in Pristina for re-adjudication, because neither the contested decision nor the facts had been completely and convincingly established, so that it was necessary to repeat the procedure so as to establish the ownership of the contested property (Decision Gz. no. 616/89).

15. On 7 October 1991, the Municipal Court in Pristina rejected the claim of the mother and brother of the Applicant's deceased husband who had built the property with his own financial means (Judgment C. no. 2810/89).

16. On 11 May 1993, the District Court in Pristina annulled the Municipal Court judgment and the same was returned to the Municipal Court for re-adjudication. The District Court held that the Municipal Court had decided the case based on facts which

were of no important relevance for this case and for this reason the Municipal Court *"shall above all establish whether the immovable property was acquired in a family community. If the immovable property was acquired in a family community, then the disputed relationship of the parties shall be clarified by means of applying the provisions of the Law on Marriage and Family Relationships, which means that it shall be established whether there was an agreement between the members of the family community concerning the shares of co-ownership regardless of the seize of the contribution."*

17. On 26 September 1995, the Municipal Court approved the claim of the mother and the brother of the Applicant's deceased husband and confirmed that each of them was owner of ¼ of the property. The Court held that *"when a building has been constructed based on a verbally concluded agreement a legally acknowledged co-ownership occurs through the verbal agreement"* (Judgment P. no. 1105/93).

18. On 14 September 1998, the District Court in Pristina annulled the Municipal Court judgment and returned it to the Municipal Court to re-adjudicate the matter. The District Court held that the Municipal Court judgment contained *"no reasoning for the decisive facts nor had it been mentioned which facts were established, which facts it deemed to be true and what was the basis for the evaluation of the statements given by the witnesses and parties to the procedure."* (Decision Gz. no. 402/98).

19. On 16 July 2004, the Municipal Court ruled that *"regarding the construction of the disputed house there existed an oral agreement between"* the Applicant's husband and his brother that the house was to be built for the needs of the two brothers, regardless of the contribution. The Municipal Court concluded that the Applicant's husband' brother owned half (1/2) of the property and the Applicant owns the other half (1/2) (Judgment C. no. 280/00).

20. On 11 May 2005, the District Court upheld the judgment of the Municipal Court (Judgment AC. no. 489/04).

21. On 15 December 2005, the Supreme Court annulled the two judgments of the lower instances and returned the case to the

first instance court for re-adjudication. The Supreme Court found a number of essential procedural violations (Decision Rev. no. 153/2005).

22. On 18 September 2006, the Municipal Court ruled that ¼ of the property belonged to the Applicant's husbands brother (Judgment C. no. 111/06).

23. On 28 June 2007, the District Court annulled the Municipal Court judgment and sent the matter back for re-adjudication because the District Court found that there were essential procedural violations and wrongful application of the substantive law (Decision AC. no. 1037/06).

24. On 29 November 2007, the Municipal Court ruled that half (1/2) of the property belonged to the Applicant's husbands brother based on the oral agreement (Judgment C. no. 1593/2007).

25. On 5 June 2008, the District Court upheld the Municipal Court judgment (Judgment AC. no. 133/08).

26. On 8 April 2011, the Supreme Court rejected the request for revision as unfounded. The Supreme Court held that there existed an oral agreement for the house to be built for the reason that the Applicant's husband's brother would also live there (Judgment Rev. no. 368/2008).

Applicant's allegations

27. As to the principle of legal certainty, the Applicant alleges that the Supreme Court Judgment Rev. 368/2008 of 8 April 2011 infringes this universal principle due to the fact that it created uncertainty regarding the question on what legal basis her right would depend on, other than the law.

28. As to the alleged violation of her property rights, the Applicant complains that the Courts did not take into consideration the part of her wealth gained during her married life.

29. As to the alleged violation that the Supreme Court did not adjudicate the matter based on the Constitution and the laws

because, the Applicant alleges that, the law does not recognize verbal agreements as the basis for obtaining a property.

30. As to the alleged violation of a right to fair trial, the Applicant complains that the Supreme Court did not reason its judgment and did not take into consideration the submitted documents she had submitted to the Court.

31. The Applicant further complains that the Courts applied the laws retroactively.

Assessment of the admissibility of the Referral

32. As to the complaint that the Supreme Court judgment violated:

    a. the universal principle of legal security;
    b. her property rights;
    c. the general principle that courts should adjudicate based on the Constitution and the law; and
    d. the right to a fair and impartial trial

    e. the Court emphasizes that, under the Constitution, it is not to act as a court of fourth instance, when considering the decisions taken by ordinary courts. It is the role of ordinary courts to interpret and apply the pertinent rules of both procedural and substantive law (see, mutatis mutandis, Garcia v. Spain [GC], no. 30544/96, para. 28, European Court of Human Rights [ECHR] 1999-I).

33. The Court can only consider whether the evidence has been presented in such a manner, and whether the proceedings in general, viewed in their entirety, have been conducted in such a way that the Applicant has had a fair trial (see among other authorities, Report of the Eur. Commission of Human Rights in the case Edwards v. United Kingdom, App. No. 13071/87, adopted on 10 July 1991).

34. In the present case, the Applicant merely disputes whether the Supreme Court correctly applied the applicable law and disagrees with the courts' factual findings with respect to her case.

35. As a matter of fact, the Applicant did not substantiate a claim on constitutional grounds and did not provide evidence that her rights and freedoms have been violated by that public authority. Therefore, the Constitutional Court cannot conclude that the relevant proceedings were in any way unfair or tainted by arbitrariness (see mutatis mutandis, Shub v. Lithuania, ECHR Decision on Admissibility of Application No. 17064/06 of 30 June 2009).

36. Therefore, the Applicant did not show why and how the Supreme Court violated:

    a. the universal principle of legal security;
    b. her property rights;
    c. the general principle that courts should adjudicate based on the Constitution and the law; and
    d. the right to a fair and impartial trial.

37. Rule 36 (2) d) of the Rules foresees that *"the Court shall reject a Referral as being manifestly ill-founded when it is satisfied that (...) the Applicant does not sufficiently substantiate his claim"*.

38. Taking into account the above considerations, it follows that the Referral as a whole must be rejected as manifestly ill-founded.

Assessment of the request for Interim Measures

39. Article 27 of the Law and, in particular, Rule 54 (1) of the Rules of Procedure, provide that "when a referral is pending before the Court and the merits of the referral have not been adjudicated by the Court, a party may request interim measures.. However, taking into account that the Referral was found inadmissible, the Applicant is not entitled under Rule 54 (1) of the Rules of Procedure to request interim measures.

FOR THESE REASONS

The Constitutional Court, pursuant to Rule 36 (2) (d), Rule 54 (1) and Rule 56 (2) of the Rules of Procedure, on 4 May 2012, unanimously

DECIDES

I. TO REJECT the Referral as Inadmissible;

II. TO REJECT the request for Interim Measures;

III. This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20 (4) of the Law;

IV. This Decision is effective immediately.

Judge Rapporteur **President of the Constitutional Court**

Snezhana Botusharova Prof. Dr. Enver Hasani

KI 95/11 dated 27 June 2012 - Constitutional Review of the Judgment of the Supreme Court of Kosovo, Rev. No. 1230/2010, dated 15 February 2011

Case KI 95/11, decision dated 29 May 2012.
Keywords: department for families of martyrs, war invalids and civil victims, constitutional rights and freedoms, individual referral, time-barred referral, *prima facie*.

The applicants filed the referral pursuant to Article 113.7 of the Constitution of Kosovo, thereby claiming that their constitutional rights were violated by the judgment of the Supreme Court of Kosovo, which upheld the decision of the Department for families of martyrs, war invalids and civil victims on the rights of the Applicants to pension for civil victims' families. The applicants claimed that the Supreme Court had violated their rights guaranteed by Articles 21, 22, 24, 31, 37 (paragraph 3), and 50, 51 and 54 of the Constitution of Kosovo.

The Court found that the referral of applicant was inadmissible, pursuant to the Article 49 of the Law on the Constitutional Court, due to the fact that the referral was filed beyond the timeline set forth by the provision. By quoting the ECtHR decision in the case of *Vanek v. Slovak Republic,* the Court further noted that even if hipotetically the Applicants had filed their referral in compliance with timelines, the Applicants have not submitted any *prima facie* evidence demonstrating such violation of their rights guaranteed by the Constitution. Due to the reasons provided above, the Court decided to find the referral of Applicant as inadmissible.

Pristine, 29 May 2012
Ref. No.: RK247/12

RESOLUTION ON INADMISSIBILITY

in

Case No. KI 95/11

Applicants

Hajrije Behrami and her daughter (a minor)

Constitutional Review of the Judgment of the Supreme Court of Kosovo, Rev. No. 1230/2010, dated 15 February 2011

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Enver Hasani, President
Kadri Kryeziu, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Ivan Čukalović, Judge
Gjyljeta Mushkolaj, Judge and
Iliriana Islami, Judge

Applicants

1. The Applicants are Hajrije Behrami and her daughter, who is a minor, from the village of Damanek in the Municipality of Drenas-Gllogog.

Subject Matter

2. The subject matter of the Referral is a claim by the former widow of a civil victim of war on her own behalf and on behalf of her minor child, to pensions under the Law on the Status and the Rights of the Families of Heroes, Invalids, Veterans and Members of KLA and of the Families of Civilian Victims of War, Law No. 02/L-2.

3. The Applicants claim that there was a violation of Articles 21, 22, 24, 31, 37 Paragraph 3, 50 ,51 and 54 of the Constitution of the Republic of Kosovo (hereinafter the "Constitution").

Legal Basis

4. The Referral is based on Art. 113.7 of the Constitution; Articles 46, 47, 48 and 49 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter referred to as the Law), and Rule 56 (2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter referred to as the Rules of Procedure)

Challenged decision

5. The Applicants challenged the Decisions of the Ministry of Labour and Social Welfare of Kosovo in Pristina-Department for Martyr Families War Invalids and Civil Victims (Hereinafter "DMFIWCV")no 01-03/6954 dated 20 October 2010 and no 01-03/6954 dated 11 November 2010 as well as the Judgment of the Supreme Court of Kosovo A.no.1230/10 dated 15 December 2010.

Procedure before the Court

6. On 13 July 2011 the Applicants submitted a referral to the Constitutional Court of Kosovo (hereinafter the "Court").

7. On 17 August 2011 the President appointed Gjyljeta Mushkolaj as Judge Rapporteur and a Review Panel composed of Judges Robert Carolan, Snezhana Botusharova and Iliriana Islami.

8. On 07 March 2012 the Review Panel considered the Preliminary Report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

9. On 20 October 2010 the DMFIWCV in its decision no.01-03/6954 rejected the Applicants' claim to a pension for the families of civilian war victims. The DMFIWCV stated that the

claim was rejected because the first named Applicant had enter into a new marriage which according to Article 11 Paragraph 3 of the Law on the Status and the Rights of the Families of Heroes, Invalids, Veterans and Members of KLA and of the Families of Civilian Victims of War, Law No. 02/L-2 (hereinafter "Law No. 02/L-2") negates the right to the aforementioned pension. The Applicants were informed that they could appeal the Decision with 15 days upon receipt.

10. On 11 November 2010 the appeal division of the DMFIWCV issued its Decision rejecting the appeal made by Applicants. It also found that the Applicants had no right to the pension because the first named Applicant had entered into a new marriage.

11. The Applicants brought a claim to the Supreme Court on 20 December 2010 for the annulment of Decision of 11 November 2010. The Applicants alleged that the challenged Decision was unfair and illegal because of an incomplete and erroneous confirmation of the factual situation and wrong application of the substantive law. The Applicants emphasized that the first instance body has erroneously concluded the factual situation, with ungrounded reasoning that the first named Applicant does not enjoy the status of a family member of a civilian war victim, since she has entered into a new wedlock.

12. On 15 February 2011 the Supreme Court of Kosovo by its Judgment A.no.1230/2010 rejected the Applicants' claim. The Supreme Court found that the DMFIWCV appeal division had in a complete and right manner confirmed the factual situation when it rejected the appeal of the Applicants. The Supreme Court concurred with the reasoning in the first and second hearings that the first named Applicant was not entitled to the status of a family member because she had entered into a new marriage.

Allegations of the Applicants

13. The Applicants alleged that they were denied one of their fundamental rights guaranteed and protected by the provisions of Article 21 of the Constitution as well as their human rights and freedoms as guaranteed with international legal

agreements and instruments pursuant to Article 22 of the Constitution

14. The Applicants claimed that they were denied their right of equality before the law, pursuant to Article 24 and they were denied the right to a fair and impartial trial pursuant to Article 31 of the Constitution

15. The Applicants asserted that there was a violation of Article 37 of the Constitution because the special protection by the state that families enjoyed was denied to them.

16. The Applicants alleged that they were denied their rights as guaranteed by the provisions of Article 50 [Rights of children] and Article 51 [Health and social protection] of the Constitution.

17. Finally the Applicants claimed that by violating their guaranteed legal rights they were denied the right to effective legal remedies pursuant to Article 54 of the Constitution.

Assessment of admissibility

18. With regard to Applicants' Referral, the Court refers to Article 49. of the Law which provides as follows:

> *"The referral should be submitted within a period of four (4) months. The deadline shall be counted from the day upon which the claimant has been served with a court decision. In all other cases, the deadline shall be counted from the day when the decision or act is publicly announced. If the claim is made against a law, then the deadline shall be counted from the day when the law entered into force."*

19. From the submission can be found that the Referral was not filed within the time lines provided by the Article 49 of the Law.

20. The latter decision is the Resolution of the Supreme Court of Kosovo Rev. No.1230/2010 of 15 February 2011, which the Applicants acknowledged that they received through their lawyer Cene Gashi, on 10 March 2011, the Applicants submitted

their Referral to the Constitutional Court on 13 July 2011. This means that they submitted their Referral to the Court beyond the deadline provided by Article 49 of the Law.

21. It follows that the Referral is inadmissible pursuant to Article 36 (lb) of the Rules of Procedure, providing that "The Court may only deal with Referrals if: b)the Referral is filed within four months from the date on which the decision on the last effective remedy was served on the Applicant,"

22. Even if the report were not inadmissible for reasons of time, The Constitutional Court reiterates that it is not its task under the Constitution to act as a court of appeal, or a court of fourth instance, in respect of the decisions taken by ordinary courts. It is the role of the latter to interpret and apply the pertinent rules of both procedural and substantive law *(see, mutatis mutandis, Garcia Ruiz v. Spain [GC), no. 30544/96, § 28, European Court on Human Rights [ECHRJ1999-1).*

23. The Constitutional Court can only consider whether the evidence has been presented in such a manner and the proceedings in general, viewed in their entirety, have been conducted in such a way that the Applicant had a fair trial *(see, Constitutional Court Judgment of 23 June 2010, of the Kosovo Energy Corporation against 49 individual judgments of the Supreme Court of the Republic of Kosovo, paras. 66 and 67).*

24. Having examined proceedings before the ordinary courts as a whole, the Constitutional Court does not find that the relevant proceedings were in any way unfair or tainted by arbitrariness *(see mutatis mutandis, Shub v. Lithuania, ECHR Decision as to the Admissibility of Application no_17064/06 of 30 June 2009)*

25. Furthermore the Applicant had not submitted any prima facie evidence indicating a violation of his rights under the Constitution *(see Vanek v. Slovak Republic, ECHR Decision as to the Admissibility of Application no. 53363/99 of 31 May 2005).* The Applicants were provided with many opportunities to present their case and to challenge the interpretation of the law which they deem to be incorrect both before the DMFIWCV and before the Supreme Court. After reviewing the proceedings in its entirety, the Court did not find that relevant proceedings

were in any fashion incorrect or arbitrary *(see* mutatis mutandis *Shub vs. Lithuania, Decision of ECtHR on admissibility of request, No. 17064/06 of 30 June 2009)*

26. In relation to claim of the second named Applicant the Court finds that the claim is ungrounded. The Court reaches this conclusion that the seconded named Applicant is not entitled to a family pension because she is in the custody of the first named Applicant and Article 11 Paragraph 3 of the Law No.02/L-2 only grants a family pension to children of civilian victims of war who are without parental care.

27. Because the Applicants merely disputed whether the Supreme Court applied the proper law and reached the proper factual conclusion it appears that the Applicants are simply asking this Court to reverse the legal decision of the Supreme Court. Therefore, this referral is manifestly ill-founded with respect to a violation of any of his constitutional or human rights, and consequently is inadmissible.

28. Therefore, the admissibility requirements have not been met in this Referral. The Applicants have failed to substantiate the allegation that the challenged decision violated the Applicants' constitutional rights and freedoms.

29. It results that the Referral is manifestly ill-founded pursuant to Rule 36 (2b) of the Rules of Procedure which provides that: " The Court shall reject a Referral as being manifestly ill-founded when it is satisfied that: b) when the presented facts do not in any way justify the allegation of a violation of the constitutional rights."

FOR THESE REASONS

The Court, following deliberations on 7 March 2012, pursuant to Articles 113.7 of the Constitution, Articles 20 of the Law and Rule 56.2 of the Rules, unanimously

DECIDES

I. TO REJECT the Referral as inadmissible;

II. This Decision is to be notified to the Applicant; and

III. This Decision shall be published in accordance with Article 20(4) of the Law and is effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Dr.Gjyljeta Mushkolaj	Prof. Dr. Enver Hasani

KI 30/10 dated 10 July 2012- Constitutional Review of the Judgment of the Supreme Court of Kosovo A. no. 852/2009 dated 24 March 2010

Case KI 30/10, decision dated 8 June 2012
Keywords: violation of individual rights and freedoms, Department of Pension Administration of Kosovo, individual referral, manifestly ungrounded referral, Complaints Council, medical commission, *prima facie*.

The applicant filed the referral pursuant to Article 113.7 of the Constitution of Kosovo, thereby claiming that his constitutional rights were violated by the judgment of the Supreme Court of Kosovo, which upheld the decision of the Medical Commission of the Department of Pension Administration on the right of the Applicant to disability pension. The Applicant claimed that the Supreme Court had violated her rights as guaranteed by Articles 3 and 51 of the Constitution of Kosovo.

The Court found that the referral of applicant was inadmissible, pursuant to Rule 36 of the Rules of Procedure, since the applicant had failed in submitting any *prima facie* evidence demonstrating such violation of constitutional rights. By quoting the ECtHR decision in the case of *Shub v. Lithuania,* the Court further reasoned that after the review of general proceedings before regular courts, it did not find any indication that the general proceedings have been unfair or flawed with arbitrarity. Due to the reasons provided above, the Court decided to find the referral of Applicants as inadmissible.

Pristine, 08 June 2012
Ref. No.: RK248/12

RESOLUTION ON INADMISSIBLITY

in

Case No. KI 30/10

Applicant

Belkize Mustafa

Constitutional Review of the Judgment of the Supreme Court of Kosovo
A. no. 852/2009 dated 24 March 2010

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Enver Hasani, President
Kadri Kryeziu, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Ivan Čukalović, Judge
Gjyljeta Mushkolaj, Judge and
Iliriana Islami, Judge

Applicant

1. The Applicant is Belkize Mustafa from Pristina.

Challenged decision

2. The Applicant challenges the Decision of the Supreme Court of Kosovo A. No. 852/2009 dated 24 March 2010.

Legal Basis

3. The Referral is based on Art. 113.7 of the Constitution; Articles 46, 47, 48 and 49 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter referred to as the

"Law on the Constitutional Court"), and Rule 56 (2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter referred to as the "Rules of Procedure").

Subject Matter

4. The Applicant alleges that there has been a violation of Article 3 [Equality Before the Law] and Article 51 Right to Health and Social Protection) of the Constitution of the Republic of Kosovo (hereinafter the "Constitution")

Procedure before the Court

5. On 7 May 2010 the Applicant submitted the Referral to the Court.

6. On 14 September 2010 the President appointed Prof Dr. Ivan Čukalović as Judge Rapporteur and a Review Panel composed of Iliriana Islami, Gjyljeta Mushkolaj and Robert Carolan.

7. On 11 December 2010 and 14 January 2011 the Court sent letters to MLSW seeking clarification on certain parts of the Referral.

8. On 18 January 2011 the Court received a response from the MLSW.

9. On 16 May 2011 after having considered the Report of the Judge Rapporteur, the Review Panel, made a recommendation to the full Court on the inadmissibility of the Referral.

Summary of facts

10. On 21 October 2005, the Department of Pension Administration of Kosovo (hereinafter "DPAK"), Ministry of Labour and Social Welfare (hereinafter "MLSW"), issued a decision recognizing applicant's right to disability pension retroactively from 1 January 2004, in the amount of forty Euros (€40) per month. The decision also states that 3 years from obtaining this right, this Ministry shall invite Mrs. Mustafa for review purposes.

11. On 12 July 2007, the DPAK, MLSW, pursuant to the assessment of the Medical Commission, which assessed that the Applicant did not have full and permanent disability, issued a Decision rejecting Mrs. Mustafa's request for disability pension.

12. On 11 December 2007, DPAK, MLSW following the examination of documents, appeals, medical documents and the assessments of the first instance and second instance Medical Commissions, concluded that there was no sufficient evidence that Mrs. Mustafa meets legal requirements to enjoy a disability pension, and, as a result, issued the Decision to reject her request as ungrounded.

13. On 27 May 2009, the Supreme Court of Kosovo, in the absence of documents and as a result of MLSW's inaction to provide said documents pursuant to the request of the Supreme Court, issued the Judgment A.nr.1287/2008, approving Mrs. Mustafa's lawsuit, submitted against the Resolution of MLSW-Appeals Council dated 11 December 2007, thereby annulling it.

14. On 5 August 2009, the Appeals Council on Disability Pensions of DPAK, MLSW acting pursuant to the Supreme Court Judgment A.Nr.1287/08, issued a Resolution rejecting as ungrounded Mrs. Mustafa's appeal for the recognition of the right to disability pension and confirmed the decision of the Medical Commission of the first instance as fully based on the Law on Disability Pensions 2003/23 (hereinafter the "LPD"

15. On 24 March 2010, the Supreme Court of Kosovo, based on accompanying documents, issued a judgment A.nr.852/2009, rejecting Mrs. Mustafa's lawsuit submitted against the Resolution dated 5 August 2009, of MLSW - Appeals Council.

16. In the same judgment, the Supreme Court stressed that the Medical Commissions established by the MLSW, pursuant to Article 3.2 of the LDP, comprising of medical experts in related fields, after the assessment of medical documents and results of direct examination found that the Applicant does not have a full and permanent disability. The Supreme Court therefore concluded that DPAK, MLSW, by rejecting plaintiff's lawsuit, correctly applied the material law when it concluded that Mrs.

Mustafa does not fulfill requirements set forth to be eligible for the disability pension under Article 3 of the LDP.

Applicant's allegations

17. The Applicant alleges that there has been a violation of Article 3 of the Constitution, which guarantees equality before the law.

18. The Applicant also claims that there has been a violation of Article 51 of the Constitution, which states that health care and social insurance are to be regulated by law.

Preliminary assessment on admissibility

19. In order to be able to adjudicate the Applicant's Referral, the Constitutional Court needs first to examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution, further specified in the Law on the Constitutional Court and the Rules of Procedure.

20. In this respect the Court recalls that according to Rule 36(1) (c) "*the Court may only deal with Referrals if the Referral is not manifestly ill-founded*."

21. Rule 36 (2) of the Rules of Procedure further prescribes that:

> *"The Court shall reject a Referral as being manifestly ill-founded when it is satisfied that:*
>
> *a) the Referral is not prima facie justified, or*
>
> *b) when the presented facts do not in any way justify the allegation of a violation of the constitutional rights, or*
>
> *c) when the Court is satisfied that the Applicant is not a victim of a violation of rights guaranteed by the Constitution, or*
>
> *d) when the Applicant does not sufficiently substantiate his claim;"*

22. The Applicant has not submitted any prima facie evidence indicating a violation of his rights under the Constitution (see Vanek v. Slovak Republic, ECHR Decision as to the Admissibility of Application no. 53363/99 of 31 May 2005).

23. The Court should also reiterate, in this case, that it is not its task under the Constitution to act as a court of appeal, or a court of fourth instance, regarding decisions taken by ordinary courts. It is the role of the latter to interpret and apply the pertinent rules of both procedural and substantive law (See, *mutatis mutandis*, Garcia Ruiz v. Spain [GC), no. 30544/96, § 28, European Court of Human Rights [ECHRJ1999-1).

24. The Constitutional Court can only consider whether the evidence has been presented in such a manner, and whether the proceedings in general, viewed in their entirety, have been conducted in such a way that the Applicant has had a fair trial (see among other authorities, Report of the European Commission on Human Rights in the case Edwards v. United Kingdom, App. No. 13071/87 adopted on 10 July 1991).

25. In the actual case, the Applicant was offered many possibilities to present her case and challenge the interpretation of the law, which she considered inaccurate, before MLSW and the Supreme Court. Following the revision of the administrative procedures and the Supreme Court case as a whole, the Court does not notice that the relevant proceedings were in any way unfair or arbitrary (see *mutatis mutandis,* Shub v Lithuania, European Court of Human Rights Decision as to the Admissibility of Application no.17964/06 of 30 June 2009).

26. The Court concludes, therefore, that the Referral is manifestly ill-founded, within the meaning of Article 36 of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court pursuant to Article 113.7 of the Constitution, Article 27 of the Law and Rule 36 of the Rules of the Procedure unanimously:

DECIDES

I. TO REJECT the Referral as Inadmissible;

II. This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20 (4) of the Law; and

III. This Decision is effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Ivan Čukalović	Prof. Dr. Enver Hasani

KI 46/10 dated 19 June 2012- Constitutional Review of Judgment P. nr. 162/03 dated 7 April 2005 of the District Court in Gjilan Judgment P.nr.628/04 dated 8 March 2007 of the District Court in Prishtina, Judgment of the Supreme Court Ap.nr.393/2006 dated 21 May 2008, Judgment API. Nr. 04/2009 dated 16 September 2009 of the Special Criminal Panel of the Supreme Court and Judgment of the Supreme Court Ap.nr.84/09 dated 3 December 2009

Case KI 46/10, decision dated 11 June 2012.
Keywords: actio popularis, violation of constitutional rights and freedoms, individual referral, organizing council, inadmissible referral, locus standi, criminal offence of murder.

The applicant filed the referral on behalf of the Organizing Council "Justice for the Kicina case" pursuant to Article 113.7 of the Constitution of Kosovo, thereby claiming that constitutional rights and freedoms of individuals the Applicant claimed to represent, were violated by judgments of ordinary courts, by which the individuals were sentenced to imprisonment, upon being found guilty, *inter alia*, of having committed the criminal offence of murder. The Applicant claimed that ordinary courts had violated the rights and freedoms of individuals guaranteed by Articles 21, 22, 29, 31 of the Constitution of Kosovo, and Article 6 of the European Convention for Protection of Human Rights and Freedoms.

The Court found that the referral of applicant was inadmissible, pursuant to the Article 113.1 of the Constitution, since the Applicant was not an authorized party. The Court argued in its decision that the parties filing referrals in the Court must be authorized parties, and must prove that they have been directly affected by a normative act or disputed decision. Quoting its case law in the case no. *KI51/10, Živić Ljubiša, constitutional review of the decision of the President of the Republic of Kosovo on appointment of Mr. Goran Zdravković as member to the Central Election Commission, as a representative of the Serbian community,* the Court further noted that normative acts and decisions cannot be abstractly contesterd, since the Constitution does not provide on *actio popularis remedies*. Due to the reasons provided above, the Court decided to find the referral of Applicant as inadmissible.

Pristine, 11 June 2012
Ref. No.: RK250/12

RESOLUTION ON INADMISSIBILITY

in

Case No. KI 46/10

Applicant

Sebahate Shala
on behalf of the Organizational Council
"Justice for the Kiqina case"

Constitutional Review of Judgment P. nr. 162/03 dated 7 April 2005 of the District Court in Gjilan Judgment P.nr.628/04 dated 8 March 2007 of the District Court in Prishtina, Judgment of the Supreme Court Ap.nr.393/2006 dated 21 May 2008, Judgment API. Nr. 04/2009 dated 16 September 2009 of the Special Criminal Panel of the Supreme Court and Judgment of the Supreme Court Ap.nr.84/09 dated 3 December 2009

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Enver Hasani, President
Kadri Kryeziu, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Ivan Čukalović, Judge
Gjyljeta Mushkolaj, Judge and
Iliriana Islami, Judge

Applicant

1. The Applicant is Mrs. Sebahate Shala from Krajkovë Gllogovc who files the Referral based on the authorization of the Organizational Council "Justice for the Kiqina case". The Applicant has submitted to the Constitutional Court (hereinafter: the "Court"), a petition with the signatures of approximately fifty-thousand (50.000) citizens of the Republic of Kosovo in support of its Referral with the Court.
2. The Organizational Council "Justice for the Kiqina case" is comprised of students from Prishtina University, the Council for Protection of Rights of UCK fighters, activists from civil society, and others.

3. The Referral states that the Applicant is represented by Visar Zogaj, a student from Malisheva; however, she signed the Referral Form herself.

Challenged decisions

4. The Applicant challenges Judgment P. nr. 162/03 dated 7 April 2005 of District court in Gjilan, judgment P.nr.628/04 dated 8 March 2007 of the District Court in Prishtina, judgment of the Supreme Court Ap.nr.393/2006 dated 21 may 2008 Judgment API.nr.04/2009 dated 19 September 2009 of the Special Criminal Panel of the Supreme Court and judgment of the supreme Court Ap.nr.84/09 dated 3 December 2009.

Subject matter

5. The subject matter, according the Applicant, is the alleged wrongful conviction of Burim Ramadani, Arsim Ramadani, Arben Kiqina and Jeton Kiqina for serious crimes, including murder. The Applicant states that she represents an organization which claims that the convictions for murder and other serious offences of certain named persons, "the Kiqina cases", amounted to serious violations of human rights.

Legal basis

6. Article 113.7 of the Constitution, Article 22 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo of 16 December 2008 (hereinafter: the "Law") and Rule 56(2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the “Rules of Procedure”).

Proceedings before the Court

7. On 25 June 2010, the Applicant submitted this Referral with the Court.

8. On 29 June 2010, Arben Kiqina filed a Referral with the Court which was registered on the same date under no. KI52/10.

9. On 29 March 2011, Jeton Sefer Kiqina filed a Referral with the Court which was registered on the same date under no. KI 43/11.

10. On 7 June 2011 Burim Ramadani, Arsim Ramadani, Arben Kiqina and Blerim Kiqina submitted to the Court a Referral registered under no. KI 78/11.

11. On 13 June 2011, Burim Ramadani and Arsim Ramadani submitted to the Court a Referral registered under no. KI 81/11.

12. On 11 November 2010, the President, appointed Judge Snezhana Botusharova as Judge Rapporteur in this Referral, KI 46/10. On the same date, the President appointed the Review Panel composed of Judges Robert Carolan (Presiding), Altay Suroy and Ivan Cukalovič.

13. On 19 July 2011, the President, by order BK-46/10, joined all of these separate Referrals KI46/10, KI52/10, KI43/11, KI78/11 and KI81/11, due to the relationship of one another as to subject matter and as to the persons making the Referrals. . The Judge Rapporteur and the Review Panel remained the same as was appointed for this Referral.

14. On 14 May 2012, due to the temporary unavailability of Judge Ivan Čukalović, the President appointed himself, Enver Hasani, as a replacement Judge on the Review Panel.

15. On 15 May 2012 the Review Panel considered the Preliminary Report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts according to the Applicant's documents filed with the Court

16. From the Referral and the documents submitted therewith the following brief summary of facts can be ascertained.

17. In the evening of 20 August 2001, H H together with his wife and children attended a wedding in the village of Baicë. After leaving the wedding, later that night his vehicle was ambushed and he, his wife, his son and two daughters were shot to death. One young daughter survived.

18. On 4 July 2002, Blerim Kiqina was questioned as a witness by the Kosovo and International Police whereby he gave an incriminating statement against himself and others that were allegedly involved in the murders. The incriminating statement of Blerim Kiqina was video recorded.

19. On 7 July 2002, Blerim Kiqina repeated the incriminated statement which he gave on 4 July 2002, before the investigating judge.

20. The investigation procedure led to the indictment and trial of Burim Ramadani, Arsim Ramadani, Arben Kiqina and Jeton Kiqina and others.

21. On 7 April 2005, the District Court in Gjilan by way of Judgment P. nr. 162/03, found Burim Ramadani, Arsim Ramadani, Arben Kiqina and several other accused persons guilty of the murder, attempted murder and complicity in the criminal act of murder of H H and his family. Burim Ramadani, Arsim Ramadani and Arben Kiqina were all individually

sentenced with imprisonment for 30 years. Some charges were dismissed in that court process.

22. The Defendants appealed that conviction and on 20 May 2008, the Supreme Court of Kosovo in its Judgment, Ap.nr.393/2006, rejected the appeal of Burim Ramadani, Arsim Ramadani and Arben Kiqina as ill-founded and it upheld the conviction of the District Court in Gjilan, whereas for the rest of the accused the Supreme Court acquitted them because it could not be verified that they had committed the criminal acts for which they were charged.

23. On 16 September 2009, the Special Criminal Panel of the Supreme Court, by way of Judgment API. Nr. 04/2009, rejected a further appeal lodged by Burim Ramadani, Arsim Ramadani and Arben Kiqina against the above-mentioned Judgment of the Supreme Court as ill-founded.

Summary of facts in relation to Jeton Kiqina according to the Applicant's documents filed with the Court

24. On 8 March 2007 The District Court in Prishtina by way of Judgment P.nr.628/04, found Jeton Kiqina guilty on several counts entailing murder, attempted murder and complicity to commit the criminal act of murder of H H and his immediate family. Jeton Kiqina was sentenced to 15 years of imprisonment.

25. On 3 December 2009, the Supreme Court of Kosovo by way of Judgment Ap.nr.84/09, partially upheld the appeal of the accused Jeton Kiqina whereby it found that the latter is guilty on the counts of murder and attempted murder but is vindicated on the count of complicity to commit the act of murder of H H and his immediate family.

Applicant's request and her allegations

26. The Applicant requests that the Constitutional Court;

a) To make review, analysis, and to reassess the violation of human rights against the convicted persons,

b) To give an opinion and make an interpretation of the violation of human rights arising from the convictions,

c) To give an opinion about the violation of human rights against the convicted persons,

d) To made a decision according to the competences of the Court if it concludes that violations have been proved against the convicted persons.

27. The Applicant maintains that the following Articles of the Constitution have been violated; Articles 21 [Fundamental Rights and Freedoms], Article 22 [Direct Applicability of International Agreements and Instruments], Article 29 [Right to Liberty and Security], Article 31 [Right to Fair and Impartial Trial] and Article 6 of the European Convention on Human Rights (hereinafter: the "Convention").

28. The Applicant claims that none of three instances of trial has legally verified the culpability of Burim Ramadani, Arsim Ramadani, Arben Kiqina and Jeton Kiqina.

29. The Applicant claims that in the last judgment issued in 2009, the Special Criminal Panel of the Supreme Court did not approve the appeals of the defense. The Special Criminal Panel issued a judgment which upheld the sentence, but not the accusations. The Applicant claims that the judgment in question was in contravention with the two lower trial instances, and that the rationale of the Special Criminal Panel of the Supreme Court was in contradiction with itself.

30. The Applicant claims that the main co-accused Skënder Halilaj together with Florim Kiqina and Zeqir Kiqina were set free on 12 July 2008, the said persons were accused for the same act – planning, organizing and participation in the murder of H H and his family.

31. The Applicant claims that material evidence and results of the examined evidence which proved the innocence of Burim

Ramadani, Arsim Ramadani, Arben Kiqina and Jeton Kiqina were lost and never found.

32. The Applicant claims that charges against Burim Ramadani, Arsim Ramadani, Arben Kiqina and Jeton Kiqina are fabricated and completely prepared beforehand by the UNMIK International Investigating Team.

33. The Applicant claims that Jeton Kiqina was sentenced to 16 years of imprisonment under the count of having supplied Florim Kiqina with weapons who later on has allegedly participated in the murder of H H. However, F K was found not guilty by the Supreme Court of Kosovo in July 2008, whereas the "supplier" of weapons – Jeton Kiqina is still in jail. The District Court in Gjilan had sentenced F K to 21 years of imprisonment, under the count of planning, organizing and participating in the murder of H H and his family.

34. The Applicant claims that at the time the murder of H H occurred on 20 August 2001, at 23:17 hrs, according to the KFOR registration, this group of lads was celebrating the birthday of Burim Ramadani, in a local bar in Gllogovc. There were also present three policemen, who heard on radio-connection the news of a terrible murder which had occurred in the village of Tërstenik in Gllogovc. This news was allegedly heard by everybody that was celebrating.

35. The Applicant claims that Burim Ramadani, Arsim Ramadani, Arben Kiqina and Jeton Kiqina were denied the right to fair trial in contravention to Article 31 of the Constitution in connection with Article 6 of the Convention.

36. Furthermore, the Applicant asks the Court to give an opinion and interpretation about the alleged violation of human rights and injustice incurred against Burim Ramadani, Arsim Ramadani, Arben Kiqina and Jeton Kiqina.

Preliminary assessment of the admissibility of the Referral

37. In order to be able to adjudicate the Applicant's Referral, the Court needs to examine whether the Applicant has fulfilled the

admissibility requirements laid down in the Constitution, the Law and the Rules of Procedure.

38. The first and the foremost admissibility criteria that the Court examines in relation to the instant and indeed any Referral brought before it is to ascertain whether the Applicant has filed the Referral within the view of Article 113.1 of the Constitution which stipulates:

> "*The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties".*

39. In the instant case, the Applicant has filed a Referral with the Court on behalf of the Organizational Council "Justice for the Kiqina case" concerning the convictions of Burim Ramadani, Arsim Ramadani, Arben Kiqina and Jeton Kiqina, however it has not submitted documentation from the said persons which ought to expressly authorize the Applicant to represent them before this Court.

40. The Court notes, that in the instant case, the Applicant does not have *locus standi* before it, because the Applicant did not meet the procedural requirements of Article 113.1 of the Constitution, meaning that the Referral was not filed in a legal manner by an authorized party.

41. In relation to the petition signed by approximately fifty-thousand (50.000) citizens of the Republic of Kosovo filed with the Court by the Applicant in support of the Referral, the Court notes that it does not have jurisdiction to deal with Referrals which are *actio popularis,* meaning that normative acts and decisions cannot be challenged in the abstract and that parties before this Court must show that they are directly affected by the challenged normative act and/or decision and indeed must be an authorized party before this Court in accordance with Article 113 of the Constitution which regulates the jurisdiction of the Court and provides legal basis for the Applicants to file Referrals before this Court.

42. This Court in the case of Referral Case No. KI51/10, Zivic Ljubisa, Constitutional Review of the Decision of President of

the Republic of Kosovo on the appointment of Mr. Zdravkovic Goran as a member of the Central Election Commission representing the Serbian Community, dated 2 March 2012, stated as follows;

> *"A person who is not affected in this manner does not have standing as a victim since the Constitution does not provide for actio popularis. In other words, an Applicant cannot complain in the abstract about measures by public authorities which have not been applied to them personally, such as is the case before this Court."*

43. As in that case the Applicant in this case is not affected by the convictions in the Courts of Kosovo and therefore is not an authorized party and the Referral must be rejected as inadmissible.

FOR THESE REASONS

The Court, following deliberations on 15 May 2012, pursuant to Articles 113.7 of the Constitution, Articles 20 of the Law and Rule 56.2 of the Rules, unanimously

DECIDES

I. TO REJECT the Referral as inadmissible,

II. This Decision is to be notified to the Applicant, and

III. This Decision shall be published in accordance with Article 20(4) of the Law and is effective immediately.

Judge Rapporteur **President of the Constitutional Court**

Snezhana Botusharova Prof. Dr. Enver Hasani

KI 52/10 dated 19 June 2012- Request for review of the District Court of Gjilan Judgment P. No. 162/2003 dated 7 April 2005, Supreme Court of Kosovo in Pristina Judgments Ap. No.393/2006

Case KI 52/10, decision dated 11 June 2012.
Keywords: violation of constitutional rights and freedoms, individual referral, manifestly ungrounded referral, criminal procedure law, criminal offence of murder.

The applicant filed the referral pursuant to Article 113.7 of the Constitution of Kosovo, thereby claiming that her constitutional rights and freedoms were violated by judgments of all instances on the Applicant's rights, in which case the Applicant was sentenced to imprisonment on charges, *inter alia*, for the criminal offence of murder. The Applicant claimed that ordinary courts had violated his rights and freedoms guaranteed by the Article 31 of the Constitution of Kosovo.

The Court found that the referral of applicant was inadmissible, pursuant to the rule 36 of the Rules of Procedure, due to the fact that the referral was manifestly ungrounded. The Court further argued its decision by noting that ordinary courts have taken into consideration and have responded to complaints of the Applicant to legal issues concerning acceptance of evidence and their validity, ascertainment of factual situation and criminal proceeding. The Court also reiterated that it is not a court of appeal, or a court of fourth instance, and that the full and complete ascertainment of factual condition is a jurisdiction of ordinary courts. Quoting the decision of the ECtHR in the case of *Mezotur-Tiszazugi Tarsulat v. Hungary,* the Court further argued that the fact that the applicant is discontented with the outcome of the case does not entitle him to make an arguable case for violation of constitutional rights and freedoms. Due to the reasons provided above, the Court decided to find the referral of Applicant as inadmissible.

Pristine, 11 June 2012
Ref. No.: RK251/12

RESOLUTION ON INADMISSIBILITY

in

Case No. KI 52/10

Applicant

Arben KIQINA

Request for review of the District Court of Gjilan Judgment P. No. 162/2003 dated 7 April 2005, Supreme Court of Kosovo in Pristina Judgments Ap. No.393/2006 dated 20 May 2008, Nr.4/09 of dated 16 September 2009 and PKL-KZI Nr.30/2010 of dated 01 February 2011

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Enver Hasani, President
Kadri Kryeziu, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Ivan Čukalović, Judge
Gjyljeta Mushkolaj, Judge and
Iliriana Islami, Judge

The Applicant

1. The Referral was filed by Arben Kiqina, from the village of Baice, Municipality of Gllogoc, through his authorized representative, Ibrahim Z. Dobruna, Lawyer from Drenas. The Referral contains over 300 pages.

2. The facts and allegations contained in this Referral registered under KI52/10 are substantially identical to the facts and allegations set out in the Referrals KI46/10, KI43/11, KI78/11 and KI81/11.

Legal basis

3. Article 113.7 of the Constitution, Article 22 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo of 16 December 2008 (hereinafter: the "Law") and Rule 56(2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the “Rules of Procedure”).

Subject matter

4. The Applicant filed the Referral on the grounds that the District Court of Gjilan Judgment P. No.162/2003 dated 7 April 2005, and the Supreme Court of Kosovo Judgments Ap.No.393/2006 dated 20 May 2008, Ap. No. 04/2009 dated 16 September 2009 and PKL No. 30/2010 dated 1 February 2011 have resulted in the violation of his constitutional right to a fair trial under Article 31 [Right to a Fair and Impartial Trial].

Proceedings before the Court

5. On 29 June 2010 the Applicant filed a Referral with the Court which was registered on the same date under reference no. KI-52/10. On 1 June 2011, the Applicant filed additional documents with the Court.

6. Prior to that, on 25 June 2010 Mrs. Sebahate Shala from Krajkovë Gllogovc had filed a Referral based on the authorization of the Organizational Council “Justice for the Kiqina case” which was registered under reference no. KI 46/10.

7. On 29 March 2011 Jeton Sefer Kiqina filed a Referral with the Court which was registered on the same date under no. KI 43/11.

8. On 7 June 2011 Burim Ramadani, Arsim Ramadani, Arben Kiqina and Blerim Kiqina submitted to the Court a Referral registered under no. KI 78/11.

9. On 13 June 2011 Burim Ramadani and Arsim Ramadani submitted to the Court a Referral registered under no. KI 81/11.

10. On 11 November 2010 the President, appointed Judge Snezhana Botusharova as Judge Rapporteur in Referral, KI 46/10. On the same date, the President appointed the Review Panel composed of Judges Robert Carolan (Presiding), Altay Suroy and Ivan Čukalović.

11. On 19 July 2011 the President, by order BK-46/10, joined all of these separate Referrals KI-46/10, KI-52/10, KI-43/11, KI-78/11 and KI-81/11, due to the relationship of one another as to subject matter and as to the persons making the Referrals. The Judge Rapporteur and the Review Panel remained the same for all the Referrals.

12. On 14 May 2012, due to the temporary unavailability of Judge Ivan Čukalović, the President appointed himself, Enver Hasani, as a replacement Judge on the Review Panel.

13. On 15 May 2012 the Review Panel considered the Preliminary Report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts according to the Applicants' documents filed with the Court

14. In the evening of 20 August 2001, H H together with his wife and children attended a wedding in the village of Baicë. After leaving the wedding, later that night his vehicle was ambushed and he, his wife, his son and two daughters were shot to death. One young daughter survived.

15. The following day Blerim Kiqina and Jeton Kiqina met Burim Ramadani, Arsim Ramadani, Arben Kiqina and another outside the Era restaurant in Gllogoc. Burim Ramadani told him that the action went very well and that SH had given or was going to give him money. There was a discussion about how to split the money.

16. On 4 July 2002, Blerim Kiqina turned himself into the police station. He was then arrested, advised of his rights and then

interviewed. Blerim Kiqina waived his rights to silence and to legal counsel and continued with the interview. Blerim Kiqina confessed to the murders and implicated other participants in the crime. Those he implicated were Burim Ramadani, Arsim Ramadani, Arben Kiqina, Jeton Kiqina, and others.

17. On 7 July 2002, when Blerim Kiqina was taken before the investigating judge and he repeated almost verbatim what he had told the police in the interview on 4 July 2002.

18. Notwithstanding the evidence provided to police on 4 and 7 July 2002, on 11 October 2002, Blerim Kiqina subsequently retracted his account of events on the basis that he had fabricated the story.

19. Following indictment and subsequent trial in the District Court of Gjilan (Judgment P. No. 162/03 dated 7 April 2005, Burim Ramadani, Arben Kiqina, Arsim Ramadani, Blerim Kiqina and others were convicted of murdering the five members of the H family.

20. All defendants filed appeals against the District Court of Gjilan judgment P. No. 162/2003 dated 7 April 2005. After a session held on 20 May 2008 the Supreme Court of Kosovo, in the second instance, handed down its judgment (AP - KZ 393/2006) rejecting the appeals of Burim Ramadani, Arsim Ramadani, Arben Kiqina and Blerim Kiqina on the basis of inadmissibility. The Supreme Court supported the first degree judgment in respect of the four appellants. However, the other defendants were released due to insufficient evidence that they carried out the criminal offences with which they were charged.

21. The appeals filed in respect of Burim Ramadani, Arsim Ramadani and Arben Kiqina challenged the judgment handed down by the Supreme Court in the second instance on the basis that there were: essential violations of the provisions of criminal procedure (including the substitution of a Judge in the trial panel); erroneous and incomplete determination of the factual situation; violation of the criminal law and the incorrect decision on the punishment. The Supreme Court examined the procedural and substantive aspects contained in the appeals.

22. Unsatisfied with the outcome of the appeal, the Applicants filed a further appeal against the Supreme Court judgment. The Supreme Court, in a panel of third instance composition, rejected the complaints as inadmissible (judgment API.No. 04/2009 dated 16 September 2009).

23. One of the first points raised in that appeal concerned the composition of the trial panel of the District Court (the first instance court). During the trial, an international judge on the panel was replaced by another international judge. The Applicant argued that this would have allowed the other judges to have influence on the new judge and the trial should have recommenced from the start. He argued that the Supreme Court in the second instance rejected that there was a violation of the Criminal Procedure Code.

24. The Supreme Court, in the third instance, rejected this point of appeal as ungrounded based on Article 305 of the Law on Criminal Procedure and stated: *"At the time the trial panel applied article 305 of the Law on Criminal Procedure which in case of substitution of a Judge with the exception of the Presiding of the Panel, offers the possibility to the panel to recommence judicial deliberation from the beginning or to decide to resume it and read previous deliberation minutes. The new Judge has taken all trial minutes and parties accepted and so all the records were read."*

25. Furthermore, the replacement of the international Judge on the trial panel was permitted by law and the conditions for replacement were met. In this regard the Constitutional Court refers to the case of P.K. v. Finland, Application no. 37442/97, where the European Court of Human Rights (ECtHR), sitting on 9 July 2002, decided that notwithstanding the replacement of a Judge during the course of the trial of P.K. *"The Court's task is to ascertain whether the proceedings as a whole, including the way in which the evidence was taken, were fair. … Even so, the Court considers that in the specific circumstances of the present case this defect does not alone constitute a violation of Article 6. First, while the presiding judge was changed the three lay judges remained the same throughout the proceedings. Secondly, the credibility of the witness in question has at no stage been challenged, nor is there any indication in the file justifying*

doubts about her credibility. In these circumstances the fact that the new presiding judge had at his disposal the minutes of the session at which the witness had been heard (cf. Karjalainen v. Finland, application no. 30519/96, Commission decision of 16 April 1998, unreported) to a large extent compensates for the lack of the immediacy of the proceedings. Thirdly, the applicant's conviction was not based only on the evidence of witness H. Finally, there is nothing suggesting that the presiding judge was changed in order to affect the outcome of the case or for any other improper motives. ... The conclusions drawn by the domestic court in the present case do not appear arbitrary so as to raise an issue under Article 6..." And further, other case law of the ECtHR indicates that the mere fact of the replacement of a Judge during the course of a hearing, of itself, does not amount to a violation of Article 6 of the Convention (*see Barbera, Messegue and Jabardo v. Spain, Application no. 10590/83, dated6 December 1988, Moiseyev v. Russia, (Application no. 62936/00), dated 9 October 2008, and Ocalan v. Turkey, (Application no. 46221/99), dated 15 may 2005*.) Bearing all that in mind this Court is of the view that the Supreme Court was correct in finding no violation of the right to a fair and impartial on account of the replacement of the international Judge.

26. Another substantial part of the appeal of the Applicants addressed to the Supreme Court as a third instance related to the admissibility of the evidence used by the lower courts. Both the verdicts of the District Court and the Supreme Court, in the second instance, largely based the decisions on the statements given by: Blerim Kiqina in the investigating stage, witnesses "MB" and the daughter who survived the shooting. All these sources of evidence were challenged in the appeal (and repeated again in the Referral). The Supreme Court by judgment Ap. No. 04/2009 dated 16 September 2009 rejected the appeal and noted the following:

    a. Having examined the video recordings of the Blerim Kiqina witness interviews, his confession was genuine and there was no reason to believe that he fabricated the evidence. The detailed account of the murders

could only have come from somebody who had intimate knowledge of the event.

b. Having scrutinized the statements of Blerim Kiqina dated 4 July 2002, 7 July 2002 and 11 October 2002, some inconsistencies were identified particularly in relation to Blerim Kiqina's movements on 20 August 2001. It was held that his entire testimony cannot and should not be discounted simply because it is not reliable in part. Having considered the admissible portions of his evidence, it was abundantly clear that Blerim Kiqina was placed at the scene at the relevant time and carried out the offences he confessed to have committed. The credibility of the statement given by Blerim Kiqina given before the investigating judge on 7 July 2002 was corroborated by the motives of his confession, the accuracy and consistency of his statements, the absence of significant discrepancies and the inconsistency of the alibi of the appellants.

c. The judgments also took into account the corroborative evidence of the confession such as Blerim Kiqina's accurate description of the other accused, the existence of the compound from where the weapons were sourced, the timing of the H family's departure from the wedding, the sequence of events on the bridge and the position of the car at the bridge. It was corroborated by the evidence of the daughter who survived the shooting, witness evidence of "MB", RK, SK, EK, SK, GK, YK and BK, telephone call records as well as ballistics examinations of the bullets which verified Blerim Kiqina's evidence on the type of gun used to commit the crime.

d. The claim that the evidence of "MB" was inadmissible was rejected on the basis that it was ungrounded. "MB" gave evidence that Burim Ramadani disclosed to her that he had carried out the murders. It was argued in the appeal that: 1) "MB" was not advised of the right not to testify given she had cohabited with Burim Ramadani; 2) the public were unlawfully excluded from her oral testimony during the hearing and the

panel did not issue a written ruling regarding the protective measures given to "MB"; and 3) Burim Ramadani was denied the right to put questions to "MB" resulting in a violation of the relevant provisions of the Criminal Procedure Code.

e. In response to these claims, the court noted that the exemption to testify only applied to spouses and that "MB" was not exempt as she was not the spouse of Burim Ramadani. Pursuant to sections 2 and 3 of UNMIK Regulation 2001/20, the trial panel applied protective measures to "MB" as she was a witness well known to the defendant and had an intimate relationship with him. The ruling contained the decision to exclude the public from the hearing when "MB" was due to provide oral evidence. Lastly, Burim Ramadani was not denied the opportunity to put questions to "MB" during her testimony. Overall, the evidence of "MB" was considered reliable particularly in light of the fact that she was summoned by the police to give evidence, she was reasoned in her account of events and she maintained her evidence despite threats from family members of the defendants.

f. The appeal contained an argument that criminal procedure was breached by the court in the manner in which the testimony of the daughter who survived the shooting was given. The court held there were no violations of criminal procedure by excluding the public during the testimony of the daughter who survived the shooting given she testified by video link. Also, at the main trial, defence counsel had the possibility to examine her.

g. The claim that there was an incomplete determination of the factual situation due to the disappearance of important material evidence was rejected by the court on the basis that this did not prevent the correct establishment of the factual situation. The appeals referred to the paraffin handle taken from F K and Arben Kiqina on 21 August 2001 and to the

examination of some exhibits collected on the investigated spots which had to be examined in order to find finger prints or DNA samples.

27. The Supreme Court, in the third instance, affirmed the judgment of the second instance court in its entirety.

28. The Applicant considered the aforementioned judgment to be "extremely unjust and not based on credible and convincing evidence". Therefore, they submitted a request for the protection of legality from the Supreme Court. However, by judgment PKL.No. 30/10 dated 1 February 2011, the Supreme Court once again rejected the request.

Applicant's allegations

29. The general complaint contained in the Referral is that lower courts made only general findings, assessments and conclusions thereby violating the procedural provisions which require the courts to honestly assess each piece of evidence separately and in relation to other evidence. Therefore, on this basis the Applicant claims the judgments cannot stand.

30. In summary, the Applicant contests the reliability of the evidence used by the lower courts in formulating the judgments and allege that there was improper consideration of the evidence. The Applicant asserted the following in the Referral:

    a. The courts did not corroborate the claims of key witnesses with sufficient evidence such as forensic material (some of which went missing).

    b. The related co-defendants should have been exempted from giving evidence against their relative.

    c. The witness evidence of "MB" should not have been considered by the courts given she had been in a relationship with Burim Ramadani until the time of his arrest and sought revenge on Burim Ramadani for not marrying her.

d. Blerim Kiqina's evidence, which was given high priority by the courts, was contradictory and flawed because he was minor when the murder occurred, he was enticed by the investigators with the opportunity to move abroad and he was threatened by the police to change his evidence.

e. The evidence of the daughter who survived the shooting should not have been taken into account due to inconsistency with other evidence.

f. Based on Article 157 of the Criminal Procedure Code of Kosovo, the courts should not have declared the defendants guilty based only one piece of evidence.

g. The District Court violated criminal procedure (Articles 354-359 and 403 of the Criminal Procedure Code of Kosovo) because after the appointment of a new judge in the panel during the proceeding, the trial did not re-start from the beginning.

Assessment of admissibility

31. In order to be able to adjudicate the Applicant's Referral, the Court needs to examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution, the Law and the Rules of Procedure.

32. In this relation, the Court refers to Article 113.7 of the Constitution, which stipulates that:

    a. *"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."*

33. The Constitutional Court notes that it is not a fact verifying Court, the Constitutional Court wishes to reiterate that the correct and complete determination of the factual situation is a full jurisdiction of regular courts, and that the role of the Constitutional Court is solely to ensure compliance with the

rights guaranteed by the Constitution and other legal instruments and cannot, therefore, act as a "fourth instance court" *(see, mutatis mutandis, i.a., Akdivar v. Turkey, 16 September 1996, R. J. D, 1996-IV, para. 65, also see Resolution on Inadmissibility in Case. NO. KI-86/11 – Applicant Milaim Berisha – Request for Constitutional Review of Judgment of the Supreme Court of Kosovo, Rev. nr. 20/09, dated 1.3.2011 – issued by the Court on 5 April 2012).*

34. From facts submitted with the Referral, the Applicant has used all legal remedies available, and that the regular courts have taken into account and indeed answered the Applicant's appeals on the points of law in relation to admission of evidence and their veracity, determination of the factual situation and the flow of the criminal procedure. The Court, therefore, considers that there is nothing in the Referral which indicates that the courts hearing the case lacked impartiality or that proceedings were otherwise unfair.
35. In this regard, the Applicant has not substantiated his claim, explaining how and why a violation has been committed, or furnished evidence to prove that a right guaranteed by the Constitution has been violated.

36. Moreover, the Referral does not indicate that the Supreme Court acted in an arbitrary or unfair manner. It is not within the province of the Constitutional Court to substitute its own assessment of the facts for that of the regular courts and, as a general rule, it is for these courts to assess the evidence before them. The Constitutional Court's task is to ascertain whether the regular court's proceedings were fair in their entirety, including the way in which evidence was taken *(see Judgment ECHR App. No 13071/87 Edwards v. United Kingdom, para 34, of 10 July 1991).*

37. The fact that the applicant is dissatisfied with the outcome of the case cannot of itself raise an arguable claim of a breach of Article 31 [Right to Fair and Impartial Trial] of the Constitution *(see mutatis mutandis Judgment ECHR Appl. No. 5503/02, Mezotur-Tiszazugi Tarsulat vs. Hungary, Judgment of 26 July 2005).*

38. In these circumstances, the Applicant has not substantiated his claim nor the violation of Article 31 of the Constitution [Right to

Fair and Impartial Trial], because the facts presented by him do not show in any way that the regular courts of the three instances had denied him rights guaranteed by the Constitution. The Referral, therefore, is manifestly ill-founded and should be rejected as inadmissible pursuant to Rule 36 of the Rules.

FOR THESE REASONS

The Court, following deliberations on 15 May 2012, pursuant to Articles 113.7 of the Constitution, Articles 20 of the Law and Rule 56.2 of the Rules, unanimously

DECIDES

I. TO REJECT the Referral as inadmissible;

II. This Decision is to be notified to the Applicant; and

III. This Decision shall be published in accordance with Article 20(4) of the Law and is effective immediately.

Judge Rapporteur **President of the Constitutional Court**

Snezhana Botusharova Prof. Dr. Enver Hasani

KI 43/11 dated 19 June 2012 - Constitutional Review of the Judgment of the District Court of Pristina P. No. 628/2004 dated 8 March 2007, Supreme Court of Kosovo in Pristina Judgments Ap. No. 84/2009 dated 3 December 2009 and PKL-KZZ No. 31/2010 dated 1 November 2010

Case KI 43/11, decision dated 11 June 2012
Keywords: violation of constitutional rights and freedoms, individual referral, manifestly ungrounded referral, criminal procedure law, criminal offence of murder.

The applicant filed the referral pursuant to Article 113.7 of the Constitution of Kosovo, thereby claiming that her constitutional rights and freedoms were violated by judgments of all instances on the Applicant's rights, in which case the Applicant was sentenced to imprisonment on charges, *inter alia*, for the criminal offence of murder. The Applicant claimed that ordinary courts had violated his rights and freedoms guaranteed by the Article 31 of the Constitution of Kosovo.

The Court found that the referral of applicant was inadmissible, pursuant to the rule 36 of the Rules of Procedure, due to the fact that the referral was manifestly ungrounded. The Court further argued its decision by noting that ordinary courts have taken into consideration and have responded to complaints of the Applicant to legal issues concerning acceptance of evidence and their validity, ascertainment of factual situation and criminal proceeding. The Court also reiterated that it is not a court of appeal, or a court of fourth instance, and that the full and complete ascertainment of factual condition is a jurisdiction of ordinary courts. Quoting the decision of the ECtHR in the case of *Mezotur-Tiszazugi Tarsulat v. Hungary,* the Court further argued that the fact that the applicant is discontented with the outcome of the case does not entitle him to make an arguable case for violation of constitutional rights and freedoms. Due to the reasons provided above, the Court decided to find the referral of Applicant as inadmissible.

Pristine, 11 June 2012
Ref. No.: RK249/12

RESOLUTION ON INADMISSIBILITY

Case No. KI 43/11

Applicant

Jeton Sefer KIQINA

Constitutional Review of the Judgment of the District Court of Pristina P. No. 628/2004 dated 8 March 2007, Supreme Court of Kosovo in Pristina Judgments Ap. No. 84/2009 dated 3 December 2009 and PKL-KZZ No. 31/2010 dated 1 November 2010

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Enver Hasani, President
Kadri Kryeziu, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Ivan Čukalović, Judge
Gjyljeta Mushkolaj, Judge and
Iliriana Islami, Judge

The Applicant

1. The Referral was filed by Jeton Sefer Kiqina, a Kosovo national and Swedish citizen, born in the village of Baice, Municipality of Gllogoc, through his authorized representative, Ibrahim Z. Dobruna, Lawyer from Gllogoc. The facts and allegations contained in this Referral registered under KI43/11 are

substantially identical to the facts and allegations set out in the Referrals KI46/10, KI52/10, KI78/11 and KI81/11.

Legal basis

2. Article 113.7 of the Constitution, Article 22 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo of 16 December 2008 (hereinafter: the "Law") and Rule 56(2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the "Rules of Procedure").

Subject matter

3. The Applicant filed the Referral on the grounds that the District Court of Prishtina Judgment P. No.628/2004 dated 8 March 2007, and the Supreme Court of Kosovo Judgments Ap.No.84/2009 dated 3 December 2009 and PKL-KZZ No.31/2010 dated 1 November 2010, have resulted in the violation of his constitutional right to a fair trial under Article 31 [Right to a Fair and Impartial Trial].

Proceedings before the Court

4. On 29 March 2011, the Applicant filed a Referral with the Court which was registered on the same date under no. KI 43/11.

5. Prior to that, on 25 June 2010 Mrs. Sebahate Shala from Krajkovë Gllogovc had filed a Referral based on the authorization of the Organizational Council "Justice for the Kiqina case" which was registered under reference no. KI 46/10.

6. Also, prior to that, on 29 June 2010, Arben Kiqina filed a Referral with the Court which was registered on the same date under reference no. KI52/10. On 1 June 2011, the Applicant filed additional documents with the Court.

7. On 7 June 2011 Burim Ramadani, Arsim Ramadani, Arben Kiqina and Blerim Kiqina submitted to the Court a Referral registered under no. KI 78/11.

8. On 13 June 2011, Burim Ramadani and Arsim Ramadani submitted to the Court a Referral registered under no. KI 81/11.

9. On 11 November 2010, the President, appointed Judge Snezhana Botusharova as Judge Rapporteur in Referral, KI 46/10. On the same date, the President appointed the Review Panel composed of Judges Robert Carolan (Presiding), Altay Suroy and Ivan Čukalović.

10. On 19 July 2011, the President, by order BK-46/10, joined all of these separate Referrals KI46/10, KI52/10, KI43/11, KI78/11 and KI81/11, due to the relationship of one another as to subject matter and as to the persons making the Referrals. The Judge Rapporteur and the Review Panel remained the same for all the Referrals.

11. On 14 May 2012, due to the temporary unavailability of Judge Ivan Cukalovic, the President appointed himself, Enver Hasani, as a replacement Judge on the Review Panel.

12. On 15 May 2012 the Review Panel considered the Preliminary Report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts according to the Applicant's documents filed with the Court

13. In the evening of 20 August 2001, H H together with his wife and children attended a wedding in the village of Baicë. After leaving the wedding, later that night his vehicle was ambushed and he, his wife, his son and two daughters were shot to death. One young daughter survived.

14. The following day Blerim Kiqina and Jeton Kiqina met Burim Ramadani, Arsim Ramadani, Arben Kiqina and another outside the Era restaurant in Gllogoc. Burim Ramadani told him that the action went very well and that S K had given or was going to give him money. There was a discussion about how to split the money.

15. On 4 July 2002, Blerim Kiqina turned himself into the police station. He was then arrested, advised of his rights and then interviewed. Blerim Kiqina waived his rights to silence and to legal counsel and continued with the interview. Blerim Kiqina

confessed to the murders and implicated other participants in the crime. Those he implicated were Burim Ramadani, Arsim Ramadani, Arben Kiqina, Jeton Kiqina, and others.

16. On 7 July 2002, when Blerim Kiqina was taken before the investigating judge and he repeated almost verbatim what he had told the police in the interview on 4 July 2002.

17. Notwithstanding the evidence provided to police on 4 and 7 July 2002, on 11 October 2002, Blerim Kiqina subsequently retracted his account of events on the basis that he had fabricated the story.

18. Following indictment and subsequent trial in the District Court of Gjilan (Judgment P. No. 162/03 dated 7 April 2005) Burim Ramadani, Arben Kiqina, Arsim Ramadani, Blerim Kiqina and others were convicted of murdering the five members of the H family.

19. On 9 July 2002, investigations commenced against Jeton Kiqina and the other suspects. Jeton Kiqina was living in Sweden while the investigations were taking place. Jeton Kiqina returned to Kosovo in 2004 purportedly to give evidence on behalf of S H and other defendants who were being tried for the murders. Jeton Kiqina was arrested on 9 November 2004 under the warrant of 11 July 2002. Jeton Kiqina has been in custody since that time because he was under investigation and one of the suspects for the murder of H family.

20. On 8 March 2007, by judgment P. No. 628/04, the District Court of Pristina found Jeton Kiqina guilty of committing the criminal offences of murder, attempted murder (in respect of the daughter who survived the shooting) and agreement to conduct the criminal offence of murder. As a result, he was sentenced to 16 years imprisonment.

21. Jeton Kiqina's lawyer filed an appeal on 3 March 2008 against the verdict alleging: essential violations of the provisions of criminal procedure (including substitution of a Judge in the trial panel), erroneous and incomplete determination of the factual situation; violation of the criminal law and the incorrect decision on the punishment.

22. On 3 December 2009, by judgment Ap.Kz.No.84/2009, the Supreme Court of Kosovo partially granted the appeal. Jeton Kiqina was acquitted of the criminal offence of agreement to conduct a criminal offence. However, the verdicts in relation to the offences of murder and attempted murder were unchanged.

23. On 4 March 2010, Jeton Kiqina's lawyer submitted a request for protection of legality on his behalf in the Supreme Court.
24. On 1 November 2010, the Supreme Court by judgment Kzz.No.31/2010, rejected the request for protection of legality on the basis that it was ungrounded. The Supreme Court, in its reasoning, addressed each of the following allegations:

    a. Substantial violation of the criminal law, namely:

        i. Improper composition of the first instance trial panel;

        ii. Exemption for the Kiqina family members from the duty to testify in court;

        iii. Admissibility of Blerim Kiqina's evidence of 4 and 7 July 2002;

        iv. Admissibility of the minutes of the hearing of the international police officer and of the list of mobile phone calls; and

        v. Lack of motive due to the acquittal of S K.

    b. Erroneous and incomplete determination of the factual situation

    c. Decision on the punishment.

25. In relation to the allegation referred to in paragraph (a) (i) above, the Supreme Court, in the third instance, rejected this point of appeal as ungrounded given Article 305 of the Law on Criminal Procedure [or the relevant provision of the Criminal Procedure Code] provides that if a panel has changed the trial panel may decide not to conduct re-examination of witnesses or conduct a site examination but may consider the recorded testimony of the

witnesses.. The Supreme Court noted that the new Judge was given all trial records prior to the resumption of the trial. The Supreme Court also found no evidence of any influence exercised by the other judges on the new Judge.

26. Furthermore, the replacement of the international Judge on the trial panel was permitted by law and the conditions for replacement were met. In this regard the Constitutional Court refers to the case of P.K. v. Finland, Application no. 37442/97, where the European Court of Human Rights (ECtHR), sitting on 9 July 2002, decided that notwithstanding the replacement of a Judge during the course of the trial of P.K. *"The Court's task is to ascertain whether the proceedings as a whole, including the way in which the evidence was taken, were fair. ... Even so, the Court considers that in the specific circumstances of the present case this defect does not alone constitute a violation of Article 6. First, while the presiding judge was changed the three lay judges remained the same throughout the proceedings. Secondly, the credibility of the witness in question has at no stage been challenged, nor is there any indication in the file justifying doubts about her credibility. In these circumstances the fact that the new presiding judge had at his disposal the minutes of the session at which the witness had been heard (cf. Karjalainen v. Finland, application no. 30519/96, Commission decision of 16 April 1998, unreported) to a large extent compensates for the lack of the immediacy of the proceedings. Thirdly, the applicant's conviction was not based only on the evidence of witness H. Finally, there is nothing suggesting that the presiding judge was changed in order to affect the outcome of the case or for any other improper motives. ... The conclusions drawn by the domestic court in the present case do not appear arbitrary so as to raise an issue under Article 6..."* And further, other case law of the ECtHR indicates that the mere fact of the replacement of a Judge during the course of a hearing, of itself, does not amount to a violation of Article 6 of the Convention (*see Barbera, Messegue and Jabardo v. Spain, Application no. 10590/83, dated6 December 1988, Moiseyev v. Russia, (Application no. 62936/00), dated 9 October 2008, and Ocalan v. Turkey, (Application no. 46221/99), dated 15 may 2005*.) Bearing all that in mind this Court is of the view that the Supreme Court was correct in finding no violation of the right to a fair and

impartial on account of the replacement of the international Judge.

27. Another aspect of the appeal related to the admissibility of the evidence relied upon by the lower courts, as referred to in paragraph (a) (iii) above. The lower courts gave significant reliance on the evidence given by: Blerim Kiqina in the investigating stage, witnesses "MB" and the daughter who survived the shooting. These sources of evidence were challenged on the basis that they were unreliable. The Supreme Court rejected the appeal and noted the following:

    a. Having examined the video recordings of the Blerim Kiqina witness interviews, his confession was genuine and there was no reason to believe that he fabricated the evidence. The detailed account of the murders could only have come from somebody who had intimate knowledge of the event.

    b. Having scrutinized the statements of Blerim Kiqina dated 4 July 2002, 7 July 2002 and 11 October 2002, some inconsistencies were identified particularly in relation to Blerim Kiqina's movements on 20 August 2001. It was held that his entire testimony cannot and should not be discounted simply because it is not reliable in part. Having considered the admissible portions of his evidence, the Supreme Court noted that it was abundantly clear that he and those he implicated had planned and executed the murders. The credibility of the statement given by Blerim Kiqina given before the investigating judge on 7 July 2002 was corroborated by the motives of his confession, the accuracy and consistency of his statements, the absence of significant discrepancies and the inconsistency of the alibi of the other defendants.

    c. The judgments also took into account the corroborative evidence of the confession such as Blerim Kiqina's accurate description of the other accused, the existence of the compound from where the weapons were sourced, the timing of the H

family's departure from the wedding, the sequence of events on the bridge and the position of the car at the bridge. It was corroborated by the evidence of the daughter who survived the shooting, witness evidence of "MB", RK, SK, EK, SK, GK, YK and BK, telephone call records as well as ballistics examinations of the bullets which verified Blerim Kiqina's evidence on the type of gun used to commit the crime.

d. The claim that the evidence of "MB" was inadmissible was rejected on the basis that it was ungrounded. "MB" gave evidence that Burim Ramadani disclosed to her that he had carried out the murders. It was argued in the appeal that: 1) "MB" was not advised of the right not to testify given she had cohabited with Burim Ramadani; 2) the public were unlawfully excluded from her oral testimony during the hearing and the panel did not issue a written ruling regarding the protective measures given to "MB"; and 3) Burim Ramadani was denied the right to put questions to "MB" resulting in a violation of Article 314 of the of the relevant provisions of the Criminal Procedure Code.

e. In response to these claims, the Supreme Court noted that the exemption to testify only applied to spouses and that "MB" was not exempt as she was not the spouse of Burim Ramadani. Pursuant to sections 2 and 3 of UNMIK Regulation 2001/20, the trial panel applied protective measures to "MB" as she was a witness well known to the defendant and had an intimate relationship with him. The ruling contained the decision to exclude the public from the hearing when "MB" was due to provide oral evidence. Lastly, Burim Ramadani was not denied the opportunity to put questions to "MB" during her testimony. Overall, the evidence of "MB" was considered reliable particularly in light of the fact that she was summoned by the police to give evidence, she was reasoned in her account of events and she maintained her evidence despite threats from family members of the defendants.

f. The appeal contained an argument that criminal procedure was breached by the court in the manner in which the testimony of the daughter who survived the shooting was given. The court held there were no violations of criminal procedure by excluding the public during the testimony of the daughter who survived the shooting given she testified by video link. Also, at the main trial, defence counsel had the possibility to examine her.

g. The claim that there was an incomplete determination of the factual situation due to the disappearance of important material evidence was rejected by the court on the basis that this did not prevent the correct establishment of the factual situation. The appeals referred to the paraffin handle taken from F K and Arben Kiqina on 21 August 2001 and to the examination of some exhibits collected on the investigated spots which had to be examined in order to find finger prints or DNA samples.

28. The Supreme Court, in the third instance, affirmed the judgment of the second instance court in its entirety.

Applicant's allegations

29. The general complaint contained in the Referral is that lower courts have made only general findings, assessements and conclusions thereby violating the procedural provisions which require the courts to honestly assess each piece of evidence separately and in relation to other evidence. Therefore, on this basis the Applicant claims the judgment cannot stand.

30. In summary, the Applicant contests the reliability of the evidence used by the lower courts in formulating the judgments and alleges that there was improper consideration of the evidence. The Applicant asserted the following in the Referral:

a. The courts did not corroborate the claims of key witnesses with sufficient evidence such as forensic material.

b. The witness evidence of "MB" should not have been considered by the courts given she had been in a relationship with Burim Ramadani until the time of his arrest and sought revenge on Burim Ramadani for not marrying her.

c. Blerim Kiqina's evidence, which was given high priority by the courts, was contradictory and flawed because he was minor when the murder occurred, he was enticed by the investigators with the opportunity to move abroad and he was threatened by the police to change his evidence.

d. The evidence of the daughter who survived the shootingshould not have been taken into account due to inconsistency with other evidence.

e. Based on Article 157 of the Criminal Procedure Code of Kosovo, the courts should not have declared the defendants guilty based only one piece of evidence.

f. The District Court violated criminal procedure (Articles 354-359 and 403 of the Criminal Procedure Code of Kosovo) because after the appointment of a new judge in the panel during the proceeding, the trial did not re-start from the beginning.

Assessment of admissibility

31. In order to be able to adjudicate the Applicant's Referral, the Court needs to examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution, the Law and the Rules of Procedure.

32. In this relation, the Court refers to Article 113.7 of the Constitution, which stipulates that:

a. *"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."

33. The Constitutional Court notes that it is not a fact verifying Court, the Constitutional Court wishes to reiterate that the correct and complete determination of the factual situation is a full jurisdiction of regular courts and that the role of the Constitutional Court is solely to ensure compliance with the rights guaranteed by the Constitution and other legal instruments and cannot, therefore, act as a "fourth instance court" *(see, mutatis mutandis, i.a., Akdivar v. Turkey, 16 September 1996, R. J. D, 1996-IV, para. 65, also see Resolution on Inadmissibility in Case. NO. KI86/11 – Applicant Milaim Berisha – Request for Constitutional Review of Judgment of the Supreme Court of Kosovo, Rev. nr. 20/09, dated 1.3.2011 – issued by the Court on 5 April 2012).*"

34. From the facts submitted with the Referral, the Applicant has used all legal remedies available, and that the regular courts have taken into account and indeed answered his appeals on the points of law in relation to admission of evidence and their veracity, determination of the factual situation and the flow of the criminal procedure.The Court, therefore, considers that there is nothing in the Referral which indicates that the courts hearing the case lacked impartiality or that proceedings were otherwise unfair.

35. In this regard, the Applicant has not substantiated his claim, explaining how and why a violation has been committed, or furnished evidence to prove that a right guaranteed by the Constitution has been violated.

36. Moreover, the Referral does not indicate that the Supreme Court acted in an arbitrary or unfair manner. It is not within the province of the Constitutional Court to substitute its own assessment of the facts for that of the regular courts and, as a general rule, it is for these courts to assess the evidence before them. The Constitutional Court's task is to ascertain whether the regular court's proceedings were fair in their entirety, including the way in which evidence was taken *(see Judgment ECHR App. No 13071/87 Edwards v. United Kingdom, para 34, of 10 July 1991).*

37. The fact that the applicant is dissatisfied with the outcome of the case cannot of itself raise an arguable claim of a breach of Article 31 [Right to Fair and Impartial Trial] of the Constitution *(see mutatis mutandis Judgment ECHR Appl. No. 5503/02, Mezotur-Tiszazugi Tarsulat vs. Hungary, Judgment of 26 July 2005).*

38. In these circumstances, the Applicant has not substantiated his claim nor the violation of Article 31 of the Constitution [Right to Fair and Impartial Trial] because the facts presented by him do not show in any way that regular courts of the three instances had denied him rights guaranteed by the Constitution. The Referral, therefore, is manifestly ill-founded and should be rejected as inadmissible pursuant to Rule 36 of the Rules.

FOR THESE REASONS

The Court, following deliberations on 15 May 2012, pursuant to Articles 113.7 of the Constitution, Articles 20 of the Law and Rule 56.2 of the Rules, unanimously

DECIDES

I. TO REJECT the Referral as inadmissible,

II. This Decision is to be notified to the Applicant, and

III. This Decision shall be published in accordance with Article 20(4) of the Law and is effective immediately.

Judge Rapporteur **President of the Constitutional Court**

Snezhana Botusharova Prof. Dr. Enver Hasani

KI 78/11 dated 19 June 2012- Constitutional Review of the Judgments of the District Court of Gjilan Judgment P. No. 162/2003 dated 7 April 2005, Supreme Court of Kosovo in Pristina Judgments Ap. No. 393/2006 dated 20 May 2008, Ap. No. 04/2009 dated 16 September 2009 and PKL No. 30/2010 dated 1 February 2011

Case KI 78/11, decision dated 11 June 2012
Keywords: violation of constitutional rights and freedoms, individual referral, manifestly ungrounded referral, criminal procedure law, criminal offence of murder.

The applicants filed the referral pursuant to Article 113.7 of the Constitution of Kosovo, thereby claiming that their constitutional rights and freedoms were violated by judgments of all instances on the Applicant's rights, in which case the Applicants were sentenced to imprisonment on charges, *inter alia*, for the criminal offence of murder. The Applicants claimed that ordinary courts had violated their rights and freedoms guaranteed by the Article 30 of the Constitution of Kosovo.

The Court found that the referral of applicant was inadmissible, pursuant to the rule 36 of the Rules of Procedure, due to the fact that the referral was manifestly ungrounded. The Court further argued its decision by noting that ordinary courts have taken into consideration and have responded to complaints of the Applicants to legal issues concerning acceptance of evidence and their validity, ascertainment of factual situation and criminal proceeding. The Court also reiterated that it is not a court of appeal, or a court of fourth instance, and that the full and complete ascertainment of factual condition is a jurisdiction of ordinary courts. Quoting the decision of the ECtHR in the case of *Mezotur-Tiszazugi Tarsulat v. Hungary,* the Court further argued that the fact that the applicant is discontented with the outcome of the case does not entitle him to make an arguable case for violation of constitutional rights and freedoms. Due to the reasons provided above, the Court decided to find the referral of Applicant as inadmissible.

Pristine, 11 June 2012
Ref. No.: RK252/12

RESOLUTION ON INADMISSIBILITY

in

Case No. KI 78/11

Applicants

Burim Ramadani, Arsim Ramadani, Arben Kiqina and Blerim Kiqina

Constitutional Review of the Judgments of the District Court of Gjilan Judgment P. No. 162/2003 dated 7 April 2005, Supreme Court of Kosovo in Pristina Judgments Ap. No. 393/2006 dated 20 May 2008, Ap. No. 04/2009 dated 16 September 2009 and PKL No. 30/2010 dated 1 February 2011

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

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Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Ivan Čukalović, Judge
Gjyljeta Mushkolaj, Judge and
Iliriana Islami, Judge

The Applicant

1. The Referral was filed by Burim Ramadani, Arsim Ramadani, Arben Kiqina and Blerim Kiqina (collectively, the "Applicants")

through their authorized representatives, Mahmut Halimi from Mitrovica and Haxhi Millaku from Prishtina.

Legal basis

2. Article 113.7 of the Constitution, Article 22 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo of 16 December 2008 (hereinafter: the "Law") and Rule 56(2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the “Rules of Procedure”).

Subject Matter

3. The Applicants filed the Referral on the grounds that the District Court of Gjilan Judgment P.No.162/2003 dated 7 April 2005, and Supreme Court of Kosovo Judgments Ap.No.393/2006 dated 20 May 2008, Ap. No. 04/2009 dated 16 September 2009 and PKL No. 30/2010 dated 1 February 2011 have resulted in the violation of their constitutional rights, namely Article 30 [Rights of the Accused] and Article 31 [Right to a Fair and Impartial Trial].

Proceedings before the Court

4. On 7 June 2011, the Applicants submitted to the Court a Referral registered under no. KI 78/11.

5. Prior to that, on 25 June 2010 Mrs. Sebahate Shala from Krajkovë Gllogovc had filed a Referral based on the authorization of the Organizational Council “Justice for the Kiqina case” which was registered under reference no. KI 46/10.

6. Also prior to that on 29 June 2010, Arben Kiqina filed a Referral with the Court which was registered on the same date under no. KI-52/10.

7. Also prior to that on 29 March 2011, Jeton Sefer Kiqina filed a Referral with the Court which was registered on the same date under no. KI 43/11.

8. On 13 June 2011, Burim Ramadani and Arsim Ramadani submitted to the Court a Referral registered under no. KI 81/11.

9. On 11 November 2010, the President, appointed Judge Snezhana Botusharova as Judge Rapporteur in Referral, KI 46/10. On the same date, the President appointed the Review Panel composed of Judges Robert Carolan (Presiding), Altay Suroy and Ivan Čukalović.

10. On 19 July 2011, the President, by order BK-46/10, joined all of these separate Referrals KI-46/10, KI-52/10, KI-43/11, KI-78/11 and KI-81/11, due to the relationship of one another as to subject matter and as to the persons making the Referrals. . The Judge Rapporteur and the Review Panel remained the same for all the Referrals.

11. On 14 May 2012, due to the temporary unavailability of Judge Ivan Cukalovic, the President appointed himself, Enver Hasani, as a replacement Judge on the Review Panel.

12. On 15 May 2012 the Review Panel considered the Preliminary Report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts according to the Applicants' documents filed with the Court

13. In the evening of 20 August 2001, H H together with his wife and children attended a wedding in the village of Baicë. After leaving the wedding, later that night his vehicle was ambushed and he, his wife, his son and two daughters were shot to death. One young daughter survived.

14. The following day Blerim Kiqina and Jeton Kiqina met Burim Ramadani, Arsim Ramadani, Arben Kiqina and another outside the Era restaurant in Gllogoc. Burim Ramadani told him that the action went very well and that S H had given or was going to give him money. There was a discussion about how to split the money.

15. On 4 July 2002, Blerim Kiqina turned himself into the police station. He was then arrested, advised of his rights and then interviewed. Blerim Kiqina waived his rights to silence and to legal counsel and continued with the interview.

16. On 7 July 2002, when Blerim Kiqina was taken before the investigating judge and he repeated almost verbatim what he had told the police in the interview on 4 July 2002.

17. Notwithstanding the evidence provided on 4 and 7 July 2002, Blerim Kiqina, on 11 October 2002, subsequently retracted his account of events on the basis that he had fabricated the story because he was allegedly manipulated during the interview process.

18. Following indictment and subsequent trial in the District Court of Gjilan (Judgment P. No. 162/03 dated 7 April 2005) Burim Ramadani, Arben Kiqina, Arsim Ramadani, Blerim Kiqina and others were convicted of murdering the five members of the H family.

19. All defendants filed appeals against the District Court of Gjilan judgment P. No. 162/2003 dated 7 April 2005. After a session held on 20 May 2008 the Supreme Court of Kosovo, in the second instance, handed down its judgment (AP - KZ 393/2006) rejecting the appeals of Burim Ramadani, Arsim Ramadani, Arben Kiqina and Blerim Kiqina on the basis of inadmissibility. The Supreme Court supported the first degree judgment in respect of the four appellants. However, the other defendants were released due to insufficient evidence that they carried out the criminal offences with which they were charged.

20. The appeals filed in respect of Burim Ramadani, Arsim Ramadani and Arben Kiqina challenged the judgment handed down by the Supreme Court in the second instance on the basis that there were: essential violations of the provisions of criminal procedure (including substitution of a Judge in the trial panel); erroneous and incomplete determination of the factual situation; violation of the criminal law and the incorrect decision on the punishment. The Supreme Court examined the procedural and substantive aspects contained in the appeals.

21. Unsatisfied with the outcome of the appeal, the Applicants filed a further appeal against the Supreme Court judgment. The Supreme Court, in a panel of third instance composition, rejected

the complaints as inadmissible (judgment API.No. 04/2009 dated 16 September 2009).

22. One of the first points raised in that appeal concerned the composition of the trial panel of the District Court (the first instance court). During the trial, an international judge on the panel was replaced by another international judge. The Applicant argued that this would have allowed the other judges to have influence on the new judge and the trial should have recommenced from the start. He argued that the Supreme Court in the second instance rejected that there was a violation of the Criminal Procedure Code.

23. The Supreme Court, in the third instance, rejected this point of appeal as ungrounded based on Article 305 of the Law on Criminal Procedure and stated: *"At the time the trial panel applied article 305 of the Law on criminal Procedure which in case of substitution of a Judge with the exception of the Presiding of the Panel, offers the possibility to the panel to recommence judicial deliberation from the beginning or to decide to resume it and read previous deliberation minutes. The new Judge has taken all trial minutes and parties accepted and so all the records were read…".*

24. Furthermore, the replacement of the international Judge on the trial panel was permitted by law and the conditions for replacement were met. In this regard the Constitutional Court refers to the case of P.K. v. Finland, Application no. 37442/97, where the European Court of Human Rights (ECtHR), sitting on 9 July 2002, decided that notwithstanding the replacement of a Judge during the course of the trial of P.K. *"The Court's task is to ascertain whether the proceedings as a whole, including the way in which the evidence was taken, were fair. … Even so, the Court considers that in the specific circumstances of the present case this defect does not alone constitute a violation of Article 6. First, while the presiding judge was changed the three lay judges remained the same throughout the proceedings. Secondly, the credibility of the witness in question has at no stage been challenged, nor is there any indication in the file justifying doubts about her credibility. In these circumstances the fact that the new presiding judge had at his disposal the minutes of the session at which the witness had been heard (cf.*

Karjalainen v. Finland, application no. 30519/96, Commission decision of 16 April 1998, unreported) to a large extent compensates for the lack of the immediacy of the proceedings. Thirdly, the applicant's conviction was not based only on the evidence of witness H. Finally, there is nothing suggesting that the presiding judge was changed in order to affect the outcome of the case or for any other improper motives. ... The conclusions drawn by the domestic court in the present case do not appear arbitrary so as to raise an issue under Article 6..." And further, other case law of the ECtHR indicates that the mere fact of the replacement of a Judge during the course of a hearing, of itself, does not amount to a violation of Article 6 of the Convention (*see Barbera, Messegue and Jabardo v. Spain, Application no. 10590/83, dated6 December 1988, Moiseyev v. Russia, (Application no. 62936/00), dated 9 October 2008, and Ocalan v. Turkey, (Application no. 46221/99), dated 15 may 2005*.) Bearing all that in mind this Court is of the view that the Supreme Court was correct in finding no violation of the right to a fair and impartial on account of the replacement of the international Judge.

25. In respect of the appeal of Blerim Kiqina dated 2 September 2008, the Supreme Court determined that the appeal was filed outside of the cases foreseen by the law pursuant to Article 391 of the Law on Criminal Procedure. Furthermore, the Supreme Court considered the legal remedy proposed in the appeal was not permitted under the law. For these reasons, the Supreme Court dismissed the appeal according to Article 383 of the Law on Criminal Procedure.

26. Another substantial part of the appeal of the Applicants addressed to the Supreme Court as a third instance related to the admissibility of the evidence used by the lower courts. Both the verdicts of the District Court and the Supreme Court, in the second instance, largely based the decisions on the statements given by: Blerim Kiqina in the investigating stage, witnesses "MB" and the daughter who survived the shooting. All these sources of evidence were challenged in the appeal (and repeated again in the Referral). The Supreme Court by judgment Ap. No. 04/2009 dated 16 September 2009rejected the appeal and noted the following:

a. Having examined the video recordings of the Blerim Kiqina witness interviews, his confession was genuine and there was no reason to believe that he fabricated the evidence. The detailed account of the murders could only have come from somebody who had intimate knowledge of the event.

b. Having scrutinized the statements of Blerim Kiqina dated 4 July 2002, 7 July 2002 and 11 October 2002, some inconsistencies were identified particularly in relation to Blerim Kiqina's movements on 20 August 2001. It was held that his entire testimony cannot and should not be discounted simply because it is not reliable in part. Having considered the admissible portions of his evidence, it was abundantly clear that Blerim Kiqina was placed at the scene at the relevant time and carried out the offences he confessed to have committed. The credibility of the statement given by Blerim Kiqina given before the investigating judge on 7 July 2002 was corroborated by the motives of his confession, the accuracy and consistency of his statements, the absence of significant discrepancies and the inconsistency of the alibi of the appellants.

c. The judgments also took into account the corroborative evidence of the confession such as Blerim Kiqina's accurate description of the other accused, the existence of the compound from where the weapons were sourced, the timing of the H family's departure from the wedding, the sequence of events on the bridge and the position of the car at the bridge. It was corroborated by the evidence of the daughter who survived the shooting, witness evidence of "MB", RK, SK, EK, SK, GK, YK and BK, telephone call records as well as ballistics examinations of the bullets which verified Blerim Kiqina's evidence on the type of gun used to commit the crime.

d. The claim that the evidence of "MB" was inadmissible was rejected on the basis that it was ungrounded. "MB" gave evidence that Burim Ramadani disclosed to

her that he had carried out the murders. It was argued in the appeal that: 1) "MB" was not advised of the right not to testify given she had cohabited with Burim Ramadani; 2) the public were unlawfully excluded from her oral testimony during the hearing and the panel did not issue a written ruling regarding the protective measures given to "MB"; and 3) Burim Ramadani was denied the right to put questions to "MB" resulting in a violation of the relevant provisions of the Criminal Procedure Code].

e. In response to these claims, the court noted that the exemption to testify only applied to spouses and that "MB" was not exempt as she was not the spouse of Burim Ramadani. Pursuant to sections 2 and 3 of UNMIK Regulation 2001/20, the trial panel applied protective measures to "MB" as she was a witness well known to the defendant and had an intimate relationship with him. The ruling contained the decision to exclude the public from the hearing when "MB" was due to provide oral evidence. Lastly, Burim Ramadani was not denied the opportunity to put questions to "MB" during her testimony. Overall, the evidence of "MB" was considered reliable particularly in light of the fact that she was summoned by the police to give evidence, she was reasoned in her account of events and she maintained her evidence despite threats from family members of the defendants.

f. The appeal contained an argument that criminal procedure was breached by the court in the manner in which the testimony of the daughter who survived the shooting was given. The court held there were no violations of criminal procedure by excluding the public during the testimony of the daughter who survived the shooting given she testified by video link. Also, at the main trial, defence counsel had the possibility to examine her.

g. The claim that there was an incomplete determination of the factual situation due to the disappearance of

> important material evidence was rejected by the court on the basis that this did not prevent the correct establishment of the factual situation. The appeals referred to the paraffin handle taken from F K and Arben Kiqina on 21 August 2001 and to the examination of some exhibits collected on the investigated spots which had to be examined in order to find finger prints or DNA samples.

27. The Supreme Court, in the third instance, affirmed the judgment of the second instance court in its entirety.

28. The Applicants considered the aforementioned judgment to be "extremely unjust and not based on credible and convincing evidence". Therefore, they submitted a request for the protection of legality from the Supreme Court. However, by judgment PKL.No. 30/10 dated 1 February 2011, the Supreme Court once again rejected the request.

Applicants' allegations

29. The general complaint contained in the Referral is that lower courts have made only general findings, assessments and conclusions thereby violating the procedural provisions which require the courts to honestly assess each piece of evidence separately and in relation to other evidence. Therefore, on this basis the Applicants claim the judgments cannot stand.

30. In summary, the Applicants contest the reliability of the evidence used by the lower courts in formulating the judgments and allege that there was improper consideration of the evidence. The Applicants asserted the following in the Referral:

    a. The courts did not corroborate the claims of key witnesses with sufficient evidence such as forensic material.

    b. The witness evidence of "MB" should not have been considered by the courts given she had been in a relationship with Burim Ramadani until the time of his arrest and sought revenge on Burim Ramadani for not marrying her.

c. Blerim Kiqina's evidence, which was given high priority by the courts, was contradictory and flawed because he was minor when the murder occurred, he was enticed by the investigators with the opportunity to move abroad and he was threatened by the police to change his evidence.

d. The evidence of the daughter who survived the shooting should not have been taken into account due to inconsistency with other evidence.

e. Based on Article 157 of the CPCK, the courts should not have declared the defendants guilty based only one piece of evidence.

f. The District Court violated criminal procedure (Articles 354-359 and 403 of the Criminal Procedure Code of Kosovo) because after the appointment of a new judge in the panel during the proceeding, the trial did not re-start from the beginning.

Assessment of admissibility

31. In order to be able to adjudicate the Applicant's Referral, the Court needs to examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution, the Law and the Rules of Procedure

32. In this relation, the Court refers to Article 113.7 of the Constitution, which stipulates that:

    a. *"Individuals are authorized to refer violations by public authorities of their individual rights andfreedoms guaranteed by the Constitution, but only after exhaustion of all legal remedies provided by law."*

33. In the instant case, the Court notes that the Applicants have complied with the requirement set out in Article 113.7 of the Constitution.

34. The Constitutional Court also notes that it is not a fact verifying Court, the Constitutional Court wishes to reiterate that the correct and complete determination of the factual situation is a full jurisdiction of regular courts and that the role of the Constitutional Court is solely to ensure compliance with the rights guaranteed by the Constitution and other legal instruments and cannot, therefore, act as a "fourth instance court" *(see, mutatis mutandis, i.a., Akdivar v. Turkey, 16 September 1996, R. J. D, 1996-IV, para. 65, also see Resolution on Inadmissibility in Case. NO. KI-86/11 – Applicant Milaim Berisha – Request for Constitutional Review of Judgment of the Supreme Court of Kosovo, Rev. nr. 20/09, dated 1.3.2011 – issued by the Court on 5 April 2012).*"

35. From the facts submitted with the Referral, the Applicants have used all legal remedies available, and that the regular courts have taken into account and indeed answered their appeals on the points of law in relation to admission of evidence and their veracity, determination of the factual situation and the flow of the criminal procedure. The Court, therefore, considers that there is nothing in the Referral which indicates that courts hearing the case lacked impartiality or that proceedings were otherwise unfair.

36. In this regard, the Applicants have not substantiated their claims, explaining how and why a violation has been committed, or furnished evidence to prove that a right guaranteed by the Constitution has been violated.

37. Moreover, the Referral does not indicate that the Supreme Court acted in an arbitrary or unfair manner. It is not within the province of the Constitutional Court to substitute its own assessment of the facts for that of the regular courts and, as a general rule, it is for these courts to assess the evidence before them. The Constitutional Court's task is to ascertain whether the regular court's proceedings were fair in their entirety, including the way in which evidence was taken *(see Judgment ECHR App. No 13071/87 Edwards v. United Kingdom, para 34, of 10 July 1991).*

38. The fact that the applicants are dissatisfied with the outcome of the case cannot of itself raise an arguable claim of a breach of

Articles 30 [Rights of the Accussed] & 31 [Right to Fair and Impartial Trial] of the Constitution *(see mutatis mutandis Judgment ECHR Appl. No. 5503/02, Mezotur-Tiszazugi Tarsulat vs. Hungary, Judgment of 26 July 2005)*.

39. In these circumstances, the Applicants have not substantiated their claims nor the violation of Articles 30 [Rights of the Accussed] & 31 of the Constitution [Right to Fair and Impartial Trial], because facts presented by them do not show in any way that regular courts of the three instances had denied them rights guaranteed by the Constitution. Therefore, the Referral registered under no.KI-78/11 is manifestly ill-founded and should be rejected as inadmissible pursuant to Rule 36 of the Rules.

FOR THESE REASONS

The Court, following deliberations on 15 May 2012, pursuant to Articles 113.7 of the Constitution, Articles 20 of the Law and Rule 56.2 of the Rules, unanimously

DECIDES

I. TO REJECT the Referral as inadmissible;

II. This Decision is to be notified to the Applicant; and

III. This Decision shall be published in accordance with Article 20(4) of the Law and is effective immediately.

Judge Rapporteur **President of the Constitutional Court**

Snezhana Botusharova Prof. Dr. Enver Hasani

KI 81/11 dated 19 June 2012 - Request for review of the District Court of Gjilan Judgment P. No. 162/2003 dated 7 April 2005, Supreme Court of Kosovo in Pristina Judgments Ap. No. 393/2006 dated 20 May 2008, Ap. No. 04/2009 dated 16 September 2009 and PKL No. 30/2010 dated 1 February 2011

Case KI 81/11, decision dated 11 June 2012.
Keywords: violation of constitutional rights and freedoms, individual referral, manifestly ungrounded referral, criminal procedure law, criminal offence of murder.

The applicants filed the referral pursuant to Article 113.7 of the Constitution of Kosovo, thereby claiming that her constitutional rights and freedoms were violated by judgments of all instances on the Applicant's rights, in which case the Applicant was sentenced to imprisonment on charges, *inter alia*, for the criminal offence of murder. The Applicant claimed that ordinary courts at all instances had violated their rights and freedoms guaranteed by Articles 30, 31, 33 of the Constitution of Kosovo, and Article 5 (1), Article 6 (1) (2) and Article 14 of the European Convention on Human Rights.
The Court found that the referral of applicants was inadmissible, pursuant to the rule 36 of the Rules of Procedure, due to the fact that the referral was manifestly ungrounded. The Court further argued its decision by noting that ordinary courts have taken into consideration and have responded to complaints of the Applicants to legal issues concerning acceptance of evidence and their validity, ascertainment of factual situation and criminal proceeding. The Court also reiterated that it is not a court of appeal, or a court of fourth instance, and that the full and complete ascertainment of factual condition is a jurisdiction of ordinary courts. Quoting the decision of the ECtHR in the case of *Mezotur-Tiszazugi Tarsulat v. Hungary,* the Court further argued that the fact that the applicant is discontented with the outcome of the case does not entitle him to make an arguable case for violation of constitutional rights and freedoms. Due to the reasons provided above, the Court decided to find the referral of Applicant as inadmissible.

Pristine,11 June 2012
Ref. No.: RK253/12

RESOLUTION ON INADMISSIBILITY

in

Case No. KI 81/11

Applicants

Burim Ramadani, Arsim Ramadani

Request for review of the District Court of Gjilan Judgment P. No. 162/2003 dated 7 April 2005, Supreme Court of Kosovo in Pristina Judgments Ap. No. 393/2006 dated 20 May 2008, Ap. No. 04/2009 dated 16 September 2009 and PKL No. 30/2010 dated 1 February 2011

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Enver Hasani, President
Kadri Kryeziu, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Ivan Čukalović, Judge
Gjyljeta Mushkolaj, Judge and
Iliriana Islami, Judge

The Applicant

1. The Referral was filed by Burim Ramadani and Arsim Ramadani (collectively, the "Applicants") through their authorized representative, Vahide Braha, a lawyer from Prishtina.

2. The facts and allegations contained in this Referral registered under number KI81/11 are substantially identical to the facts and allegations set out in the Referrals KI46/10, KI52/10, KI43/11 and KI78/11.

Legal basis

3. Article 113.7 of the Constitution, Article 22 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo of 16 December 2008 (hereinafter: the "Law") and Rule 56(2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the "Rules of Procedure").

Subject matter

4. The Applicants filed the Referral on the grounds that the District Court of Gjilan Judgment P.No.162/2003 dated 7 April 2005, and the Supreme Court of Kosovo Judgments Ap.No.393/2006 dated 20 may 2008, Ap. No. 04/2009 dated 16 September 2009 and PKL.No. 30/2010 dated 1 February 2011 have resulted in the violation of their constitutional rights, namely Article 30 [Rights of the Accused], Article 31 [Right to a Fair and Impartial Trial], Article 33 [The Principle of Legality and Proportionality in Criminal Cases] and Article 5 (1), Article 6 (1) (2) and Article 14 of the European Convention on Human Rights (hereinafter: the "Convention").

Proceedings before the Court

5. On 13 June 2011, the Applicants submitted to the Court a Referral registered under no. KI81/11.

6. Prior to that, on 25 June 2010 Mrs. Sebahate Shala from Krajkovë Gllogovc had filed a Referral based on the authorization of the Organizational Council "Justice for the Kiqina case" which was registered under reference no. KI46/10.

7. Also, prior to that, on 29 June 2010 Arben Kiqina filed a Referral with the Court which was registered on the same date under no. KI52/10.

8. Also, prior to that, on 29 March 2011 Jeton Sefer Kiqina filed a Referral with the Court which was registered on the same date under no. KI43/11.

9. Also, prior to that, on 7 June 2011, Burim Ramadani, Arsim Ramadani, Arben Kiqina and Blerim Kiqina submitted to the Court a Referral registered under no. KI78/11.

10. On 11 November 2010, the President, appointed Judge Snezhana Botusharova as Judge Rapporteur in Referral, KI46/10. On the same date, the President appointed the Review Panel composed of Judges Robert Carolan (Presiding), Altay Suroy and Ivan Čukalović.

11. On 19 July 2011, the President, by order BK-46/10, joined all of these separate Referrals KI-46/10, KI-52/10, KI-43/11, KI-78/11 and KI-81/11, due to the relationship of one another as to subject matter and as to the persons making the Referrals. . The Judge Rapporteur and the Review Panel remained the same for all the Referrals.

12. On 14 May 2012, due to the temporary unavailability of Judge Ivan Čukalović, the President appointed himself, Enver Hasani, as a replacement Judge on the Review Panel.
13. On 15 May 2012 the Review Panel considered the Preliminary Report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts according to the Applicants' documents filed with the Court

14. In the evening of 20 August 2001, H H together with his wife and children attended a wedding in the village of Baicë. After leaving the wedding, later that night his vehicle was ambushed and he, his wife, his son and two daughters were shot to death. One young daughter survived.

15. The following day Blerim Kiqina and Jeton Kiqina met Burim Ramadani, Arsim Ramadani, Arben Kiqina and another outside the Era restaurant in Gllogoc. Burim Ramadani told him that the action went very well and that S H had given or was going to give him money. There was a discussion about how to split the money.

16. On 4 July 2002, Blerim Kiqina turned himself into the police station. He was then arrested, advised of his rights and then interviewed. Blerim Kiqina waived his rights to silence and to legal counsel and continued with the interview.

17. On 7 July 2002, when Blerim Kiqina was taken before the investigating judge and he repeated almost verbatim what he had told the police in the interview on 4 July 2002.

18. Notwithstanding the evidence provided on 4 and 7 July 2002, Blerim Kiqina on 11 October 2002, subsequently retracted his account of events on the basis that he had fabricated the story because he was allegedly manipulated during the interview process.

19. Following indictment and subsequent trial in the District Court of Gjilan (Judgment P. No. 162/03 dated 7 April 2005), Burim Ramadani, Arben Kiqina, Arsim Ramadani, Blerim Kiqina and others were convicted of murdering the five members of the H family.

20. All defendants filed appeals against the District Court of Gjilan Judgment P.No. 162/2003 dated 7 April 2005. After a session held on 20 May 2008 the Supreme Court of Kosovo, in the second instance, handed down its judgment (AP - KZ 393/2006) rejecting the appeals of Burim Ramadani, Arsim Ramadani, Arben Kiqina and Blerim Kiqina on the basis of inadmissibility. The Supreme Court supported the first degree judgment in respect of the four appellants. However, the other defendants were released due to insufficient evidence that they carried out the criminal offences with which they were charged.

21. The appeals filed in respect of Burim Ramadani, Arsim Ramadani and Arben Kiqina challenged the judgment handed down by the Supreme Court in the second instance on the basis that there were: essential violations of the provisions of criminal procedure (including substitution of a Judge in the trial panel); erroneous and incomplete determination of the factual situation; violation of the criminal law and the incorrect decision on the punishment. The Supreme Court examined the procedural and substantive aspects contained in the appeals.

22. Unsatisfied with the outcome of the appeal, the Applicants filed a further appeal against the Supreme Court judgment. The Supreme Court, in a panel of third instance composition, rejected the complaints as inadmissible (judgment API.No. 04/2009 dated 16 September 2009).
23. One of the first points raised in that appeal regarded the composition of the trial panel of the District Court (the first instance court). During the trial, an international judge on the panel was replaced by another international judge. The Applicant argued that this would have allowed the other judges to have influence on the new judge and the trial should have recommenced from the start. They argued that the Supreme Court in the second instance rejected that there was a violation of the Criminal Procedure Code.

24. The Supreme Court, in the third instance, rejected this point of appeal as ungrounded based on Article 305 of the Law on Criminal Procedure and stated: *"At the time the trial panel applied article 305 of the Law on Criminal Procedure which in case of substitution of a Judge with the exception of the Presiding of the Panel, offers the possibility to the panel to recommence judicial deliberation from the beginning or to decide to resume it and read previous deliberation minutes. The new Judge has taken all trial minutes and parties accepted and so all the records were read".*

25. Furthermore, the replacement of the international Judge on the trial panel was permitted by law and the conditions for replacement were met. In this regard the Constitutional Court refers to the case of P.K. v. Finland, Application no. 37442/97, where the European Court of Human Rights (ECtHR), sitting on 9 July 2002, decided that notwithstanding the replacement of a Judge during the course of the trial of P.K. *"The Court's task is to ascertain whether the proceedings as a whole, including the way in which the evidence was taken, were fair. ... Even so, the Court considers that in the specific circumstances of the present case this defect does not alone constitute a violation of Article 6. First, while the presiding judge was changed the three lay judges remained the same throughout the proceedings. Secondly, the credibility of the witness in question has at no stage been challenged, nor is there any indication in the file justifying*

doubts about her credibility. In these circumstances the fact that the new presiding judge had at his disposal the minutes of the session at which the witness had been heard (cf. Karjalainen v. Finland, application no. 30519/96, Commission decision of 16 April 1998, unreported) to a large extent compensates for the lack of the immediacy of the proceedings. Thirdly, the applicant's conviction was not based only on the evidence of witness H. Finally, there is nothing suggesting that the presiding judge was changed in order to affect the outcome of the case or for any other improper motives. ... The conclusions drawn by the domestic court in the present case do not appear arbitrary so as to raise an issue under Article 6..." And further, other case law of the ECtHR indicates that the mere fact of the replacement of a Judge during the course of a hearing, of itself, does not amount to a violation of Article 6 of the Convention (*see Barbera, Messegue and Jabardo v. Spain, Application no. 10590/83, dated6 December 1988, Moiseyev v. Russia, (Application no. 62936/00), dated 9 October 2008, and Ocalan v. Turkey, (Application no. 46221/99), dated 15 may 2005*.) Bearing all that in mind this Court is of the view that the Supreme Court was correct in finding no violation of the right to a fair and impartial on account of the replacement of the international Judge.

26. Another substantial part of the appeal of the Applicants addressed to the Supreme Court as a third instance related to the admissibility of the evidence used by the lower courts. Both the verdicts of the District Court and the Supreme Court, in the second instance, largely based the decisions on the statements given by: Blerim Kiqina in the investigating stage, witnesses "MB" and the daughter who survived the shooting. All these sources of evidence were challenged in the appeal (and repeated again in the Referral). The Supreme Court by judgment Ap. No. 04/2009 dated 16 September 2009 rejected the appeal and noted the following:

    a. Having examined the video recordings of the Blerim Kiqina witness interviews, his confession was genuine and there was no reason to believe that he fabricated the evidence. The detailed account of the murders could only have come from somebody who had intimate knowledge of the event.

b. Having scrutinized the statements of Blerim Kiqina dated 4 July 2002, 7 July 2002 and 11 October 2002, some inconsistencies were identified particularly in relation to Blerim Kiqina's movements on 20 August 2001. It was held that his entire testimony cannot and should not be discounted simply because it is not reliable in part. Having considered the admissible portions of his evidence, it was abundantly clear that Blerim Kiqina was placed at the scene at the relevant time and carried out the offences he confessed to have committed. The credibility of the statement given by Blerim Kiqina given before the investigating judge on 7 July 2002 was corroborated by the motives of his confession, the accuracy and consistency of his statements, the absence of significant discrepancies and the inconsistency of the alibi of the appellants.

c. The judgments also took into account the corroborative evidence of the confession such as Blerim Kiqina's accurate description of the other accused, the existence of the compound from where the weapons were sourced, the timing of the H family's departure from the wedding, the sequence of events on the bridge and the position of the car at the bridge. It was corroborated by the evidence of the daughter who survived the shooting, witness evidence of "MB", RK, SK, EK, SK, GK, YK and BK, telephone call records as well as ballistics examinations of the bullets which verified Blerim Kiqina's evidence on the type of gun used to commit the crime.

d. The claim that the evidence of "MB" was inadmissible was rejected on the basis that it was ungrounded. "MB" gave evidence that Burim Ramadani disclosed to her that he had carried out the murders. It was argued in the appeal that: 1) "MB" was not advised of the right not to testify given she had cohabited with Burim Ramadani; 2) the public were unlawfully excluded from her oral testimony during the hearing and the panel did not issue a written ruling regarding the protective measures given to "MB"; and 3) Burim

Ramadani was denied the right to put questions to "MB" resulting in a violation of the relevant provisions of the Criminal Procedure Code.

e. In response to these claims, the court noted that the exemption to testify only applied to spouses and that "MB" was not exempt as she was not the spouse of Burim Ramadani. Pursuant to sections 2 and 3 of UNMIK Regulation 2001/20, the trial panel applied protective measures to "MB" as she was a witness well known to the defendant and had an intimate relationship with him. The ruling contained the decision to exclude the public from the hearing when "MB" was due to provide oral evidence. Lastly, Burim Ramadani was not denied the opportunity to put questions to "MB" during her testimony. Overall, the evidence of "MB" was considered reliable particularly in light of the fact that she was summoned by the police to give evidence, she was reasoned in her account of events and she maintained her evidence despite threats from family members of the defendants.

f. The appeal contained an argument that criminal procedure was breached by the court in the manner in which the testimony of the daughter who survived the shooting was given. The court held there were no violations of criminal procedure by excluding the public during the testimony of the daughter who survived the shooting given she testified by video link. Also, at the main trial, defence counsel had the possibility to examine her.

g. The claim that there was an incomplete determination of the factual situation due to the disappearance of important material evidence was rejected by the court on the basis that this did not prevent the correct establishment of the factual situation. The appeals referred to the paraffin handle taken from F K and Arben Kiqina on 21 August 2001 and to the examination of some exhibits collected on the

investigated spots which had to be examined in order to find finger prints or DNA samples.

27. The Supreme Court, in the third instance, affirmed the judgment of the second instance court in its entirety.

28. The Applicants considered the aforementioned judgment to be "extremely unjust and not based on credible and convincing evidence". Therefore, they submitted a request for the protection of legality from the Supreme Court. However, by judgment PKL.No. 30/10 dated 1 February 2011, the Supreme Court once again rejected the request.

Applicants' allegations

29. The general complaint in the Referral is that lower courts have made only eneral findings. Assessments and conclusions thereby violating the procedural provisions which require the courts to honestly assess each piece of evidence separately and in relation to one another. Therefore, on this basis the Applicants claim the judgments cannot stand.

30. In summary, the Applicants contest the reliability of the evidence used by the lower courts in formulating the judgments and allege that there was improper consideration of the evidence. The Applicants asserted the following in the Referral:

    a. The Applicants claim that decisions of the regular courts were taken in contravention with Articles 31 and 33 of the Constitution and in contravention with Article 6 (2), Article 14 of the Convention, thus violating the Applicant right to a fair and impartial trial.

    b. The Applicants claim that all decisions of the regular courts in four instances were taken by commission of procedural violations by pressurizing the witnesses, manipulating and giving promises to witnesses in exchange for their statements and by not assessing the proof which is favourable for the accused and by not corroborating accusatory evidence by scientific proof.

c. The Applicants consider that in their case, there is a violation of Article 152.1 and Article 155 paragraph 1 item 3 of the Criminal Procedure Code of Kosovo in relation to the interview of Blerim Kiqina, dated 7 July 2002, before the investigating judge and in absence of the defence lawyer and of the accused.

d. The Applicants claim that in the instant case basic human and constitutional rights were violated, as well as Article 5.1 of the Convention.

e. The Applicant claims that the international panel which dealt with their case was not independent and impartial, as is required by Article 6.1 of the Convention, and that the presumption of innocence was not respected, as is guaranteed by Article 6(2) of the Convention and Article 3 paragraph 1.2 of the Criminal Procedure Code of Kosovo.

f. The Applicants claim that decisions of the regular courts are entirely based on inadmissible evidence, because the statements by Blerim Kiqina dated 4 July 2002 and 7 July 2002 and of the witness "MB" who was in conflict of interest with the accused Burim Ramadani are legally inadmissible.

g. The Applicants claim that the statements of the co-accused Blerim Kiqina based on Article 157 paragraphs 1 and 2 of the Criminal Procedure Code of Kosovo cannot be used as evidence to corroborate the guilt of the accused precisely the witness himself is co-accused and that the regular courts in their decisions presumed that the co-accused wilfully gave the incriminating statement and that only on the basis of the said statement the Applicants were found guilty.

h. The Applicants claim that the assertions given before the police or the public prosecutor does not enjoy the epithet of judicial assertion. The assertion would be considered as judicial assertion, when it is given i the session for confirmation of the indictment or during the judicial deliberation and is accepted by the court

as such. The Applicants have never admitted their guilt.

i. The Applicants ask from the Constitutional Court to ascertain that the statements of Blerim Kiqina dated 7 July 2002, and that of the witness "MB" dated 6 November 2002, as indirect evidence and the minutes dated 27 may 2004 as inadmissible proof or evidence, because based on the said evidence Burim Ramadani, Arsim Ramadani and Arben Kiqina were sentenced to 90 years of imprisonment.

j. The Applicants claim that 98 % percent of Blerim Kiqina statement was eliminated, whereby seven (7) of the other accused were acquitted precisely based on the said statement including the first of the accused S K, who allegedly enticed the Applicants. The Applicants claim that the motive of their indictment was based on the allegation that they were enticed by S K.

k. The Applicants also claim that the EULEX International Panel in spite of all legal violation that accompanied their case in the end rejected the request for the protection of legality and corroborated the guilt and the sentence of the applicants.

Assessment of admissibility

31. In order to be able to adjudicate the Applicant's Referral, the Court needs to examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution, the Law and the Rules of Procedure.

32. In this relation, the Court refers to Article 113.7 of the Constitution, which stipulates that:

a. "*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".

33. The Constitutional Court notes that it is not a fact verifying Court, the Constitutional, the Court wishes to reiterate that the correct and complete determination of the factual situation is a full jurisdiction of regular courts, and that the role of the Constitutional Court is solely to ensure compliance with the rights guaranteed by the Constitution and other legal instruments and cannot, therefore, act as a "fourth instance court" (*see, mutatis mutandis, i.a., Akdivar v. Turkey, 16 September 1996, R.J.D, 1996-IV, para. 65, also see Resolution on Inadmissibility in Case. NO. KI-86/11 – Applicant Milaim Berisha – Request for Constitutional Review of Judgment of the Supreme Court of Kosovo, Rev.nr.20/09, dated 1.3.2011 – issued by the Court on 5 April 2012*).

34. From the facts submitted with the Referral, the Applicants have used all legal remedies available, and that the regular courts have taken into account and indeed answered their appeals on the points of law in relation to admission of evidence and their veracity, determination of the factual situation and the flow of the criminal procedure. The Court, therefore, considers that there is nothing in the Referral which indicates that the courts hearing the case lacked impartiality or that proceedings were otherwise unfair.

35. In this regard, the Applicants have not substantiated their claims, explaining how and why a violation was committed, or furnished evidence to prove that a right guaranteed by the Constitution has been violated.

36. Moreover, the Referral does not indicate that the Supreme Court acted in an arbitrary or unfair manner. It is not within the province of the Constitutional Court to substitute its own assessment of the facts for that of the regular courts and, as a general rule, it is for these courts to assess the evidence before them. The Constitutional Court's task is to ascertain whether the regular courts proceedings were fair in their entirety, including the way in which the evidence was taken (*see Judgment ECHR App. No 13071/87 Edwards v. United Kingdom, para 34. Of 10 July 1991*).

37. The fact that the Applicants are dissatisfied with the outcome of the case cannot itself raise an arguable breach of Article 31 [Right to Fair and Impartial Trial] of the Constitution in connection with Article 6 (1) (2) of the Convention, because the facts presented by them do not show in any way that regular courts of the three instances had denied them rights guaranteed by the Constitution. Therefore, the Referral registered under no. KI-81/11 is manifestly ill-founded and should be rejected as inadmissible pursuant to Rule 36 of the Rules.

FOR THESE REASONS

The Court, following deliberations on 15 May 2012, pursuant to Articles 113.7 of the Constitution, Articles 20 of the Law and Rule 56.2 of the Rules, unanimously

DECIDES

I. TO REJECT the Referral as inadmissible;

II. This Decision is to be notified to the Applicant; and

III. This Decision shall be published in accordance with Article 20(4) of the Law and is effective immediately.

Judge Rapporteur **President of the Constitutional Court**

Snezhana Botusharova Prof. Dr. Enver Hasani

KO 45/12 and KO 46/12 dated 27 June 2012- Request of Liburn Aliu and 11 other Members of the Assembly of the Republic of Kosovo for constitutional assessment of the Law on the Village of Hoçë e Madhe / Velika Hoča and the Law on the Historic Centre of Prizren

Cases KO 45/12 and KO 46/12, Decision dated 25 June 2012.
Keywords: equality before the law, discrimination, request of the deputies of the Assembly, municipal committees, marginalization, principle of secularity and neutrality, presumption of the constitutionality of laws, religious and cultural heritage, local self-governance.

The Applicants filed Referral based on Article 113.5 of the Constitution, alleging that Article 4.3.3 of the Law on the Village of Hoçë e Madhe, Article 14.1.2 of the Law on the Historic Centre of Prizren, are in contradiction with the Constitution. The Applicants stated that Article 4.3.3 of the Law on the Village of Hoçë e Madhe was in contradiction with the principle of secularism and neutrality in the religious matters and that creates privileges to a religious community, by marginalizing and discriminating other religious communities and the citizens who do not have religious orientation or belief. The Applicants filed same arguments regarding the Article 14.1.2 of the Law on the Historic Centre of Prizren.

Article 4 of the Law on the Village of Hoce e Madhe provides for a Committee to be established by the Municipality of Rahovec. The abovementioned committee will be composed of (5) members, where one of them is selected by the Serbian Orthodox Church and must be a resident of the village of Hoçë e Madhe. The Applicants stated that it is necessary that the composition of the Committee for the village of Hoçë e Madhe does not include any member, selected by the Serbian Orthodox Church, because it automatically creates a privileged position for it and in that case *among the other* is violated Article 24 [Equality before the Law], of the Constitution, openly creating inequality for the Serbian Orthodox Church towards the members of other religious communities and persons that do not belong to any religious orientation.

Article 14.1.2 of the Law on Historic Centre of Prizren, foresees the establishment of the Cultural Heritage Committee by the Municipality of Prizren. The above-mentioned Committee is composed of seven (7) members, where the Islamic Community, the Serbian Orthodox Church and the Catholic Church select a member for representation in that Committee. Regarding the Article 24 [Equality Before the Law], the Applicants stated that the inclusion of three religious communities in the Law, clearly favours them compared to other religious communities and to citizens without religious affiliation and *inter alia* makes violation of Article 24 of the Constitution. In order to substantiate their allegations, the Applicants cited cases from the ECtHR case law, as well as a case from the case law of the US Supreme Court.

The Court concluded that the Applicants are authorized parties and the Referrals were submitted within legal time limit, they have met all criteria of requirements and, consequently, their Referrals are admissible.

Regarding the merits of the Referral, the Court reminded the Applicants that the Chapter III of the Constitution provides special protection to communities that traditionally were present in the territory of the Republic of Kosovo, and that the Chapter II, Article 45.3 provides that the state institutions support the possibility of every person to democratically influence on decision of public bodies. Furthermore, the Court noted that the laws that are passed in the Assembly have a constitutional basis for the broad mandate to provide for the consultative planning processes that are proposed in the Laws on the Village of Hoce e Madhe and the Historic Centre of Prizren. The Court further stated that although the Committees in both instances are given a large degree of consultative responsibility, they do not have executive powers and that the decisions on planning matters are ultimately taken, after the appropriate consultation, by the relevant Municipalities and not by the Committees established under both Laws. The Court also stated that paragraph 3 of Article 24 of the Constitution advances the rights of individuals and groups, who are in unequal position, while the Applicants read the paragraphs 1 and 2 of Article 24 of the Constitution, separately from paragraph 3 of the same Article.

The Court further noted that the cases from the case law, cited by the Applicants do not coincide to the rights of the religious communities

to have a consultative voice in the decisions on planning that influence on the village Hoçë e Madhe and on Historic Center of Prizren, and that they do not assist them to argue that the Articles of the challenged laws are not in compliance with the Constitution. Due to the abovementioned reasons, the Court concluded that the Referral is admissible from the procedural-formal aspect; that the Article 4.3.3 of the Law on village Hoçë e Madhe is in compliance with the Constitution of Kosovo; that Article 14.1.2 of the Law on Historic Center of Prizren is in compliance with the Constitution of Kosovo; ordered that the Judgment is served on the parties and pursuant to Article 20.4 of the Law, is published in the Official Gazette; and declared that the Judgment is effective immediately.

Pristine, 25 June 2012
Ref .No. AGJ255/12

JUDGMENT

in

Cases KO 45/12 and KO 46/12

Request of Liburn Aliu and 11 other Members of the Assembly of the Republic of Kosovo for constitutional assessment of the Law on the Village of Hoçë e Madhe / Velika Hoča and the Law on the Historic Centre of Prizren

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Enver Hasani, President

Kadri Kryeziu, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Ivan Čukalović, Judge
Gjyljeta Mushkolaj, Judge and
Iliriana Islami, Judge

The Applicants

1. The Applicants are Liburn Aliu and 11 other deputies of the Assembly of Kosovo, namely; Albana Gashi, Albana Fetoshi, Albin Kurti, Rexhep Selimi, Glauk Konjufca, Florin Krasniqi, Visar Ymeri, Albulena Haxhiu, Afrim Kasalli, Emir Gerbeshi, and Nait Hasani (hereinafter, "the Applicants").

Subject Matter

2. The subject matter of the Referral is the question of the constitutionality of Article 4.3.3 of the Law on the Village of Hoçë e Madhe / Velika Hoča and Article 16.1.2 of the Law on the Historic Centre of Prizren. Both Laws were passed by the Assembly of Kosovo on 20 April 2012.

Legal basis

3. The Referral is based on Article 113.5 of the Constitution of the Republic of Kosovo (hereinafter, "the Constitution"), Article 20 and 43 of the Law on the Constitutional Court of the Republic of Kosovo, of 15 January 2009, (No. 03/ L-121), (hereinafter, "the Law"), and Rule 56 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter, "Rules of Procedure").

Proceedings before the Court

4. On 27 April 2012, the Applicants submitted two Referrals to the Constitutional Court alleging that certain Articles of Laws passed by the Assembly of Kosovo, namely the Law on the Village of Hoçë e Madhe / Velika Hoča, registered under No. KO45-12, and the Law on the Historic Centre of Prizren, registered under No LO46-12, were in contravention of Articles of the Constitution, as set out below.

5. On 30 April 2012, the President, by Decisions Nos. GJR. 45/12 and 46/12, appointed Judge Snezhana Botusharova as Judge Rapporteur for both Referrals. On the same date the President, appointed Review Panels consisting of Judges Robert Carolan (Presiding), Altay Suroy and Kadri Kryeziu for both Referrals.

6. On 7 May 2012, Referral KO45-12, in relation to the Law on the Village of Hoçë e Madhe / Velika Hoča was communicated to the Representatives of the Orthodox Church in Kosovo, the Government, the Assembly and the International Civilian Representative, Mr Peter Feith. They were all invited to make comments on the Referral if they wished to do so.

7. Also, on 7 May 2012, Referral KO46-12, in relation to the Law on the Historic Centre of Prizren was communicated to the representatives of the Serbian Orthodox Church, the representatives of the Catholic Church and the representatives of the Islamic Community, the Government, the Assembly and the International Civilian Representative, Mr Peter Feith. They were all invited to make comments on the Referral if they wished to do so.

8. On 15 May 2012 the President, on the recommendation of the Judge Rapporteur, joined the two Referrals because of the relationship to each other both as to subject matter and as to the persons making the Referrals. The Judge Rapporteur and the Review Panel remained the same for both.

9. The Representative of the Catholic Church responded to the Court on 9 May 2012. The response is dealt with below.

10. The Representative of the Serbian Orthodox Church responded to the Court on 14 May 2012. The response is dealt with below.

11. The Representative of the Islamic Community responded to the Court on 14 May 2012. Their response is dealt with below.

12. The Assembly responded to the Court on 14 May 2012. Their response is dealt with below.

13. The Government responded to the Court on 17 May 2012. Their response is dealt with below.

14. On 29 May 2012 the Applicants were asked to clarify the authorisation given by all the deputies to Mr Aliu Liburn to lodge the Referrals with the Constitutional Court. Their clarification was received on 4 June 2012.

Preliminary assessment of the admissibility of the Referral

15. In order to be able to adjudicate the Applicants' Referrals, it is necessary to first examine whether they have fulfilled the admissibility requirements laid down in the Constitution as further specified in the Law and the Rules of Procedure.

16. The Court needs first to determine whether the Applicants can be considered as an authorized party, pursuant to Article 113.1 of the Constitution, which states that: "The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties."

17. Article 113.5 of the Constitution provides that: "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."

18. The Referrals was made within the eight days following the adoption of the Laws by the Assembly. Therefore, the Applicants are authorised parties, entitled to refer this case to the Court, by

virtue of Article 113.5 of the Constitution and it was within the prescribed time limit.

19. Since the Applicants are authorised parties and the Referrals were made within the prescribed time limit they have complied with all the admissibility requirements and are, therefore, admissible. This means that the Court is able to consider the merits of the complaint set out in the Referrals. The scope of the merits will be limited to the remit under Article 113.5 of the Constitution i.e to decide whether the challenged Articles of the Laws, adopted by the Assembly of Kosovo, are constitutional, as regards their substance only. The Applicants do not challenge the procedure followed by the Assembly. Bearing in mind the Decision of the Court to join the Referrals their substance shall be considered together in this Judgment.

Arguments of the Applicants

a. Law on the Village of Hoçë e Madhe / Velika Hoča

20. The Applicants argue that Article 4.3.3 is contrary to the principles of secularism and neutrality in religious matters and that it creates privileges for a religious community by marginalization and discriminating the rest of the religious communities and citizens that have no religious orientation or beliefs.

21. Article 4 of the Law provides for a Committee to be established by the Municipality of Rahovec/Orahovac whose function will be to represent the interests of the village in the field of protection and promotion of religious and cultural heritage and in the field of rural planning. Article 4.3 of the Law provides for the composition of the Committee in the following terms:

> ***a. Article 4***
> ***b. The Committee***
>
> *2. The Committee shall be composed of 5 members:*

3.1. two (2) members shall be selected by the Municipality Assembly;

3.2. two (2) members shall be selected directly by citizens of the village of Hoçë e Madhe / Velika Hoča;

3.3. one (1) member shall be selected by the Serbian Orthodox Church who must be a resident of the village of Hoçë e Madhe / Velika Hoča.

22. The Applicants consider that the adoption of the Law with such content violates the following Articles of the Constitution;

23. Article 8 [Secular State],

24. Article 24 [Equality Before the Law],

25. Article 123.3 [General Principles], and

26. Article 124.3 [Local Self-Government Organization and Operation]

27. The Applicants also state that the Law on Freedom of Religion in Kosovo, Law No. 02/L-31 in Article 5 provides that religious communities shall be separated from public authorities.

28. The Applicants argue that the principles of secularism and neutrality in religion matters present an obligation to all public institutions that while exercising their constitutional authorizations they maintain their neutrality both towards religious communities and the atheist and agnostic concepts. They also state that public institutions should not favour or neglect any person or collectivism based on religious belif concepts and that they should remain neutral in religious belief matters and that by including the representatives of religious communities in a public body the Law violates the principle of secularism and neutrality of public organs.

29. They state that it is necessary that the composition of the Committee for the Village of Hoçë e Madhe / Velika Hoča should not include any member appointed by the Serbian Orthodox Church because it automatically creates a privileged position for it.

30. As to the violation of Article 24 [Equality Before the Law] the Applicants maintain that the Law creates open inequality for the Serbian Orthodox Church towards the members of other religious communities and persons that do not belong to any religious orientation.

31. As to Article 123.3 [General Principles] and Article 124.3 [Local Self-Government Organization and Operation], the Applicants maintain that the Law represents a violation of municipal autonomy which derives from Chapter X of the Constitution. They maintain that the Municipality has arbitrarily been stripped of the competence on managing and preserving the cultural heritage and rural planning.

Law on the Historic Centre of Prizren

32. The same arguements are made by the Applicants in relation to the Law on the Historic Centre of Prizren in that they argue that Article 14.1.2 is contrary to the principles of secularism and neutrality in religious matters and that it creates privileges for a religious community by marginalization and discriminating the rest of the religious communities and citizens that have no religious orientation or beliefs.

33. Article of the Law provides for the composition of the Committee to be established by the Municipality Prizren whose role is to observe and advise on activities in the Historic Centre of Prizren for the preservation of its cultural heritage. Article 14.1 of the Law provides for the composition of the Committee in the following terms:

a. Article 14

b. **Prizren Cultural Heritage Committee**

34. *Cultural Heritage Committee for the Prizren Historic Centre shall be established by the Prizren Municipality within 4 months after the entry into force of this law and shall be composed of seven (7) members:*

a. six prominent members from Kosovo civil society with experience in the preservation, development and/or promotion of Prizren's cultural heritage;

b. three (3) members from civil society referred to in subparagraph 1.1. of this article will be selected:

i. one (1) member shall be selected by the Islamic Community;

ii. one (1) member shall be selected by the Serbian Orthodox Church and

iii. one (1) member shall be selected by the Catholic Church;

c. at least two (2) such members from civil society shall be recognised experts in the field of cultural heritage with education and/or professional experience in such field. Preference shall be given to candidates who meet both criteria;

***1.3.** the seventh member shall be a representative of the Municipal Office responsible for Communities and Return.*

35. The Applicants allege that the adoption of the Law containing Article 16.1.2 violates the same Articles of the Constitution as set out in paragraph 23 above. The Applicants also make the same arguments about secularity and of neutrality in matters of religious beliefs and the obligations of all public institutions to remain impartial towards religious communities.

36. As to the violation of Article 24 [Equality Before the Law], the Applicants maintain that the the inclusion of the three religious communities in the Law clearly favours them compared to other religious communities and to citizens without religious affiliation.

37. The Applicants pointed out Annex 5 Article 4.17 of the Comprehensive Proposal for Kosovo Status Settlement which provides:

> a. *"4.1.7 The Protective Zone for the Historic Center of Prizren/Prizren shall be established by the municipal authorities of Prizren/Prizren in cooperation with the IMC, and shall include Serbian Orthodox, Ottoman, Catholic, vernacular and other sites of historic and cultural significance."*

38. Again, the Applicants repeated the argument of the violation of Chapter X of the Constitution in relation to Local Self-Government in that Article 123.3 [General Principles] and Article 124.3 [Local Self-Government Organization and Operation] were violated. They maintain that the right to manage the Historic Centre of Prizren was taken from the Municipality of Prizren in an arbitrary way.

39. In relation to both Laws the Applicants refer to case law from outside Kosovo to support their arguments. Firstly, they quote the case of Epperson v. Arkansas a 1968 case from the Supreme Court of the United States of America where they quote that Court as stating that the Government must be neutral in matters of theory, doctrine and religious practice and that it cannot assist encourage or promote a religion or religious theory against another.

40. Secondly, they quote the cases of Hasan and Chaush v. Bulgaria from 2000 and Alexandridis v. Greece from the European Court of Human Rights (ECtHR) a case from 2008. They maintain that these cases support the view that the ECtHR supported the principle of state neutrality *vis-a-vis* religions.

Responses of the Interested Parties

The Catholic Church

41. The Catholic Church responded on 9 May 2012 by furnishing a copy of a public statement issued by the Church on 9 February 2007. In the context of commenting on the proposals for Religious and Cultural Heritage in the Comprehensive Proposal for the Kosovo Status Settlement that public statement of the Church remarked upon the common heritage of Kosovo from the first millennium A.D and it pointed out many complexes that contained instances of important cultural and archeological importance. The tenor and thrust of the Public Statement was one of support for the Articles of the Kosovo Status Settlement that provided for religious and cultural heritage.

The Serbian Orthodox Church

42. The Serbian Orthodox Church in its response emphasised the cultural and historical heritage of the areas covered by the Law "in which we live together". They referred to UNESCO conventions on the Protection of World Cultural Natural Heritage and the Convention for the Protection of non-material Cultural Heritage. They pointed out that the Assembly recognised and accepted such protection when passing these Laws. They pointed out that "non-material" heritage included not only customs, technologies and handicrafts but also religious beliefs practices, traditions rituals and teachings. They noted that in the two areas protected by these Laws there was many precious objects of historical and cultural significance.

43. They point out that with the provision of the Constitution in Article 8 dealing with the secular nature of the state is followed immediately by Article 9 which obliges the Republic of Kosovo to ensure the preservation and protection of its cultural and religious heritage.

44. They point out that the letter and spirit of the Constitution and the letter and spirit of the Law on Cultural Heritage that care for cultural heritage is under the jurisdiction of the owners of the cultural heritage and the Central Authorities. The Central Authorities can devolve such care to the Local Authorities who

must cooperate with the owners of the cultural heritage in their territory.

45. The Serbian Orthodox Church point out that the case of Epperson v. Arkansas referred to by the Applicants in support of the Referral dealt with the teaching of evolutionary biology in the education system of the State of Arkansas and that the Laws being challenged do not deal with the imposition of religious belief or learning in the field of natural science. They also say that the case of Hasan and Chaush dealt with the intervention by the State of Bulgaria in the selection of the Chief Mufti in that country and that therefore it was not relevant.

46. They also referred to the Comprehensive Status Settlement as supporting the constitutionality of these Laws and in particular Annex V Article 4.1.4 which provides that there shall be Protective Zones for the sites mentioned therein.

47. They also pointed out that religious communities, their customs and rituals and object owned by them are not only associated with a particular group of people (believers of a particular religious community) but also with the general society and the present total commitment of civilization and that the whole of society was defined by the values inherited from previous generations. Therefore, they maintain, it would be unacceptable not to allow such religious communities to participate in social processes, which is a common measure of any enlightened society.

The Islamic Community of Kosovo

48. The Islamic Community in its response of 15 May 2012 supported, in principle, the regulation of what it considered its vital interests by the passing of the Law on the Historic Centre of Prizren. While not being against the protection of religious premises of other religious communities it felt that that the Serbian Orthodox heritage was being positively “discriminated”. The Islamic Community felt that it had been discriminated against by virtue of not being permitted to reconstruct a building that had previously existed in the Castle of Prizren and the Law

on the Historic Centre of Prizren did not expressly permit its reconstruction now.

The Government

49. The Government in its response of 17 May 2012 also referred to the Comprehensive Proposal for the Kosovo Status Settlement and Annex V thereof which provided for the special role of the Serbian Orthodox Church which was to be afforded the protection and enjoyment of its rights, privileges and immunities as set forth in that Annex. The response pointed out that Annex XII of the Proposal required the enactment of a Law on the Establishment of Protective Zones. It was passed on 2008; Law No. 03/L-039, dated 20 February 2008. It required the further passing of Laws on the special zones of the Historic Centre of Prizren and for the village of Hoçë e Madhe / Velika Hoča.

50. Having pointed out the consultative nature of the Committees established by the challenged Laws the Government pointed out that decisions in cases of administrative conflict will ultimately be issued by the competent Court. Finally, the Government pointed out that these Laws were necessary to give effect to the Comprehensive Status Settlement.

The Assembly

51. The Assembly furnished to the Court a transcript of the debate held in the Assembly. The debate is a matter of public record. The Laws were passed by the required majority under the Constitution after all formal processes were attended to. The debate included comment by Minister Dardan Gashi, when, commenting on the Law on the Village of Hoçë e Madhe / Velika Hoča, that the constitution of the Committee to be established did not give executive powers to the Serbian Orthodox Church. What was given was an enhanced consultative role in matters pertaining to planning matters in the Village of Hoçë e Madhe / Velika Hoča.

Merits

Assessment of the constitutionality of the proposed amendments

52. Kosovo is an ancient part of Europe and it has a rich prehistoric and historic legacy. The area that comprises Kosovo, as was the case with so much of Europe and particularly the Balkan region was influenced by empires and civilizations from the earliest times. Over the centuries many varied peoples have lived here and left their legacy behind. So today Kosovo is a blend of its history and of its peoples and the diversity and multi-ethnicity is reflected in the six stars of the flag of the Republic of Kosovo.

53. All Communities have their different cultures and heritage and the Constitution therefore recognises this diversity and provides a structure for the preservation of that culture and heritage. This is done not just for the benefit of an individual community but it is for the benefit of everyone in the State.

54. This diversity and multi-ethnicity is reflected in the Constitution of the Republic of Kosovo. Article 1 says that the Republic is a state of its citizens. Article 3 says that the Republic of Kosovo is a multi-ethnic society consisting of Albanian and other Communities. Article 4 says that the President of the Republic of Kosovo represents the unity of the people. Article 5 provides that the official languages of the Republic of Kosovo are Albanian and Serbian. It also provides that the Turkish, Bosnian and Roma languages have the status of official languages at the municipal level.

55. These are just a few of the Articles that define the multi-ethnic nature of Kosovo and the status of Communities within it. The Court bears in mind Chapter III [Rights of Communities and Their Members] which provides special protections to inhabitants of Kosovo belonging to the same national or ethnic, linguistic or religious group traditionally present on the territory of the Republic of Kosovo. They are given specific rights in addition to the human rights and fundamental freedoms provided in Chapter II of the Constitution. From Chapter II, Article 45.3 it is noted that the State institutions support the possibility of every person

to participate in public activities and everyone's right to democratically influence decision of public bodies.

56. It can be argued that the State has an obligation to give expression to the rights granted to Communities and their members under the Constitution. Rights can be preserved and provided for by the passing and implementation of those laws.

57. Laws that are passed in the Assembly therefore have a constitutional basis for the broad mandate to provide for the consultative planning processes that are proposed in the Laws on the Village of Hoçë e Madhe / Velika Hoča and the Historic Centre of Prizren.

58. The Articles that are challenged by the Applicants are those that provide for membership of Communities in Committees that must be consulted in the planning process for Hoçë e Madhe / Velika Hoča and for the Historic Centre of Prizren.

Membership of the Committees

59. In the case of the village of Hoçë e Madhe / Velika Hoča it is foreseen that the Serbian Orthodox Church shall nominate one member of a five person Committee; that member must be a resident of the village. The Committee itself shall be established by the Municipal Assembly of Rahovec/Orahavac. Two members of the Committee are selected by the Municipal Assembly itself; another two shall be selected by citizens of the village. It is not the Committee itself that the Applicants object to but the representation by a person who is selected by the Serbian Orthodox Church. That Committee member need not be a member of the Church but he or she must be selected by the Church.

60. In the case of the Historic Centre of Prizren a Committee of seven persons shall be established by the Municipal Assembly of Prizren. Six members shall be prominent members from Kosovo civil society with experience in the preservation, development and/or promotion of Prizren's cultural heritage. Of those six members it is foreseen that the Serbian Orthodox Church, the Islamic Community and the Catholic Church shall each nominate

one member; there is no requirement that the members thereby nominated reside in Prizren. The seventh member of the Committee shall be a representative of the Municipal Office responsible for Communities and Return. It is not the Committee itself that the Applicants object to but the representation on the Committee by persons who are selected by the Serbian Orthodox Church, the Islamic Community and the Catholic Church. Those Committee members need not be a member of the Serbian Orthodox Church, the Islamic Community or the Catholic Church but they must be selected by those bodies.

Consultation with the Committees

61. In the case of the village of Hoçë e Madhe / Velika Hoča the Committee is stated to represent its interests in the field of protection and promotion of religious and cultural heritage and in the field of rural planning. The Municipal or Central Authorities shall consider, implement or integrate the contribution, assessments and proposals/recommendations of the Committee as provided for in the Law and other applicable law. The Municipality shall draft and adopt planning documents for the village in compliance with Law No. 2003/14 on Spatial Planning and Law No. 03/L-106 Amending the Law on Spatial Planning No. 2003/14 and Law No. 02/L-88/2006 on Cultural Heritage. In the case of disagreement between the Committee and the Municipal and Central Authorities the parties shall refer the matter to the Implementation and Monitoring Council, as defined by the Law No. 03/L-039/2008 on Special Protective Zones.

62. In the case of the Historic Centre of Prizren the role of the Committee is to observe and advise on activities in the Historic Centre of Prizren for the preservation of its cultural heritage. The Department of Urbanism shall submit copies of all project requests for urban permits for construction, demolishing or modifying buildings and other similar activities to it. It shall consult with the institutional owner of the institution property will be affected by the project request. The Committee shall seek the agreement of the Serbian Orthodox Church for activities that would affect the Church's properties. There is provision for the request of further consultation. Eventually, in the absence of consent, there is provision for submitting a case to the

Implementation and Monitoring Council as defined by the Law No. 03/L-039/2008 on Special Protective Zones which may give instructions in relation to the project request.

63. It is important to note that, whilst the Committees in both instances are given a large degree of consultative responsibility, they do not have executive powers. Decisions on planning matters are ultimately taken, after the appropriate consultation, by the relevant Municipalities and not by the Committees established under both Laws.

64. The effect of the proposed establishment is to give a consultative role to parties who are likely to be affected by planning proposals for both Hoçë e Madhe / Velika Hoča and for the Historic Centre of Prizren. However, the Committees do not have a veto on the proposals. Instead the nature of their role is a participatory one that is foreseen in Article 3 of the Law on Spatial Planning, Law No. 2003/14, which provides:

> ***a. Article 3***
> *b. Principles*
>
> *c. Spatial planning and regulation shall be based on the following internationally acceptable principles:*

65. Promote the common interest of Kosovars by protecting natural resources adn advocating sustainable development;

66. Promote and inclusive participatory process of formulation development strategies and physical plans, which includes all stakeholders and communities without discrimination, men as well as women;

67. Promote full transparency in the planning and decision-making process allowing stakeholders access to planning date and maps necessary for their full participation as a citizen's right and duty;

68. In its Judgment in the case of Fadil Hoxha and 59 others v. The Municipality of Prizren, KI 56/09, dated 3, March 2011 at para 60, the Constitutional Court stated as follows:

    a. *Article 52 (2) of the Constitution guarantees that:*

    b. *"Everyone should be provided an opportunity to be heard by public institutions and have their opinions considered on issues that impact the environment in which they live."*

69. In that case a development had commenced that affected inhabitants of a neighbourhood without adequate local consultation and the Court found that the Municipality in question was in violation of a constitutionally protected right. By giving the right to participate in the local planning process the two Laws under consideration allow to the involvement of the Serbian Orthodox Church, the Islamic Community and the Catholic Church. But by allowing this nobody is excluded from also participating in the process. What the provisions of the contested Laws do is to formalise the participation and consultation with the mentioned bodies. It does so in the letter and the spirit of the Constitution and according to the special position of Communities in the Republic of Kosovo and the multi-ethnic character of the State.

70. In these Referrals the Applicants complain the challenged Laws are contrary to Article 24 [Equality Before the Law]. They refer in particular to paragraphs 1 and 2 of that Article. However, they do not mention paragraph 3. The entire Article 24 provides as follows:

a. Article 24 [Equality Before the Law]

71. All are equal before the law. Everyone enjoys the right to equal legal protection without discrimination.

72. No one shall be discriminated against on grounds of race, color, gender, language, religion, political or other opinion, national or social origin, relation to any community, property, economic

and social condition, sexual orientation, birth, disability or other personal status.

2. *Principles of equal legal protection shall not prevent the imposition of measures necessary to protect and advance the rights of individuals and groups who are in unequal positions. Such measures shall be applied only until the purposes for which they are imposed have been fulfilled.*

73. This Court has often emphasised the importance of the principle of equality as is set out in Article 24. Non-discrimination, on the different grounds in paragraph 2, is the foundation that underpins the non-arbitrary application of Laws, Rules and Regulations. These are the values and ethics that sustain the Rule of Law in a democratic society. The first two paragraphs of Article 24 ought not to be read in isolation from the third. The third paragraph advances the rights of individuals and groups who are in unequal positions. It is within the margin of appreciation of the Assembly under Article 24.3 to legislate for the special consultative roles afforded to the Serbian Orthodox Church, the Islamic Community and the Catholic Church as has been done in the challenged laws.

74. The Applicants advance their arguments by quoting Article 8 [Secular State] which states that *"The Republic of Kosovo is a secular state and in neutral in matters of religious beliefs"*. This is a clear statement of the position of the State in relation to religious beliefs. Among other things, this means that a State may not interfere in the internal affairs of religious organisations. Bulgaria was found to be in contravention of the European Convention on Human Rights and the Protection of Fundamental Freedoms (the Convention) when it intervened between rival groups within the Islamic Community in Bulgaria by choosing, as the head of the Community, one faction's preferred candidate. This case is more fully examined in paragraph 67 below, Hasan and Chaush v. Bulgaria.

75. The principle of secularism, as provided for in Article 8, also contemplates that the State and religious organisations operate separately within each's own sphere and they do not exercise authority over the affairs of the other. Thus, secularism permits

religious organisations to conduct their affairs without undue interference from the State and religious organisations cannot mandate what the state can or cannot legislate for. That is not to say that religious organisations are excluded from debate within issues in the public sphere or to say that the State is forbidden to regulate matters within its constitutional remit. Each ought to have respect for the other and recognise that they have different remits.

76. But the secular nature of the State as provided for in Article 8 does not override all other provisions of the Constitution. The Secular State Article in followed immediately in the Constitution by Article 9 [Cultural and Religious Heritage]. This provides that Kosovo *"ensures the preservation and protection of its cultural and religious heritage."* Article 24 relied on by the Applicants is in Chapter II of the Constitution, Fundamental Rights and Freedoms, and that Chapter is followed immediately by Chapter III, Rights of Communities and Their Members. This Chapter contains specific rights granted to national, ethnic, linguistic and religious group in addition to those in Chapter II. The Court needs to examine all of the constitutional provisions together and not to rely on one alone when interpreting the Constitution.

Authorities relied on by the Applicants

77. The Applicants quote the ECtHR Judgment in Hasan and Chaush v. Bulgaria in support of their Referrals. This case, decided in 2000, concerned a dispute within the Bulgarian Muslim community as to who should be its national leader. The Government of Bulgaria involved itself in the dispute and replaced one person with another to the position of national leader of the Muslim community. The Applicants to the ECtHR argued that there was a violation of Article 9 of the Convention, along with other Articles. The Court found that there was interference with the internal organisation of the Muslim religious community and with the Applicants' right to freedom of religion as protected by Article 9 of the Convention. The Court held that the interference with the internal affairs was not prescribed by law, in that it was arbitrary and that it allowed an unfettered discretion to the executive and that it did not meet the required standards of clarity and foreseeability. This case is clear

authority for the proposition that a State cannot interfere with the internal affairs of a religious organisation or community. The Applicants state that this case emphasises freedom of religion, which is true, but it cannot be relied on as authority, as the Applicants maintain, for providing a framework for certain religious communities to participate in the planning process.

78. The Applicants seek to rely also on the ECtHR case of Alexandridis v. Greece, a Judgment from 2008. This case involved a lawyer from Athens who had been obliged to swear that he was not an Orthodox Christian in order to be admitted to practice as a lawyer before the Court of First Instance in Athens. The ECtHR held that the freedom to manifest one's beliefs also contained a negative aspect, namely, the individual's right not to be obliged to manifest his or her religion or religious beliefs and not to be obliged to act in such a way as to enable conclusions to be drawn regarding whether he or she held - or did not hold - such beliefs. That was the essence of the decision in the Alexandridis case. It was a case about freedom of religion and particularly about not having to disclose that one did not have a religion; it was not a case, as the Applicants maintain, criticizing the role of the Greek Orthodox Church in public institutions. The case is of no assistance to the Applicants in maintaining that the religious communities should not have a consultative voice in the planning decisions affecting the Village of Hoçë e Madhe / Velika Hoča and the historic centre of Prizren.

79. The Applicants also cite Epperson v. Arkansas, a United States of America Supreme Court Judgment from 1968. In this case the state of Arkansas adopted a statute in 1928 that prohibited teaching “the theory or doctrine that mankind ascended or descended from a lower order of animals”, or using textbooks that included material on evolution. The Judgment of the Supreme Court invalidated the State law prohibiting the teaching of human evolution in schools. As stated by the Supreme Court, the State of Arkansas did not seek to excise from the curricula of its schools and universities all discussion of the origin of man. Instead, the law's effort was confined to an attempt to blot out a particular theory because of its supposed conflict with a literal reading of the account of creation contained in the Bible. This case is an example of how a religious belief ought not to be allowed to

permeate into the public sphere, here, the teaching of evolution. This case supports the principles of how a secular state may prohibit religious beliefs to be propagated to the exclusion of secular or scientific theory. It is not authority to exclude a consultation process with religious communities on planning issues in Municipalities when heritage is sought to be preserved. Epperson v. Arkansas is of no assistance to the Applicants in arguing their case that the Articles of the challenged laws are not in compliance with the Constitution.

FOR THESE REASONS

Pursuant to Article 113.5 of the Constitution, Articles 20 and 43 of the Law on the and Rule 56 of the Rules of Procedure the Constitutional Court,

DECIDES

I. Unanimously, to hold that the Referrals are admissible;

II. Unanimously, to hold that Article 4.3.3 of the Law on the Village of Hoçë e Madhe / Velika Hoča is compatible with the Constitution of Kosovo;

III. By majority, to hold that Article 14.1.2 of the Law on the Historic Centre of Prizren is compatible with the Constitution of Kosovo;

IV. Orders that this Judgment be served on the Parties and, in accordance with Article 20.4 of the Law, be published in the Official Gazette; and

V. Declares that this Judgment is effective immediately.

Judge Rapporteur **President of the Constitutional Court**

Snezhana Botusharova Prof. Dr. Enver Hasani

KI 152/11 dated 10 July 2012- Constitutional Review of the Decision of the Kosovo Government (11/279), dated 07.11.2007

Case KI 152/11, decision dated 26 June 2012
Keywords: Decision of Government, individual Referral, out of time Referral, *incompatible ratione temporis with the Constitution*, right to competition, economic relations

The Applicant submitted his Referral based on Article 113.7 of the Constitution, alleging that his constitutional rights were violated by the Decision of the Government of Kosovo (111/279), dated 7 November 2007, establishing that the Islamic Community of Kosovo is the only legitimate institution to organize the Hajj pilgrimage for the citizens of Kosovo. The Applicant considers that being the owner of a licensed tourist agency his rights to exercise economic activity were violated, which are violated by Article 10 and 109 of the Constitution of the Republic of Kosovo.
The Court concluded that the Applicant's Referral was inadmissible based on the Rule 56.2 of the Rules of Procedure, because the Applicant has not submitted any *prima facie* evidence, which indicate the violation of constitutional rights. The Court reasoned its decision by stating that the challenged decision of the Government was rendered on 7 November 2007, that is to say, before the entry into force of the Constitution on 15 June 2008. The Court cannot deal with a Referral relating to events that occurred before the entry into force of the Constitution. Therefore the Court concluded that the Referral was inadmissible because it was incompatible "ratione temporis" with the provisions of the Constitution.
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Pristine, 26 June 2012
Ref. No. :RK259/12

RESOLUTION ON INADMISSIBILITY

In
Case No. KI 152/11

Applicant

Bekim Murati

Constitutional Review of the Decision of the Kosovo Government (11/279), dated 07.11.2007

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

Composed of:

Enver Hasani, President
Kadri Kryeziu, Deputy-President
Robert Carolan Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Ivan Cukalovic, Judge
Gjyljeta Mushkolaj, Judge and
Iliriana Islami, Judge

Applicant

1. The Applicant is Bekim Murati, from Prishtina, represented by Bajram Morina, a practicing lawyer from Gjakova.

Subject Matter

2. The Applicant challenges the Decision of the Kosovo Government 11/279, dated of 06/11/2007 (hereafter, the Decision).

Legal Basis

3. The Referral is based on Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter, Constitution); Article 22 of the Law on the Constitutional Court of the Republic of Kosovo (hereinafter, the Law); and Rule 30 and 75 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter, Rules of Procedure).

Proceedings before the Court

4. On 24 November 2011, the Applicant submitted the Referral to the Court.

5. On 17 January 2012, the President appointed Judge Almiro Rodrigues as Judge Rapporteur and a Review Panel composed of Judges Robert Carolan (Presiding), Enver Hasani and Kadri Kryeziu.

6. On 24 January 2012, the Court communicated the Referral to the Office of the Prime Minister (hereafter, OPM).

7. On 27 February 2012, the Court sent a letter to the OPM requesting additional information, namely whether the Decision is still in force.

8. On 27 February 2012, the Court sent a letter to the Applicant requesting additional information, namely whether the Applicant undertook any further step with the responsible institutions to challenge the Decision.

9. On 9 March 2012, the OPM replied that "the decision in question was made having in mind the circumstances and the conditions in that time and the same decision is still in power". In addition, the OPM also informed that "by far did not receive any complaints related to that decision or a request to revoke the above mentioned Decision by the interested parties and from the Commission of Competition as a competent authority for the implementation of the Law No. 03/L-229 on the protection of Competition (Official Gazette No. 88, 25 November 2010)".

10. On 19 March 2012, the Applicant's lawyer submitted the requested additional information, explaining that the Applicant had contacted the public authorities in order to raise his concerns with regards to the Decision, but he only received verbal advices to address this issue to the Constitutional Court.

11. On 20 June 2012, the Review Panel considered the Report of the Judge Rapporteur and made a recommendation to the Court on the Inadmissibility of the Referral.

Summary of the facts

12. The Applicant is the owner of the Tourist Agency "Royal Travel", which operates in Pristina and, on 14 January 2011, the Department of Tourism within the Ministry of Trade and Industry awarded the Touristic Agency "Royal Travel" with "the license for the exercising of the Touristic activity for a 3 year period as: **Touristic Agency-Organizer".**

13. However, on 7 November 2007, the Government of Kosovo had taken the Decision, establishing that "the Islamic Community of Kosovo is the only legitimate institution to organize the Hajj pilgrimage for the citizens of Kosovo".

14. The Applicant alleges that the Kosovo Government decision violates Article 119.3 of the Constitution of Republic of Kosovo (hereinafter, the "Constitution"), which establishes that "actions limiting free competition through the establishment or abuse of a dominant position or practices restricting competition are prohibited, unless explicitly allowed by law". The Applicant further claims that his "fundamental right to work, guaranteed by Article 49.1 of the Constitution of Republic of Kosovo, was violated".

15. In sum, the Applicant complains that the Decision violates Article 10 [Economy] and Article 119.3 [General Principles] of Chapter IX [Economic Relations] of the Constitution, since it created a dominant position for the Islamic Community as the only legitimate institution to organize Hajj pilgrimage for citizens of Kosovo.

16. The Applicant concludes requesting from the Constitutional Court of Kosovo (hereinafter, the "Court") "to annul the Decision of Kosovo Government no. 11/279, dated 7 November 2007".

Preliminary assessment of the admissibility of the Referral

17. First of all, the Court examines whether the Applicant have fulfilled the admissibility requirements laid down by the Constitution, the Law and the Rules of Procedure. The Court considers that the Applicant justified the referral with the relevant facts and a clear reference to the alleged violations; expressly challenges the Decision as being the concrete act of public authority subject to the review; clearly points out the relief sought; and attaches the different decisions and other supporting information and documents.

18. However, in examining the deadline requirement, the Court notes that Article 56 (Earlier Cases) of the Law provides:

a. *"The deadlines defined in this Law for the initiation of procedures on matters that fall under the jurisdiction of the Constitutional Court and which have arisen before the entry into force of this Law shall begin to be counted on the day upon which this Law enters into force".*

19. On the other side, Article 49 (Deadlines) of the Law states:

a. *"The referral should be submitted within a period of four (4) months. The deadline shall be counted from the day upon which the claimant has been served with a court decision".*

20. Taking into account these two legal provisions, it must be concluded that the temporal jurisdiction of the Constitutional Court for earlier cases starts on the date of the Constitution entered into force, which was on 15 June 2008, and ends on 15 May 2009, meaning four months (see Article 49 of the Law) after the entering into force of the Law, which happened on 15 January 2009.

21. The Court notes that, in the case, the Decision was taken on 7 November 2007, that is to say, before the entry into force of the

Constitution on 15 June 2008. The Applicant submitted his Referral on 24 November 2011.

22. Moreover, the Court observes that the the Touristic Agency "Royal Travel" was awarded with "the license for the exercising of the Touristic activity (...) as: Touristic Agency-Organizer" on 14 January 2011. The Decision was in force as of on 7 November 2007.

23. Consequently, the Decision has been taken before 15 June 2008, the date of entering into force of the Constitution. The Court cannot deal with a Referral relating to events that occurred before the entry into force of the Constitution (see, the Court's Resolution on Inadmissibility in Case No 18/10, Denic et al of 17 August 2011).

24. The Court also reminds that the OPM informed that "by far did not receive any complaints related to that decision or a request to revoke the above mentioned Decision by the interested parties".

25. Furthermore, Rule 36 (3) h) of the Rules foresees that *"a Referral may also be deemed inadmissible"* if "*the Referral is incompatible ratione temporis with the Constitution"*. Therefore, the Court considers that the Referral is out of time "*ratione temporis*".

26. Therefore, the Court concludes that the Referral is incompatible "ratione temporis" with the provisions of the Constitution.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 49 of the Law, and Rule 56 (2) of the Rules of Procedure, on 20 June 2012, unanimously

DECIDES

I. TO REJECT the Referral as Inadmissible;

II. This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20 (4) of the Law;

III. This Decision is effective immediately

Judge Rapporteur **President of the Constitutional Court**

Almiro Rodrigues Prof. Dr. Enver Hasani

KI 156/11 dated 10 July 2012 - Constitutional Review of the Judgments of the District Court of Prizren, Ac. No. 378/09, dated 01 October 2009, and of the Supreme Court of Kosovo, Rev. NO. 509/2009, dated 5 August 2011

Case KI 156/11, decision dated 26 June 2012.
Keywords: alimony, violation of constitutional rights and freedoms, individual referral, manifestly ungrounded referral, family law, provisional criminal code of Kosovo.

The applicant filed the referral pursuant to Article 113.7 of the Constitution of Kosovo, thereby claiming that her constitutional rights and freedoms were violated by judgments of all instances on the Applicant's rights to receive enjoy alimony from the father of her minor child. The applicant claimed, without quoting any specific constitutional provision, that her constitutional rights were violated.

The Court found that the referral of applicant was inadmissible, pursuant to Rule 56.2 of the Rules of Procedure, since the applicant had failed to prove how and why the courts of all instances had violated her constitutional rights. Quoting its case law in the *case no. KI. 06/09, Applicant X v. Judgment of the Supreme Court no. 215/2006; Judgment of the District Court no. 741/2005; judgment of the Municipal Court no. 217/2004,* the Court further noted that its role is only to ensure compliance with the rights guaranteed by the Constitution and other legal instrument, and therefore, it cannot function as a court of fourth instance. The Court also noted that the ordinary courts had sufficiently reasoned their decisions, thereby providing reasons on their ascertainment of proof. Due to the reasons provided above, the Court decided to find the referral of Applicant as inadmissible.

Pristine, 26 June 2012
Ref. No.: RK260/12

RESOLUTION ON INADMISSIBILITY

in

Case No. KI 156/11

Applicants

Zahide Samadraxha

Constitutional Review of the Judgments of the District Court of Prizren, Ac. No. 378/09, dated 1 October 2009, and of the Supreme Court of Kosovo, Rev. NO. 509/2009, dated 5 August 2011

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Enver Hasani, President
Kadri Kryeziu, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Ivan Čukalović, Judge
Gjyljeta Mushkolaj, Judge and
Iliriana Islami, Judge

The Applicant

1. The Applicant is Zahide Samadraxha of Banjë Village in the Municipality of Malishevo. She is unrepresented.

Challenged Decision

2. The Applicant challenges the Judgments of the District Court of Prizren, Ac. No. 378/09, dated 1 October 2009, and of the

Supreme Court of Kosovo, Rev. NO. 509/2009, dated 5 August 2011.

Subject Matter

3. The subject matter of the Referral concerns the request of the Applicant to receive maintenance from the father of her minor child. The Applicant was not married to her minor child's father and her minor child resides with the father.

Legal Basis

4. The Referral is based on Art. 113.7 of the Constitution; Article 20 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter referred to as "the Law"), and Rule 56 (2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter referred to as the Rules of Procedure).

Procedure before the court

5. On 2 December 2011 the Applicant filed a Referral with the Constitutional Court.

6. On 17 January 2012 the President of the Constitutional Court appointed Judge Ivan Cukalovic as Judge Rapporteur. On the same date the President appointed a Review Panel composed of Judges Robert Carolan (presiding), Snezhana Botusharova and Kadri Kryeziu.

7. By letter dated 20 February 2012 the Court acknowledged the making of the Referral and it requested further information concerning the Referral from the Applicant.

8. The Applicant replied on 27 February 2012, which reply was received in the Court on 1 March 2012. In her reply the Applicant stated that she was not employed and that she had not received any financial support from the father of her minor child. She also maintained that the family and financial circumstances of the father were good, that he jointly owns some cadastral parcels, that his mother has a pension from abroad and that his brothers live and work in Italy.

9. A report prepared by the Judge Rapporteur was considered by the Review Panel on 18 June 2012 which made a recommendation on inadmissibility of the Referral to the full Court. The full Court considered the Referral on the same date.

Description of the facts of the case as evidenced by the documents furnished by the Applicants

10. On 17 June 2009 the Municipal Court in Malishevo, in Judgment C. nr. 269/2006 refused the claim of the Applicant for maintenance/alimony from the father of her minor child and it approved contact with her minor child one day per month. The Court held that the minor child now formed part of a family unit with the father, his wife and two sons.

11. The Applicant filed an appeal from that decision to the District Court in Prizren which in its Judgment Ac.no. 378/09, dated 1 October 2009, upheld the decision of the Municipal Court. The District Court noted that the claim in relation to contact between the Applicant and her minor child was no longer pursued.

12. The Applicant filed a further appeal from that decision to the Supreme Court which in its decision Rev. nr. 509/2009, dated 5 August 2011, upheld the earlier decisions refusing maintenance/alimony to the Applicant. This was served on her on 13 September 2011.

Alleged violations of the Constitution

13. The Applicants maintains in a general way that the Courts at every level have violated the Family Law of Kosovo, the Provisional Criminal Code of Kosovo and constitutional guarantees. The Referral does not go into greater detail.

Assessment of the admissibility of the referral

14. In order to be able to adjudicate the Applicants' Referral, the Court needs first to examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution,

further specified in the Law on the Constitutional Court and the Rules of Procedure.

15. Article 113 Section 1 and 7 of the Constitution establish the general legal frame required for admissibility. It provides:

16. *"1. The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties.*

a. (...)

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."

17. Furthermore, Article 48 of the Law states:

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

18. Finally, Rule 36 of the Rules of Procedure states:

a. "1. The Court may only deal with Referrals if:
c) the Referral is not manifestly ill-founded.

3. The Court may reject a Referral as being manifestly ill-founded when it is satisfied that:

a) the Referral is not prima facie justified, or

b) when the presented facts do not in any way justify the allegation of the violation of constitutional rights, or

c) when the Court is satisfied that the Applicant is not a victim of a violation of rights guaranteed by the Constitution, or

d) when the Applicant does not sufficiently substantiate the claim;"

19. The Applicant alleges that the Courts at all levels committed various violations. The Courts in their Judgments referred to a number or relevant Articles of the Family Law of Kosovo, Law Nr.2004/32, the most relevant of which were the following:

a. ***Article 279. Neediness***
b. *Only persons who can not financially maintain themselves are eligible to financial maintenance.*

c. ***Article 281. Obligation of Reciprocal Information on Financial Situation***
(1) *Relatives in a direct line are obliged to disclose to each other their income and financial situation based on request.*

(2) *Based on request the person who is obliged to provide maintenance shall present written evidence and documents to give proof about his income and his financial situation.*

d. ***Article 307. Capability for Alimony***
(1) *Persons who considering all other obligations are not able to provide alimony without endangering their own reasonable maintenance, are not obliged to provide maintenance.*

(2) *As far as they are able to provide alimony the obligation remains.*

e. ***Article 330. Principles of Determination of Maintenance and Alimony***
(1) *The obligation to provide financial maintenance or alimony is determined in proportion to all means of the defendant and within the limits of the needs of the claimant.*

(2) *The court shall consider the defendants financial situation, ability to work, factual possibility of employment, health condition, personal needs, legal obligations and all other relevant circumstances.*

(3) *When alimony is demanded for the child, the court considers the age of the child and all needs for his education.*

20. In the Municipal Court decision of 17 June 2009 the Court gave a reasoned judgment why certain evidence was relied by it in coming to its Decision, including, but not limited to, the

current family circumstances of the minor child and the income of the father.

21. As stated by the Constitutional Court in Case No. KI. 06/09, Applicant X vs. Supreme Court Judgment Nr. 215/2006, District Court Judgment Nr. 741/2005, Municipal Court Judgment Nr. 217/2004:

a. "*. . . the Court would like to underline that it is not a court of appeal for other courts in Kosovo and it cannot intervene on the basis that such courts have issued a wrong decision or have erroneously assessed the facts. The role of the Court is solely to ensure compliance with the rights guaranteed by the Constitution and other legal instruments and cannot therefore act as a "fourth instance" court (see, mutatis mutandis, i.a., Akdivar v. Turkey, 16 September 1996, R.J.D, 1996-IV, para. 65).*"

22. As further stated by the Constitutional Court in Case No. KI. 06/09, Applicant X vs. Supreme Court Judgment Nr. 215/2006, District Court Judgment Nr. 741/2005, Municipal Court Judgment Nr. 217/2004:

a. *"The mere fact that the Applicant is dissatisfied with the outcome of the case cannot of itself raise an arguable claim of a breach of Article 31 of the Constitution (see mutatis mutandis Judgment ECHR Appl. No. 5503/02, Mezotur Tiszazugi Tarsulat v. Hungary, Judgment of 26 July 2005)."*

23. The Applicant has not indicated in any way how the Courts, in all instances, have violated her constitutional rights.

FOR THESE REASONS

The Court, following deliberations on 18 June 2012, pursuant to Articles 113.7 of the Constitution, Articles 20 of the Law and Rule 56.2 of the Rules, unanimously

DECIDES

I. TO REJECT the Referral as inadmissible;

II. This Decision is to be notified to the Applicant; and

III. This Decision shall be published in accordance with Article 20(4) of the Law and is effective immediately.

Judge Rapporteur **President of the Constitutional Court**

Ivan Čukalović Prof. Dr. Enver Hasani

KI 08/12 dated 10 July 2012- Constitutional Review of the Judgment of the District Court in Prishtina, Ac. nr. 1107/2010, dated 28 June 2011

Case KI 08/2012, decision dated 20 June 2012
Keywords: property dispute, individual referral, manifestly ill-founded Referral

The Applicant submitted Referral based on Article 113.of the Constitution, alleging that the District Court in Prishtina, by rejecting the request for repetition of procedure, violated his constitutional rights, guaranteed by Article 21 [General Principles], Article 31 [Right to Fair and Impartial Trial], Article 32 [Right to Legal Remedies], Article 54 [Right to Judicial Protection] and as well Article 6 of the European Convention on Human Rights.

In this case, the Court referred to Article 48, which establishes that, "the claimant should accurately clarify what rights and freedoms he/she claims to have been violated". The Court also referred to the Rule 36 of the Rules of Procedure, which establishes that, "the Court shall reject a Referral as being manifestly ill-founded when it is satisfied that: b) the presented facts do not in any way justify the allegation of a violation of the constitutional rights or d) the Applicant does not sufficiently substantiate his claim."

The Court concluded the Applicant has not substantiated his claims on constitutional grounds, showing why and how the District Court committed a violation of his rights guaranteed by the Constitution and European Convention, and he did not provide evidence that his rights and freedoms have been violated by the District Court. So, the Constitutional Court cannot find why and how the relevant proceedings in the District Court were in any way unfair or tainted by arbitrariness and for this case the Court mentioned the case Shub v. Lithuania, ECHR Decision on Admissibility of Application No. 17064/06 of 30 June 2009.

As a conclusion, the Court finds that the Referral did not fulfill the requirements of Article 48 of the Law and Rule 36.2 b) and d) of the Rules of Procedure, as such it was considered manifestly ill-founded.

Pristine, 26 June 2012
Ref. No. :RK256/12

RESOLUTION ON INADMISSIBILITY

Case No. KI 08/12

Applicant

Nexhat Shala

Constitutional Review of the Judgment of the District Court in Prishtina, Ac. nr. 1107/2010, of 28 June 2011

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Enver Hasani, President
Kadri Kryeziu, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Ivan Čukalović, Judge
Gjyljeta Mushkolaj, Judge and
Iliriana Islami, Judge

Applicant

1. The Referral was filed by Nexhat Shala (the Applicant) residing in Barileva, municipality of Prishtina, represented by Hasan Rexha, a lawyer from Prishtina.

Challenged decision

2. The Applicant challenges the Judgment of the District Court in Prishtina, Ac. nr. 1107/2010, of 28 June 2011, which was served on the Applicant on 5 July 2011, and by which it was decided to reject his request for the repetition of the procedure in the first instance court.

Subject matter

3. The subject matter of the Referral concerns alleged violations of the rights to property as guaranteed by the Constitution and the European Convention on Human Rights, and regarding a disputed real estate (flat).

Legal basis

4. Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter referred to as the "Constitution"), Article 47 of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo, of 15 January 2009 (hereinafter referred to as the "Law") and Rule 56.2 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter referred to as the "Rules of Procedure"").

Proceedings before the Court

5. On 9 November 2011, the Applicant submitted the Referral with the Constitutional Court (hereinafter, the "Court").

6. On 11 November 2011, the Court notified the Applicant of the enregistrement of the Referral and requested additional information on exhaustion of legal remedies.

7. On 13 January 2012, the Court again requested the Applicant to supplement his Referral and submit the final decision on his issue.

8. On 30 January 2012, the Applicant submitted the supplemented Referral together with the documents requested by the Court.

9. On 1 March 2012, the President, by Decision Nr. GJR. 08/12 appointed Judge Almiro Rodrigues as Judge Rapporteur and Decision Nr. KSH 08/12, appointed the Review Panel composed of Judges: Robert Carolan (Presiding), Mr. sc Kadri Kryeziu (member) and Prof. Dr. Enver Hasani (member).

10. On 20 June 2012, the Review Panel considered the Report of the Judge Rapporteur and made a recommendation to the Court on the Inadmissibility of the Referral.

Summary of facts

11. In June 2005, the Applicant concluded a contract with Ali Gashi for purchase of flat, located in Lipjan. The sales contract has been certified by the Municipal Court in Lipjan on 9 September 2005. On 14 June 2005, Ali Gashi (the seller) sold the same real estate to Rasim Shabani (the buyer). Since the subject matter in both contacts was about the same real estate it resulted in a legal dispute. As a consequence different civil and criminal proceedings were developed in order to the interested parties to ensure their alleged rights.

12. In fact, on 6 September 2006, the Municipal Court in Lipjan recognized (Judgment C. nr. 248/06) to Rasim Shabani the right of ownership to the flat. The applicant filed an appeal against this resolution with the District Court in Prishtina. On 12 February 2007, the District Court in Prishtina (Judgment Ac. nr. 971/2006) confirmed the Judgment of the Municipal Court in Lipjan.

13. On 13 February 2007, the Applicant submitted a request with the Municipal Court in Lipjan for the repetition of the procedure in case C. nr. 248/2006, of 6 August 2006 asking for

the disqualification of the judge who had decided in the first instance. On 28 October 2010, the Municipal Court in Lipjan rejected (Resolution C. nr. 216/2010) the Applicant's request as inadmissible, because the Judgment C. nr. 248/2006, of 6 August 2006, became final and was not based on false evidence. The Applicant filed an appeal against this resolution with the District Court in Prishtina.

14. On 28 June 2011, the District Court in Prishtina rejected (Resolution Ac. nr. 1107/2010) the Applicant's appeal as ungrounded, because the appealed Resolution (C. nr. 216/2010) did not contain essential violations that would impact on the lawfulness of the appealed decision.

15. On 26 August 2011, the Applicant submitted a proposal for the protection of legality with the Office of the State Prosecutor in Prishtina against the final Resolution of the Municipal Court in Lipjan, C. nr. 216/2010. On 9 September 2011, the Office of the State Prosecutor notified the Applicant that his request had been rejected because no legal basis for the submission of the request for the protection of legality was found.

Applicant's allegations

16. The Applicant claims that his rights, mainly to Fair and Impartial Trial and to Legal Remedies, have been violated.

17. The Applicant alleges that the District Court in Prishtina, by rejecting his request for the repetition of the procedure, has violated his rights, as foreseen in the following Constitutional provisions: Article 21 [General Principles], Article 31 [Right to Fair and Impartial Trial], Article 32 [Right to Legal Remedies], Article 54 [Right to Judicial Protection], and as well Article 6 of the European Convention on Human Rights.

18. The Applicant requests the Constitutional Court, inter alia, to annul the Municipal Court in Lipjan Resolution C. nr.

216/2010, of 28 October 2010, and the District Court in Prishtina Resolution Ac. nr. 1107/2010, of 28 June 2010.

Preliminary assessment of the Referral

19. First of all, the Court examines whether the Applicant has fulfilled the admissibility requirements as laid down in the Constitution and further specified in the Law and the Rules of Procedure. The Court considers that the Applicant justified the referral with a clear reference to the alleged violations; expressly challenges the Decision of the District Court as being the concrete act of public authority subject to the review; clearly points out the relief sought; and attaches the different decisions and other supporting information and documents.

20. However, in examining the substantiation of the Referral requirement, the Court notes that Article 48 establishes that "the claimant should accurately clarify what rights and freedoms he/she claims to have been violated".

21. On the other side, Rule 36 of the Rules foresees that "the Court shall reject a Referral as being manifestly ill-founded when it is satisfied that: b) the presented facts do not in any way justify the allegation of a violation of the constitutional rights or d) the Applicant does not sufficiently substantiate his claim.

22. Finally, Art 48 of the Law establishes that "the Constitutional Court receives and processes a referral (…) if it determines that all legal requirements have been met".

23. The Court notes that the parties dispute the validity and legality of the abovementioned contract. The assessment of the legality of contracts is under the jurisdiction of regular courts. A case must be built on constitutionality grounds for the Constitutional Court to intervene.

24. In this respect, the Applicant does not show why and how the District Court committed a violation of his rights guaranteed by the Constitution and European Convention nor provides evidence on the alleged violation.

25. The Court reiterates that it is not the task of the Constitutional Court to deal with errors of fact or errors of law (legality) allegedly committed by the District Court in Prishtina, unless and in so far as they may have infringed rights and freedoms protected by the Constitution (constitutionality). Thus, the Court cannot act as a court of third instance in the instant case. It is the task and obligation of regular courts to interpret and apply pertinent rules of both procedural and substantive law (see, *mutatis mutandis,* Garcia Ruiz v. Spain [GC], no. 30544/96, para. 28, European Court of Human Rights [ECHR] 1999-I).

26. The Court can only consider whether the evidence has been presented in such a manner that the proceedings in general, viewed in their entirety, have been conducted in such a way that the Applicant had a fair trial (see among others authorities, Report of the European Commission on Human Rights in the case Edwards v. United Kingdom, App. No 13071/87 adopted on 10 July 1991).

27. In fact, the Applicant has not substantiated his claims on constitutional grounds, showing why and how the District Court committed a violation of his rights guaranteed by the Constitution and European Convention, and he did not provide evidence that his rights and freedoms have been violated by the District Court. So, the Constitutional Court cannot find why and how the relevant proceedings in the District Court were in any way unfair or tainted by arbitrariness (see *mutatis mutandis*, Shub v. Lithuania, ECHR Decision on Admissibility of Application No. 17064/06 of 30 June 2009).

28. Having said that, the Court finds that the Referral does not fulfill the requirements of Article 46 of the Law and Rule 36.2 b) and d), as such it is manifestly ill-founded and, in accordance with Art 48 of the Law, it cannot be received and processed.

29. Consequently, pursuant to Article 113.7 of the Constitution, Article 20 of the Law, and Rule 56.2 of the Rules of Procedure, the Referral is inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 46 of the Law, Rules 36.2 (b) and (d), Rule 56.2 of the Rules of Procedure, on 20 June 2012, unanimously

DECIDES

I. TO REJECT the Referral as inadmissible;

II. This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20.4 of the Law on the Constitutional Court; and

III. This Decision is effective immediately.

Judge Rapporteur **President of the Constitutional Court**

Almiro Rodriguez Prof. Dr. Enver Hasani

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