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BULLETIN OF CASE LAW 2013

OF THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

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Keywords:Individual Referral, exhaustion of legal remedies, right to fair and impartial trial, property dispute

The Applicants submitted their Referrals separately. Given that the subject matter and their challenged legal act was the same in all their Referrals, with the decision of the President and pursuant to Rules of Procedure, these Referrals were joined into one.

The Applicants filed their Referrals based on Article 113.7 of the Constitution of Kosovo, claiming that the Municipality Court Judgment C. 90/03 of 09.01.2008 and the District Court Judgment AC Nr. 313/2010 of 09.11.2011 violate their rights as guaranteed by Article 3 [Equality Before the Law]; Article 7 [Values]; Article 16 [Supremacy of the Constitution]; Article 21 [General Principles]; Article 22 [Direct Applicability of International Agreements and Instruments]; Article 23 [Human Dignity]; Article 24 [Equality Before the Law]; Article 25 [Right to Life]; Article 26 [Right to Personal Integrity]; Article 27 [Prohibition of Torture, Cruel, Inhuman and Degrading Treatment]; Article 31 [Right to Fair and Impartial Trial]; Article 41 [Right of Access to Public Documents]; Article 46 [Protection of Property] and Article 54 [Judicial Protection of Rights] in conjunction with Article 102 [General Principles of the Judicial System] of the Constitution of the Republic of Kosovo (hereinafter: the "Constitution") and their rights guaranteed by Article 1 [Obligations to respect human rights]; Article 2 [Right to life]; Article 3 [Prohibition of torture]; Article 6.1 [Right to a fair trial]; Article 8 [Right to respect for private and family life]; Article 10 [Freedom of Expression]; Article 13 [Right to an effective remedy]; Article 14 [Prohibition of discrimination] of the European Convention on Human Rights (hereinafter: the "ECHR") and Article 1 of Protocol No. 1 to the ECHR; Article 2, Article 3 and Article 4 of Protocol No. 7 to the ECHR in conjunction with Article 1 of Protocol No. 12 to the ECHR.

The Court concluded that it is not its task to deal with errors of fact or law (legality) allegedly committed by the regular courts, unless and in so far as

they may have infringed rights and freedoms protected by Constitution (constitutionality). The Court is not to act as a court of fourth instance, when considering the decisions taken by regular courts.

Therefore, the Applicants failed to show why and how the regular courts violated their rights as guaranteed by the Constitution, and thus, the Court decided that the Referral is inadmissible because it is manifestly ill-founded.

RESOLUTION ON INADMISSIBILITY
in
Cases No. KI 27/12, KI31/12, KI 32/12 and KI33/12
Applicants
Mykyreme Hoxha, Merita Hoxha, Mërgim Hoxha
and.Blerim.Hoxha
Constitutional Review of the Judgment of Municipal Court in Peja, C. 90/03 of 09.01.2008, and
Judgment of District Court in Peja, AC Nr. 313/2010 of 09.11.2011.

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Enver Hasani, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Kadri Kryeziu, Judge and
Arta Rama-Hajrizi, Judge.

Applicant

1. The Applicants are Mykyreme Hoxha, Merita Hoxha, Mërgim Hoxha and Blerim Hoxha residing in Peja.

Challenged decision

2. The challenged decisions are: the Judgment of Municipal Court in Peja C. 90/03 of 09.01.2008 and the Judgment of District Court in Peja AC Nr. 313/2010 of 09.11.2011, which were served on the Applicants on 25 November 2011.

Subject matter

3. The Applicants submitted separate Referrals with the Constitutional Court of the Republic of Kosovo (hereinafter: the "Court") on 19 March 2012, 26 March 2012 (two of them), and 27 March 2012 respectively, claiming that the Municipality Court Judgment C. 90/03 of 09.01.2008 and the District Court Judgment AC Nr. 313/2010 of 09.11.2011 violate

their rights as guaranteed by Article 3 [Equality Before the Law]; Article 7 [Values]; Article 16 [Supremacy of the Constitution]; Article 21 [General Principles]; Article 22 [Direct Applicability of International Agreements and Instruments]; Article 23 [Human Dignity]; Article 24 [Equality Before the Law]; Article 25 [Right to Life]; Article 26 [Right to Personal Integrity]; Article 27 [Prohibition of Torture, Cruel, Inhuman and Degrading Treatment]; Article 31 [Right to Fair and Impartial Trial]; Article 41 [Right of Access to Public Documents]; Article 46 [Protection of Property] and Article 54 [Judicial Protection of Rights] in conjunction with Article 102 [General Principles of the Judicial System] of the Constitution of the Republic of Kosovo (hereinafter: the "Constitution") and their rights guaranteed by Article 1 [Obligations to respect human rights]; Article 2 [Right to life]; Article 3 [Prohibition of torture]; Article 6.1 [Right to a fair trial]; Article 8 [Right to respect for private and family life]; Article 10 [Freedom of Expression]; Article 13 [Right to an effective remedy]; Article 14 [Prohibition of discrimination] of the European Convention on Human Rights (hereinafter: the "ECHR") and Article 1 of Protocol No. 1 to the ECHR; Article 2, Article 3 and Article 4 of Protocol No. 7 to the ECHR in conjunction with Article 1 of Protocol No. 12 to the ECHR.

Legal Basis

4. The Referral is based on Article 113.7 of the Constitution, Article 20 of the Law no. 03/L-121 on the Constitutional Court of the Republic of Kosovo of 16 December 2008, which entered into force on 15 January 2009 (hereinafter: 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 Constitutional Court

5. On 19 March 2012, the first applicant, Mykyreme Hoxha, submitted her Referral to the Court.

6. On 26 March 2012, the second and the third applicants, Merita Hoxha and Mërgim Hoxha, submitted their Referrals to the Court.

7. On 27 March 2012 the fourth applicant, Blerim Hoxha, submitted his Referral to the Court.

8. By the Decision of the President (No. GJR. 27/12 of 11 April 2012) judge Robert Carolan was appointed as Judge Rapporteur in the case KI 27/12. On the same day, by decision No. KSH. 27/12, the President appointed the

Review Panel composed of Judges: Altay Suroy (Presiding), Gjyljeta Mushkolaj and Iliriana Islami.

9. By the Decision of the President (No. GJR. 31/12 of 23 April 2012) Gjyljeta Mushkolaj was appointed as Judge Rapporteur in case KI 31/12. On the same day, by decision No. KSH. 31/12, the President appointed the Review Panel composed of Judges: Snezhana Botusharova, Ivan Čukalović and Iliriana Islami.

10. By the Decision of the President (No. GJR. 32/12 of 23 April 2012) Almiro Rodrigues was appointed as Judge Rapporteur in the case KI 32/12. On the same day, by decision No. KSH. 32/12, the President appointed the Review Panel composed of Judges: Robert Carolan, Enver Hasani and Kadri Kryeziu.

11. By the Decision of the President (No. GJR. 33/12 of 23 April 2012) Altay Suroy was appointed as Judge Rapporteur in the case KI 33/12. On the same day, by decision No. KSH. 33/12, the President appointed the Review Panel composed of Judges: Ivan Čukalović, Gjyljeta Mushkolaj and Iliriana Islami.

12. On 24 April 2012, the Applicants submitted to the Court additional documents, mainly minutes of the deliberations in regular courts, which according to the Applicants are important to prove their allegations.

13. On 18 May 2012, the Constitutional Court through a letter informed the Applicants that their Referrals have been registered. On the same day, the Court requested from the Applicant Mykereme Hoxha to submit additional documents, which until present day have not been submitted.

14. On 4 July 2012, pursuant to Rule 37.1 of the Rules of Procedure, by the Order of the President (No. Urdh. KI.27/12 KI.31/12 KI.32/12 KI.33/12) the cases were joined into a single case, in which the Judge Rapporteur was assigned from KI.27/12 and the Review Panel members were from KI 37/12.

15. On 2 July 2012, the President, by Decision GJR. 35/12 reappointed the new Review Panel composed of judges: Altay Suroy(presiding), Ivan Čukalović, is appointed to replace Judge Gjyljeta Mushkolaj, since her terms of office as judge of the Constitutional Court had expired on 26 June 2012, and Kadri Kryeziu, is appointed to replace Judge Iliriana

Islami because her term of office on the Court had expired on 26 June 2012.

16. On 21 June 2013 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 26 October 1986 M.H. (who is the first applicant's late husband and the other applicants' late father), and H.D., both residing in Peja, concluded a purchase contract for the immovable property of 0.68 m². This contract was verified at the Municipal Court in Peja on 10 November 1986.

18. On 11 October 1996 H.D., through her lawyer, filed a lawsuit to the Municipal Court in Peja for verification of ownership, against the defendant M.H. claiming that , in fact, they agreed to join the immovable properties in order to build a building together, and that she was not aware that she actually signed a contract of purchase, which transferred the ownership exclusively to M.H.

19. On 16 September 1997, the defendant M.H. filed a counter-lawsuit against H.D.

20. On 11 October 2002, M.H. died.

21. On 11 March 2003, the legal representative of H.D. submitted a motion requesting from the Municipal Court in Peja to continue the proceedings against the inheritors of late M.H. namely the Applicants.

22. On 9 January 2008 Municipal Court of Peja adopted its Judgment C. nr. 90/03, by which:

> "
>
> *I. CONFIRMS that H.D. from Peja is the owner of the apartment consisted of two rooms, kitchen, dining room, bathroom, balcony, in a usable surface of 46.35 m2, basement in a surface of 7.77 m2, entrance in the ground floor in a surface of 5.72 m2 and the stairs for the first floor and the basement in a surface of 12.64 m2, which is part of joint construction.*

II. OBLIGES Mikereme Hoxha, Mërgim Hoxha, Blerim Hoxha, Merita Hoxha, A. R., maiden name Hoxha and Sh.Gj., maiden name Hoxha, as the first legal inheritors of the late, M.H., from Peja, to recognize the ownership right to H.D. as confirmed in the point I of the enacting clause of this judgment and to allow the changes in the register of the rights for the immovable property in the Municipal Cadastral Office in Peja, so this right is registered in the name H.D. and to pay the court costs in amount of 4.005 euros, all this in a time limit of 15 days from the day when this judgment becomes final, under the threat of the forced execution.

III. REJECTS AS UNGROUNDED, the claim of Mikereme Hoxha, Mërgim Hoxha, Blerim Hoxha, Merita Hoxha, A.R., maiden name Hoxha and Sh. Gj., maiden name Hoxha, as the first legal inheritors of the late M.H. from Peja, through which they requested to oblige H.D. from Peja to return to M.H. from Peja, the disputed apartment."

23. Further in the Judgment, C. no. 90/03, the Municipal Court in Peja reasoned by stating that:

"...after the assessment of the evidence, the court is convinced that, in fact, between H.D. and M.H. both from Peja existed a real agreement, a verbal agreement on the joint construction. Regardless the fact that in the present case, there is no written agreement, and there is a contract of purchase instead, the Court concluded that the contract on the joint construction was the true and the real intention, as it is regulated pursuant to the Article 28 of the Law on Contracts and Torts, according to which "Intention to enter a contract may be expressed by words, usual signs or other conduct, on the grounds of which one may safely conclude of its existence". The court concluded that the contract of purchase cannot stand as real contract in the present case, since it is confirmed that the same, hid the real will and intention of the contracting parties."

24. On 24 May 2008, the Applicants filed an appeal with District Court in Peja, against Judgment, C. no. 90/03, of the Municipal Court in Peja, requesting its annulment, due to:

"...

- *Essential violations of the provisions of the European Convention on Human Rights;*

- *Erroneous assessment of factual situation;*

- *Essential violations of the provisions of the Law on Civil Procedure;*

- *Essential violations of the provisions of substantial Law."*

25. On 9 November 2011 the District Court in Peja adopted Judgment Ac. Nr. 313/2010 and served to the Applicants on 25 November 2011, rejecting the Applicants' appeal as ungrounded and upheld the Judgment C. nr. 90/03 of the Municipality Court in Peja.

Applicant's allegations

26. The Applicants allege that both the Municipal Court in Peja and the District Court in Peja, while conducting the procedures and assessing the facts of the case, caused numerous violations of fundamental rights and freedoms, as follows:

- Article 3 [Equality Before the Law];
- Article 7 [Values];
- Article 16 [Supremacy of the Constitution];
- Article 21 [General Principles];
- Article 22 [Direct Applicability of International Agreements and Instruments];
- Article 23 [Human Dignity];
- Article 24 [Equality Before the Law];
- Article 25 [Right to Life];
- Article 26 [Right to Personal Integrity];
- Article 27 [Prohibition of Torture, Cruel, inhuman and Degrading Treatment];
- Article 31 [Right to Fair and Impartial Trial];
- Article 41 [Right of Access to Public Documents];
- Article 46 [Protection of Property] and
- Article 54 [Judicial Protection of Rights] in conjunction with
- Article 102 [General Principles if the Judicial System]

of the Constitution of the Republic of Kosovo (hereinafter: the "Constitution") and their rights guaranteed by:

- Article 1 [Obligations to respect human rights];
- Article 2 [Right to life];
- Article 3 [Prohibition of torture];
- Article 6.1 [Right to a fair trial];
- Article 8 [Right to respect for private and family life];
- Article 10 [Freedom of Expression];
- Article 13 [Right to an effective remedy];
- Article 14 [Prohibition of discrimination]

of the European Convention on Human Rights (hereinafter: the "ECHR") and

- Article 1 of Protocol No. 1 to the ECHR;
- Article 2, Article 3 and Article 4 of Protocol No. 7 to the ECHR in conjunction with Article 1 of Protocol No. 12 to the ECHR.

27. In this respect, the Applicants request the Court to declare null and void Judgment C. no. 90/03 of the Municipal Court of Peja, Judgment Ac. No. 313/2010 of the District Court in Peja and Judgment C.No. 4/2010 of the Supreme Court of Kosovo, which was never submitted to the Court, despite the fact that that the Applicants were asked to do so.

28. Consequently, the Applicants request the Court to return the case for retrial in the Municipal Court in Peja.

Preliminary assessment of admissibility of the Referral

29. First of all, the Court examines whether the Applicants have fulfilled the admissibility requirements laid down by the Constitution, the Law and the Rules of Procedure. The Court considers that the Applicants justified the referral with the relevant facts and a clear reference to the alleged violations; expressly challenged the Judgment as being the concrete act of public authority subject to the review; clearly pointed out the relief sought; and attached some of the different decisions and other supporting information and documents.

30. However, in examining the admissibility requirement, the Court notes that 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."

and Rule 36 (2.a), which provides:

"The Court shall reject a Referral as being manifestly ill-founded when it is satisfied that: the Referral is not prima facie justified"

31. The Court also recalls that on 18 May 2012, by a letter the Applicants were asked to submit the Judgment of the Supreme Court, in compliance with Rule 36 (4) and Rule 36 (5), which provide:

"(4) In the event that a Referral to the Court is incomplete or it does not contain the information necessary for the conduct of the proceedings, the Court may request that the Applicant make the necessary corrections within 30 days.

(5) If the Applicant fails, without good cause, to make the necessary corrections within the time-limit referred to in paragraph 5 of this Rule, the Referral shall be proceeded with."

32. The Court emphasizes that it is not its task to deal with errors of fact or law (legality) allegedly committed by the regular courts, 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).

33. In sum, 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 Applicants have 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. As a matter of fact, the Applicants did not substantiate the claim on constitutional grounds and did not provide convincing evidence that their rights and freedoms have been violated by that public authority. Therefore, the 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).

35. Therefore, the Applicants failed to show why and how the regular courts violated their rights as guaranteed by the Constitution. The Court notes that the Judgment C. no. 90/03 of the Municipal Court of Peja and the Judgment Ac. No. 313/2010 of the District Court in Peja, were well argued and reasoned.

36. It follows that the Referral is inadmissible because it is manifestly ill-founded pursuant to Rule 36 (1.c), 36 (4) and 36 (5) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court of the Republic of Kosovo, pursuant to Article 113.7 of the Constitution, Article 20 of the Law and Rule 36 of the Rules of Procedure, in the session of 5 July 2013, unanimously

DECIDES

I. TO REJECT the Referral as Inadmissible;

II. TO NOTIFY this decision to the Parties

III. TO PUBLISH the decision in the Official Gazette, in accordance with Article 20 (4) of the Law; and

IV. This Decision is effective immediately.

Judge Rapporteur
Robert Carolan

President of the Constitutional Court
Prof. Dr. Enver Hasani

KI 51/12, Sahit Sylejmani, date 11 July 2013- Constitutional review of the Kosovo Judicial Council decisions no. 4/2013 and 32/2013, dated 4 January 2013 respectively 25 January 2013.

Case KI 51/12, Resolution on Inadmissibility of 8 July 2013

Keywords: individual referral, inadmissible referral, non-exhaustion of legal remedies, right to work and exercise profession, judicial protection of rights.

The Referral is based on Article 113.7 of the Constitution, Articles 20, 22.7 and 22.8 of the Law and Rule 56 (2) of the Rules of Procedure.The Applicant, among others, claimed that the decisions of Kosovo Judicial Council regarding the level of his salary as the President of the Special Chamber of the Supreme Court of Kosovo are not based on the law, and as such, they violate the constitutional right to work and exercise profession. The Applicant also requested from the Court to five its legal opinion with respect to the level of his salary as the President of the Special Chamber of the Supreme Court of Kosovo.

The Court concluded that the Applicant has not exhausted all legal remedies regarding the decisions of the Kosovo Judicial Council with respect to the height of his salary. As to the Applicant's request for interpretation of the legal basis pertinent to his salary, the Court considers that it is questionable whether such a request for an advisory opinion can be raised by the Applicant as an individual party filing his referral pursuant to Article 113.7 of the Constitution. Due to the mentioned reasons, the Court, based on Article 113.7 of the Constitution, Article 47.2 of the Law and Rule 36 (1) a) of the Rules of Procedure, decided to reject the Referral as inadmissible.

RESOLUTION ON INADMISSIBILITY
in
Case No.KI-51/12
Applicant
Sahit Sylejmani
Constitutional review of the Kosovo Judicial Council decisions nos.4/2013 and 32/2013, dated 4 January 2013 respectively 25 January 2013

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

Composed of:

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

Applicant

1. The Applicant is Sahit Sylejmani, President of the Special Chamber of the Supreme Court of Kosovo (hereinafter: SCSC), with residency in Prishtina.

Challenged decisions

2. The Applicant challenges the constitutionality of the Kosovo Judicial Council (hereinafter: KJC), decisions nos.4/2013 and 32/2013 dated 4 January 2013 respectively 25 January 2013. The Applicant also challenges the content of notifications of the Secretariat of Kosovo Judicial Council nos. 01 120-413 and 09-031-56 dated 29 March 2012 respectively 2 May 2012.

Legal basis

3. Article 113.7 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 (hereinafter: the Law) and Rule 56 (2) of the Rules of Procedure (hereinafter: the Rules of Procedure).

Subject matter

4. The subject matter of the Referral is centered around three questions: (i) if the level of salary of the President of SCSC should be equal based on the law, with the level of the salary of a local judge of the SCSC, (ii) if there exists a legal basis based on the Law on Courts, or if there is another legal basis from another applicable law which regulates salaries in the public sector, which stipulates that the salary of the President of the SCSC is higher (due to additional responsibilities inherent to the position) compared to the salary of a local judge of the SCSC, and (iii) if there is a legal basis for the current determination of the KJC, based on which the salary of the President of the SCSC is equal to the salary of a President of a branch of the Supreme Court of Kosovo, which in fact implies the salary of a local judge of the SCSC.

5. On 4 January 2013, the KJC by decision no.4/2013 determined that the salary of the President of the SCSC (Applicant) is 5 % higher than that of the local judge of the SCSC. However, the Applicant maintains that the increase by 5% of his salary should be paid to him retroactively as well; by taking into account the period when he assumed office as the president of the SCSC, which commences from 18 January 2012.

Procedure before the Court

6. On 11 May 2012, the Applicant submitted a Referral with the Court. On the same date the Court asked the Applicant to fill in the Referral form.

7. On 22 May 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.

8. On 23 May 2013, the Court notified the Applicant about the registration of the Referral. On the same date the Court communicated the Referral to the KJC.

9. On 24 May 2013, the President by Decision (No. KSH.KI-51/12) appointed Judges Ivan Čukalović and Kadri Kryeziu as members of the Review Panel, after the term of office of Judges Gjyljeta Mushkolaj and Iliriana Islami as Judges of the Court had ended.

10. On 28 May 2013, the Applicant filed additional documents with the Court.

11. On 21 June 2013, the Review Panel deliberated the report of Judge Rapporteur and recommended to the full court the inadmissibility of the Referral.

Summary of facts as evidenced by the documents furnished by the Applicant

12. On 18 January 2012, the Applicant was appointed as the President of the SCSC.

13. On 5 March 2012, the Applicant submitted with the KJC a request with questions pertinent to the level of the salary of the President of the SCSC in comparison with the salary of the President of the Supreme Court of Kosovo, Presidents of branches of the Supreme Court and local judges of the SCSC.

14. On 29 March 2012, the legal department of the Secretariat of KJC by notification no.01 120-413 informed the Applicant that his request regarding the level of his salary has no fixed legal basis and that based on the said notification the KJC in the meeting of 23 march 2012, has determined that the current salary of the President of the SCSC (Applicant) is equal with that of the Presidents of other branches of the Supreme Court of Kosovo, who according to KJC also have additional competences while being paid as judges of the Supreme Court.

15. On 2 April 2012, the Applicant repeated his request with the KJC in order to review once more the issue of his salary and to permit a difference in salary between a local judge of the SCSC and the President of the SCSC (Applicant), by taking "*into account that there is a legal basis based on article 29 of the Law on Courts"*.

16. On 2 May 2012, the legal department of the Secretariat of KJC served notification no.09-031-56 to the Applicant thereby informing him that his salary question was reviewed anew in the KJC meeting held on 23 April 2012, whereby the KJC adhered to its previous determination that the salary of the President of the SCSC will remain at the current level pending restructuring of the courts and determination of differences in salaries by the pertinent law.

17. On 4 January 2013, by decision no.4/2013 pertinent to the basic salary and additional payments the KJC determined that the President of the SCSC (Applicant) will receive a salary 5% higher than that of the judges of the SCSC. In another related decision no.32/2013 dated 25 January 2013, the KJC determined that decision no.04/2013 dated 4 January 2013 has retroactive force as of 1 January 2013, which excludes the previous period commencing form 18 January 2012 which is the date when the Applicant assumed office as the President of the SCSC.

18. On 6 March 2013, the Secretariat of the KJC by notification ref.03-33 informed the Applicant that the KJC decision dated 4 January 2013 does not provide for retroactive payment; therefore his request for retroactive application of the decision would not be granted.

19. On 28 May 2013, the Applicant informed the Court that he still adhered to his Referral submitted on 11 May 2012.

Applicant's allegations

20. The Applicant claims that given the volume of responsibilities of the President of the SCSC, there are no sound practical and legal grounds that the salary of the President of the SCSC is equal to that of a judge of the SCSC; or to that of other Presidents of branches within the organizational structure of the Supreme Court of Kosovo.

21. The Applicant claims that other branches of the Supreme Court do not possess organizational and functional attributes which are vested by the SCSC, thereby purporting that his salary should not be on the same level as that of the Presidents of other branches of the Supreme Court; or to that of other judges of the SCSC.

22. The Applicant claims: "*.....that it appears to be an undeniable fact that the Kosovar legislator when approving the law on courts did not deem it necessary to regulate the level of salary of the President of the SCSC via article 29 of the Law on Courts, so this high judicial position is left unregulated*".

23. The Applicant alleges that the legal department of the Secretariat of the KJC in its notifications does not mention a strict deadline and how the question of the salary of the President of the SCSC will be regulated, and based on what law, and if the President of the SCSC (Applicant), if there is a salary change, will be paid the difference in salary as of the day he assumed the office which is 18 January 2012.

24. The Applicant claims that the right to an adequate salary proportionate to one's position is a constitutionally guaranteed right by articles 49 [Right to Work and Exercise Profession] and 54 [Judicial Protection of Rights] of the Constitution, as well by international legal instruments.

25. The Applicant claims that his increased salary should also be paid to him retroactively, i.e. commencing from 18 January 2012 which is the date the Applicant assumed office as the President of the SCSC.

26. Furthermore, the Applicant asks the Court to give a legal opinion on the following questions:

- Should the level of salary of the President of SCSC be equal, based on the law, with the level of the salary of a local judge of the SCSC?

- Is there a legal basis in the Law on Courts, or from another applicable law which regulates salaries in the public sector, which stipulates that the salary of the President of the SCSC is higher (due to additional responsibilities inherent to the position) than the salary of a local judge of the SCSC?

- Is there a legal basis for the current determination of the KJC, that the salary of the President of the SCSC is equivalent to the salary of a President of a branch of the Supreme Court of Kosovo, which is the same as the salary of a local judge of the SCSC?

Assessment of admissibility

27. 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.

28. 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 remedies provided by law".*

29. The Court also refers to Article 14.1 of the Law No. 03/L-199 on Courts which is fully implemented as of 1 January 2013, and which provides:

> *"The Administrative Matters Department of the Basic Court shall adjudicate and decide on administrative conflicts according to complaints against final administrative acts and other issues defined by Law".*

30. From the documents submitted, it is clear that the Applicant has not initiated an administrative complaint based on the applicable law in Kosovo, and consequently has not exhausted all legal remedies in accordance with Article 113.7of the Constitution.

31. 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: AABRIINVEST University L.L.C., Prishtina vs. the Government of the Republic of Kosovo, KI-41/ 09, of 21 January 2010, and see mutatis mutandis, ECHR, Selmouni vs. France, no. 25803/94, Decision of 28 July 1999).*

32. The Court similarly decided, on 18 May 2011, in the Resolution on Inadmissibility in case No. KI114/10, Applicant Vahide Badivuku - Constitutional Review of the Kosovo Judicial Council Notification on the reappointment of judges and prosecutors, No 01/118-713, of 27 October 2010.

33. In the aforementioned resolution on inadmissibility, the Court further reasoned:

> *"As to the present Referral, the Constitutional Court notes that, on 29 October 2010, the Kosovo Judicial Council notified the Applicant, through its Notification No. 01/118-713, that her mandate as a prosecutor ceased on 27 October 2010.*
>
> *The Kosovo Judicial Council 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, without mentioning other reasons for the dismissal of the Applicant. The Applicant never appealed against this Notification.*

In this respect, 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.

In the present case, the Court finds that the Applicant has not submitted any prima facie evidence and facts showing that she has exhausted all effective remedies under Kosovo law, in order for the Court to proceed with her allegation about the constitutionality of Notification No. 01/118-713 of 27 October 2010, pursuant to Section 6 [Request for reconsideration] of AD No. 2008/02...”

34. As to the Applicant's request for interpretation of the legal basis pertinent to his salary, the Court considers that it is questionable whether such a request for an advisory opinion can be raised by the Applicant as an individual party filing his referral pursuant to Article 113.7 of the Constitution.

35. It follows that the Referral is inadmissible due to the non-exhaustion of all legal remedies 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.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 47.2 of the Law and Rule 36 (1) a) of the Rules of Procedure, on 8 July 2013, 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
Robert Carolan

President of the Constitutional Court
Prof. dr. Enver Hasani

KI 62/13, Mr. Tahir Morina, date 11 July 2013- Constitutional Review of the Judgment of the Supreme Court in Prishtina

Case KI 62/13, Resolution on Inadmissibility of 25 June 2013.

Keywords: individual Referral, constitutional review of the Decision of the Supreme Court of Kosovo

The Referral is based on Article 113.7 of the Constitution, Article 47 of the Law on the Constitutional Court of the Republic of Kosovo no. 03/L-121 of 15 January 2009, and Rule 56 of the Rules of Procedure of the Constitutional Court.

On 23 April 2013, the Applicant submitted Referral to the Constitutional Court of the Republic of Kosovo and sought from the court the constitutional review of the Decision of the Supreme Court of Kosovo.

The Applicant alleges that his rights from Article 31 of the Constitution (Right to Fair and Impartial Trial) in conjunction with Article 358, paragraph 5 362-370, and in particular of Article 371 of the Criminal Code of Kosovo (hereinafter: CCK) have been violated.

The President with Decision (no. GJR.62/13 of 29 April 2013), appointed Judge Kadri Kryeziu as Judge Rapporteur. On the same day, the President with Decision no.KSH.KI 62/13 appointed the Review Panel composed of Judges: Almiro Rodrigues,Ivan Čukalović and Enver Hasani.

The court having examined the documents submitted by the Applicant, does not find any indication that the proceedings before HPCC and regular courts were in any way unfair or tainted by arbitrariness

For all the aforementioned reasons, the Constitutional Court of Kosovo concluded that the case is manifestly ill-founded.

RESOLUTION ON INADMISSIBILITY
n
Case no.KI62/13
Applicant
Tahir Morina
Constitutional Review of the Judgment of the Supreme Court in Prishtina Rev. no. 49/2010 dated 01 February 2013

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Enver Hasani, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Kadri Kryeziu, Judge and
Arta Rama-Hajrizi, Judge.

Applicant

1. The Applicant is Tahir Morina,from the village of Gllabar, (hereinafter: the Applicant), who is represented by the lawyer Xhafer Maloku from Klina.

Challenged decision

2. The Applicant challenged the Judgment of the Supreme Court in Prishtina Rev.no. 49/2010 dated 01 February 2013.

Subject matter

3. The subject matter of the case submitted in the Constitutional Court of the Republic of Kosovo (hereinafter: the Court), on 23 April 2013, is the confirmation of the property rights over the property, which is the subject of the contract concluded on 21 November 2002.

Legal basis

4. The Referral is based on Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), Articles 20, 22.7 and 22.8 of

the Law Nr. 03/L-121, on Constitutional Court of the Republic of Kosovo, dated 15 January 2009 (hereinafter: the Law)and the Rule 56.2 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: Rules of Procedure).

Proceedings before the Constitutional Court

5. On 23 April 2013, the Applicant submitted the Referral in the Constitutional Court of the Republic of Kosovo and the same was registered under number KI62/13.

6. By Decision of the President, JudgeKadri Kryeziuwas appointed as Judge Rapporteur. On the same day, the President appointed the Review Panel composed of Judges: Almiro Rodrigues, Ivan Čukalović and Enver Hasani.

7. On 25 June 2013 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. On 21 November 2002, the Applicant, in capacity of buyer concluded sale-purchase contract with V.R., who in the contract was marked as a seller of the real estate, which according to power of attorney Vr.no. 3842/2002, dated 18 November 2002, which was certified in the Basic Court in Ulqin (Republic of Montenegro), is represented by B. M.

9. According to the contract, the Applicant acquires the property right over the seller's property and this is the real estate, which in the possession list was registered under number 791, as cadastral plot no. 533 CZ Klina, as well as the right of transfer of property to his name.

10. On the same day, the Applicant paid to the seller V.R. the contracted price, in the amount of €200.000, 00, and at the same time he registered the real estate in his name in the Directorate for Cadastre in Klina, which is the subject of the contract.

11. V.R. challenges the validity of the contract, concluded on 21 November 2002, and on an unspecified day submitted the request for restitution of property to the Housing and Property Claims Commission in Prishtina (hereinafter: HPCC).

12. On an unspecified date, V.R. initiates the criminal proceedings in the Basic Court in Ulqin, due to fraud, as well as civil claim in the Municipal Court in Klina, with a purpose of the restitution of the possessed property.

Proceedings before HPCC

13. On 18 June 2005, the HPCC in the first instance proceedings, based on available case file and on the opinion of graphologist on the authenticity of signature, by which was signed the power of attorney Vr.no. 3842/2002 dated18 November 2002 and the sale-purchase contract, which was signed on 21 November 2002, issues the order to return the property to V.R. and at the same time to expel the other party from the property (Applicant).

14. On 31 October 2005, the Applicant duly files appeal against the first instance decision of the HPCC of 18 June 2005.

15. On 08 June 2007, in the second instance proceedings, upon the Applicant's appeal, the HPCC renders the decision to reject the Applicant's request for reconsideration of the first instance decision of 18 June 2005, and to issue final order as the previous one.

Criminal proceedings before the Basic Court in Ulqin (Republic of Montenegro)

16. On 17 April 2007, Basic State Prosecution Office in Ulqin raised indictment in the Basic Court in Ulqin against the defendants, the Applicant and M.B., from Gllogovci, citizen of the Republic of Kosovo, due to criminal offence under Article 207 paragraph 3 in conjunction with paragraph 1. CC RMN (forgery of documents), and criminal offence of as per Article 209, paragraph 1 of the CC RMN [Presentation in verification of false content].

17. On 09 February 2012, Basic Court in Ulqin renders the Judgment [K. nr. 185/08]. In the enacting clause of the Judgment, the Court concludes that, *"during presentation of evidence and hearing of witnesses as well as according to the opinion of the court expert, graphologist, it was confirmed that the personal ID no. 31854, to the name of V.R. issued by the SUP Klina, which was used as authentic on the occasion of certification of power of attorney in the Basic Court in Ulqin, is forged public document, that the latter was not issued by SUP Klina, which*

was confirmed by the document of MIA of Republic of Serbia, no. 205-325/11, of 13 April 2011, The Court assessed this evidence as reliable, because it was issued by a competent authority from which it was ascertained that the personal ID, serial no. CP61221811, reg. no. 31854, is not authentic, and was not issued by SUP Klina, to V.R."

18. The Court also notes that "*it wasundoubtedlyconfirmed that the person, who certified the power of attorney on 18 November 2002, in the Basic Court in Ulqin in the name of V.R., used forged personal document with registration number 31854, which was concluded by the Court in the certification book, but in the proceedings it was not found that this person was the Applicant or M.T. "*

19. According to this, the Basic Court in Ulqin, by Judgment [K.no.185/08] dated 09 February 2012, acquitted the defendants, the Applicant and M.B. of the indictment, because it was not found that they have committed criminal offence which they were accused of, while the Court suggests to the injured V.R. to file property-legal claim in the contested procedure.

20. On 05 July 2012, the Higher Court in Podgorica, upon the appeal of the State Basic Prosecution Office in Ulqin against the Judgment of the Basic Court in Ulqin [K.no 185/2008] of 09 February 2012, rendered the Judgment [Kz no.1027/2012], by which is rejected the appeal of the prosecution office and upheld the Judgment of the Basic Court [K.no 185/2008] in Ulqin of 09 February 2012.

Proceedings regarding the annulment of sale-purchase contract [1478/2002] in the Municipal Court in Klina

21. On 02 April 2009, the Municipal Court in Klina by Judgment [C.no 48/2004], annuls and declares null and void the sale-purchase contract number 1478/2002 dated 21 November 2002, where as contracting parties appeared the Applicant and V.R.

22. In the enacting clause of the judgment, the Court states that "*the respondent (the Applicant) should waive the possession and vacate the property, registered with the possession list 791 as cadastral parcel no. 533 CZ Klina,, within a deadline of 15 days from the date of service of the judgment, under threat of forced execution.*"

23. The Court ordered the Cadastral Office of the Municipality of Klina to make the changes in the cadastral books pursuant to the judgment and registration of the plot in the name of the claimant, respectively of V.R.

24. On an unspecified date, the Applicant filed an appeal against the Municipal Court in Klina (the appeal of the Applicant does not exist in the case file, but, as basis for paragraph 23 were used claims from the judgment of the Supreme Court).

25. On an unspecified date, the second instance Court rejected the appeal of the Applicant and upheld the first instance judgment (the second instance judgment does not exist in the case file, but as basis for paragraph 24 were used claims from the judgment of the Supreme Court).

26. On 19 March 2013, the Applicant filed a request for revision in the Supreme Court.

27. On 01 February 2013, the Supreme Court rendered the Judgment [Rev. no. 49/2010], by which is rejected the revision of the Applicant as ungrounded.

Applicant's allegations

28. The Applicant alleges that his rights from Article 31 of the Constitution (Right to Fair and Impartial Trial) in conjunction with Article 358, paragraph 5 362-370, and in particular of Article 371 of the Criminal Code of Kosovo (hereinafter: CCK)

29. The Applicant also alleges that *„it is not known who conducted graphology expertise in the procedure before HPCC, but it is said that it was done at a private graphologist in Bulgaria, It was not conducted according to the judicial practice where would be applied the conditions for the claimant to respond to interactive questions of interested parties, but it was done in another manner which does not meet conditions and standards of a court expertise, according to criteria of the Article 371 of the CPK."*

30. The Applicant alleges that he did not participate personally in the proceedings in HPCC, as an authentic owner and neither authorized another person to represent him in proceedings for the confirmation of ownership in front of HPCC.

31. The Applicant addresses the Constitutional Court with the following request:

"That the Court finds that in the proceedings before the regular courts, these constitutional rights were violated to the responding party (the Applicant):

a) Equality Before Law – Article 24 of the Constitution, because the Applicant was not given a possibility to participate in a procedure before the HPCC, where his property was reviewed, that all evidence were used against him and that the proceedings favoured his opponent V.R.

b) Right to Fair and Impartial Trial- Article 31 of the Constitution, because the key evidence (graphology expertise) was presented in an unprofessional manner, in a procedure which is not judicial. "

Assessment of admissibility of the Referral

32. In order to be able to adjudicate the Applicant's Referral, the Constitutional Court has to assess beforehand whether the Applicant has met all the requirements of admissibility, which are foreseen by the Constitution and further specified by the Law and Rules of Procedure.

33. In this regard, 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."

34. Although the Applicant states that by decisions of regular courts and by HPCC decision were violated his rights guaranteed by the Constitution and the laws of the Republic of Kosovo, he has not presented any relevant evidence or fact to support that the Housing and Property Claims Commission or judicial authorities have made any violation of his rights guaranteed by the Constitution (see Vanek against the Slovak Republic, the ECHR's Decision on admissibility in case no. 53363 of 31 May 2005).

35. The Court holds that pursuant to Section 1.2 of UNMIK Regulation 1999/23 it is provided that the Commission (HPCC) has jurisdiction for deciding:

„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."

36. This jurisdiction was clarified by UNMIK Regulation 2000/60, as follows:

"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..."

37. With regards to the present case, the Court reiterates that the question of HPCC decisions was raised in case KI104/10, and on 29 April 2012 adopted Judgment AGJ221/12, in which stated that "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." (see mutatis mutandis in Case Draža Arsić, Constitutional Review of Decision GZ No. 78/2010 of the District Court of Gjilan dated 7 June 2010).

38. The Constitutional Court reiterates that it is not its task to act as a court of appeal in respect of the decisions taken by ordinary courts. It is the role of the regular courts to interpret and apply the pertinent rules of both procedural and substantive law (see, mutatis mutandis, Garcia Ruiz v. Spain [VK] no. 30544/96, § 28, European Court on Human Rights [ECHR] 1999-1).

39. 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 other 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).

40. However, having examined the documents submitted by the Applicant, the Constitutional Court does not find any indication that the proceedings before HPCC and regular courts were in any way unfair or tainted by arbitrariness (see mutatis mutandis Application No. 53363/99, Vanek v. Slovak Republic, ECHR Decision of admissibility 31 May 2005).

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 20 of the Law and the Rule 36 (2) b) of the Rules of Procedure, on 8 July 2013, unanimously

DECIDES

I. TO REJECT the Referral as Inadmissible;

II. TO NOTIFY this decision to the Parties

III. TO PUBLISH the decision in the Official Gazette, in accordance with Article 20 (4) of the Law; and

IV. This Decision is effective immediately.

Judge Rapporteur
Dr. Sc. Kadri Kryeziu

President of the Constitutional Court
Prof. Dr. Enver Hasani

KI 52/12, Adije Iliri date 12 July 2013- Constitutional Review of the Decision of the Supreme Court of the Republic of Kosovo, Ac. no. 95/2011, dated 8 December 2011.

Case KI 52/12, Judgment of 5 July 2013

Keywords: individual referral, right to fair and impartial trial, 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 Supreme Court of the Republic of Kosovo, Ac. no. 95/2011, dated 8 December 2011, because neither the Applicant nor the Public Prosecutor had been summoned to participate in the proceedings. In particular, the Applicant alleges that "By the decision of the District Court in Prizren I.A.Gj. no. 2/2009 -16 dated 19.01.2010 and from the minutes of the main hearing undoubtedly results that the Applicant and District Public Prosecutor in Prizren have not even been invited and have not even participated in the trial, although their participation was obligatory pursuant to provisions of Article 4.2 of UNMIK Regulation no. 2004/29 for Protection Against International Abduction of Children. This Regulation was based exclusively on Convention for Civil Aspects of International Abduction of Children dated 25.10.1980."

On the issue of the admissibility of the Referral, the Court held that the Applicant has fulfilled the procedural requirements for admissibility.

On the merits of the Referral, the Court held that the presence of her husband and his lawyer at the proceedings before the District Court in Prizren placed the Applicant in a substantial disadvantage vis-à-vis her husband, since she was unable to present arguments and evidence and challenge the submissions of her husband during the course of the proceedings. Furthermore, the Court held that the Applicant by not having been present at the court proceedings, the Applicant was unable to refute the statements of her husband and other interested parties and was deprived of the possibility to convince the District Court that the children should be returned to their place of habitual residence in Austria in accordance with the Hague Convention. In the Applicant's opinion, this situation constituted a violation of her right to a fair trial.

JUDGMENT
in
Case No. KI 52/12
Applicant
Adije Iliri
Constitutional Review of the Decision of the Supreme Court of the Republic of Kosovo, Ac. no. 95/2011, dated 8 December 2011

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

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

Applicant

1. The Applicant is Mrs. Adije Iliri, with permanent residence in Austria, represented by Mr. Albert Islami, a practicing lawyer from Pristina.

Challenged decision

2. The Applicant challenges the Supreme Court decision, Ac. no. 95/2011, of 8 December 2011, which was served on her on 14 January 2012.

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 above Supreme Court decision, by which, allegedly, her rights guaranteed under Article 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo (hereinafter: the "Constitution") as well as under Article 6 (Right to fair trial) of the European Convention on Human Rights and Fundamental Freedoms (hereinafter: the "ECHR") have been violated.

Legal basis

4. The Referral is based on Article 113.7 of the Constitution, Article 47 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo of 15 January 2009, (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").

Proceedings before the Court

5. On 11 May 2012, the Applicant submitted the Referral to the Court.

6. On 17 May 2012, the Referral was communicated to the Supreme Court.

7. On 4 July 2012, the President of the Court, with Decision No.GJR.KI-52/12, appointed Judge Ivan Čukalovič as Judge Rapporteur. On the same date, the President of the Court, with Decision No.KSH.KI-52/12, appointed the Review Panel composed of Judges Almiro Rodrigues (Presiding), Snezhana Botusharova and Kadri Kryeziu.

8. On 25 July 2012, the Court requested additional information from the Applicant, who submitted it on 31 July 2012.

9. On the same day, the Referral was communicated to the Ministry of Justice.

10. Still on the same day, the Court requested additional information from the District Court in Prizren, which replied on 7 August 2012 that *"after reviewing the case files, we have concluded that the invitation for participation in the session dated 13.07.2009 was not sent to Ms. Adije Iliri."*

11. On 18 October 2012, the Court deliberated on the case and decided to postpone it until a future session. The main issue that was discussed was whether there existed a decision on custody of the Applicant's children by the Austrian authorities. However, based on the documents submitted there is apparently no such decision.

12. On 5 July 2013, the Court deliberated and voted on the merits of the case.

Summary of facts

13. The Applicant got married in 1995 in Studencan, Kosovo, and in 1998 settled down with her husband in Austria, where their three children were born. The parents and children possess both Austrian and Kosovar citizenship and had permanent residence in the Fischerstrasse in Ried im Innkreis in Austria.

14. In February 2009, after marital problems had arisen between them, the Applicant and her husband together with the children went on a family visit to Kosovo. In early March 2009, the Applicant was apparently forced to stay with her parents, while her husband and children remained at the house of his parents.

15. On 3 March 2009, the Applicant's husband went back to Ried im Innkreis, Austria in order to relinquish the family's residence. On 19 March 2009, he apparently deregistered himself and the children out.

16. Not being able to exercise her parental rights, the Applicant travelled back to Austria in order to initiate proceedings for the return of her children.

17. On 26 March 2009, at the session of the District Court in Ried im Innkreis, Austria, the Applicant made a statement about the events and requested the Court to be entrusted with the custody of her three minor children.

18. As mentioned in the Protocol of the court session of 26 March 2009, the Applicant declared, inter alia:

> ["...]
> *In January of this year, my parents-in-law came from Kosovo to visit us in Ried im Innkreis. My parents in law saw tensions between myself and my partner, the father of the children, and thought that if I go on a vacation in Kosovo to relax, our relations would improve. On 26.02.2009, the trip to Kosovo was planned, while in fact we travelled on 27.02.2009, by bus to Kosovo, and I took my two daughters G. and D. with me.*
>
> *The next day – without any notice – I saw my husband coming there together with our son. I was surprised, because he had taken everything with him, all the toys and clothes of children. He told me that from now on I should always stay in Kosovo. Ultimately, we agreed that A., our son, would first attend an Albanian school, and that we would then see after the summer, where we want to stay.*

On 2 March 2009, I wanted to visit my family and went there with the three children and my father-in-law. Two hours later, my father-in-law came to pick me up together with my children. He told me that my husband wanted to say good-bye to the children, because he was going back to Austria. That is why we went back to my parents-in-law. Then my husband took the children and told me that he wanted to buy some gifts for them. I waited in the house of my parents-in-law for the children.

But after some time, my father-in-law, my brother in law and a cousin of my husband told me to get ready, because we were leaving and that I had nobody left at their place, neither my husband nor the children.

Since that moment, I have never seen my children again.

I then had serious psychological problems; a doctor prescribed medicines and gave me an infusion. The parents-in-law then wanted to resolve the whole matter according to Albanian tradition. I was afraid that the children would then stay with the father and, since nothing in those 14 days had changed for me to the better, I decided to return to Austria in order to fight for my children.

From the information I have, the children continue to reside in the house of my parents-in-law.

In the meantime, my husband went again to Austria and dispensed of the apartment in the Fischerstrasse. He also deregistered me and the children

[…]

My husband deregistered our eldest son from the school here in Austria and enrolled G. and A. into a school in Kosovo.

[…]

I believe that it would be best for the children to come back to Austria soon. They are all born in Austria and are socially integrated here.

[…].

19. The Protocol of the District Court in Ried im Innkreis further mentioned that the District Court informed the Applicant that, based on a telephone call with the Austrian Federal Ministry of Justice, the request for return, according to the Hague Convention on civil aspects of international child abduction (hereinafter: the "Hague Convention"), would be senseless, since Kosovo was not a party to that Convention.

20. According to the Protocol, the Applicant was further notified by the District Court that a phone call with the Federal Ministry of Foreign Affairs had made clear that an intervention by the Ministry of Foreign Affairs would not be possible, when the father has dual citizenship. Since legal remedies are sparse, only the submission of a request for the, in any case, temporary transfer of the custody, would be possible.

21. The Protocol then mentioned that, as a consequence, the Applicant filed with the Austrian District Court a request to be entrusted with the custody of her three minor children, A., G. and D.

22. On 21 April 2009, the Austrian District Court called for a session, where it informed the Applicant that, according to information provided by the Federal Ministry for European and International Affairs on 15 April 2009, in the concrete case of child custody, it would be possible to file a request as per the Hague Convention.

23. As mentioned in the Protocol, the District Court then assisted the Applicant, in connection with her request for return, to complete the form recommended by the Hague Conference [Convention]. The Protocol was signed by the Judge and the representative of the Federal Minister of Justice of Austria.

24. By letter of 25 May 2009, the Austrian Federal Ministry of Justice; acting in its capacity as the Austrian central authority according to the Hague Convention (No. BMJ-C935.233/0001-I 10/2009) with the Kosovo Ministry of Justice for the return of the Applicant's three minor children who were believed to be staying with their father. The Austrian Federal Ministry of Justice held that "The parents who are both Austrian citizens are still married and according to article 144 of the Austrian civil code have joint custody of the children."

25. On 5 June 2009, the Kosovo Ministry of Justice wrote to the Applicant's husband requesting him to voluntarily return the children to the Applicant, in accordance with paragraph (c) of Section 3 [General proceedings] of UNMIK Regulation No. 2004/29 on Protection against

International Child Abduction of 5 August 2004 (hereinafter: "UNMIK Regulation No. 2004/29"). No reply was received, however.

26. On 26 June 2009, the Kosovo Ministry of Justice upon the request (No. MBJ-C935-233/0001-I 10-2009) of the Austrian Ministry of Justice filed a request with the District Court in Prizren asking it to issue an order securing the return of the children to Austria, pursuant to Article 4.1 and Article 3.3(c) of UNMIK Regulation No. 2004/29,

27. The Kosovo Ministry of Justice further requested the District Court to initiate judicial proceedings on the basis of Article 4.4.1 of the Hague Convention which was applicable in Kosovo in accordance with Article 145 of the Constitution.

28. On 2 July 2009, the President of the District Court in Prizren notified the District Chief Public Prosecutor of the request of the Ministry of Justice of the Republic of Kosovo, based on the request of the Ministry of Justice of the Republic of Austria, to take action in the international abduction case of minor children A., G. and D., abducted by their father A.I.

29. Pursuant to Section 4.2 of UNMIK Regulation no. 2004/29, the President of the District Court also filed with the District Chief Public Prosecutor a copy of the request of the Ministry of Justice of the Republic of Kosovo, together with all other files, in order for the Prosecutor to take the necessary action within his competence by virtue of the Regulation, and to notify the court thereof in order to enable the latter to render decisions and orders within the meaning of this Section.

30. On the same day, the President of the District Court in Prizren informed the Commander of the Police Station in Prizren that a hearing on the request of the Kosovo Ministry of Justice in the abduction case had been scheduled for 9 July 2009 and requested him to deliver to the Applicant's husband the summons for the hearing.

31. On 9 July 2009, the District Court in Prizren held a hearing in relation to the request for legal aid in relation to the abduction case in the presence of the Applicant's husband who had authorized a lawyer from Suhareka to represent him in the matter. From the minutes of the hearing it appears that the Applicant's husband, as the respondent, was also heard about the substance of the abduction case.

32. On 13 July 2009, the hearing of the District Court in Prizren continued in the presence of the Applicant's husband, who, according to the minutes of the hearing, filed as evidence, inter alia, the Protocol of the District Court in Ried im Innkreis, Austria, containing the statement given by the Applicant to that Court.

33. On the same day, the District Court in Prizren, handed down its decision No. I. Agj.no.2/2009-16, rejecting the request of the Kosovo Ministry of Justice, holding that *"[...] pursuant to the Convention of the Hague on Civil aspects of International Abduction of Children (1991) and UNMIK Regulation 2004/29 in which the principles of the abovementioned Convention are embodied, that no abduction of the children has taken place [...], since the father has brought the children from Austria to Kosovo in a legal way and has not hidden himself from the state authorities, since he immediately responded to the court's invitation and has also communicated with the relevant bodies in the Republic of Austria, which can be even be seen in the letter addressed to the District Court in Reid im Innkreis in the Republic of Austria."*

34. Apparently, the Ministry of Justice of Kosovo did not appeal against the decision of the District Court in Prizren, but the Public Prosecutor of Kosovo did so by filing a request for protection of legality against the decision with the Supreme Court.

35. On 10 November 2009, the Supreme Court, by Decision Mlc. no. 19/2009, held that the request for protection of legality was grounded and quashed the decision of the District Court in Prizren, by returning the case to the court of first instance for retrial. The Supreme Court held that *"[...] the appealed decision is contradictory [...]* and that *[...] the request for protection of legality rightly stated that the appealed decision constitutes essential violations of provisions of contentious procedure pursuant to Article 182.1 n of the Law on Contentious Procedure, which consist in the absence of reasons regarding crucial facts, but that even the reasons given are in contradiction between themselves and with the evidence in the case file. When retrying the case, the court of second instance is obliged to avoid the abovementioned violation and to take into consideration other allegations from the request for protection of legality.*

36. On 19 January 2010, the District Court in Prizren, by Decision I.Agj.no. 2/2009-16, retried the request of the Ministry of Justice of Kosovo of 26 June 2009, based on the request of the Ministry of the Republic of Austria to return the minor children, but rejected it once more. As part of the evidence, the court, inter alia, read out the Protocol of the District

Court in Ried im Innkreis which contained the statement of the Applicant as well as the reports submitted by the Center for Social Work in Suhareka.

37. The District Court in Prizren reasoned that *"according to its assessment, regardless of the provisions of the Article in question* [Article 3 of the Hague Convention], *it is not obligated to order the return of a child pursuant to Article 13(b) when there exists a serious risk that the return of children will expose the children to physical or psychological damage or put a child in front of an intolerable situation. Starting from the fact that the children since the divorce are under the care of their father [...] and have created a strong emotional bond with him and attend school in Kosovo, in the concrete case there is a serious risk that the return of the children will have a negative impact on their psychological and physical development".*

38. The District Court referred to the findings of a Certificate issued by the Center for Social Work in Suhareka, referring to the problematic marital relations between the Applicant and her husband and the divorce proceedings initiated by the husband. The Certificate further mentioned that the children were now within the care and education of the father who lives with his parents and that the mother of the children was far away in Austria.

39. On 3 February 2010, the Kosovo Minister of Justice wrote to the State Prosecutor asking him *"[...] to take the necessary action in accordance with applicable law in Kosovo, and file an appeal with the Supreme Court of Kosovo, through the District Court in Prizren, in order to change Decision no.I.Agj.No.2/2009 rendered by the District Court in Prizren on 19 January 2010,.*"

40. The Minister of Justice, inter alia, stated that the District Court in Prizren [...] had rejected the request of the Austrian authorities to return the minor children [...] for the following reasons:

"According to the assessment of the District Court in Prizren, independently of Article 3 of the Convention on Civil Aspects of International Child Abduction, the court is not bound to order the return of the children, as per Article 13(h), when there is a serious risk that the return of the children shall expose the children to physical or psychological damage, or put the child in an intolerable situation. Taking into account the fact that the children have been under then

care of the father A.I., since the termination of the marital union and that they have created a strong bond with the father and are attending school in Kosovo, there is a serious risk that the return of the children will have a negative influence on their psychological and emotional development.

The decision rendered by the District Court in Prizren is in violation of the purpose and objective of the Convention, which clearly provides that the objective of the Convention is to ensure rapid and safe return of children to the state from where they were unjustly displaced, in this case the Austrian state. Furthermore, the purpose and objective of the Convention is to ensure that custody and contact rights, according to the laws of the contracting states, are observed effectively in other countries where this Convention is applicable.

Furthermore, the District Court in Prizren, in reaching its decision, has not justly analysed Article 3 of the Convention, which clearly provides for the conditions to be met for considering the removal as unjust displacement and holding. Mr. Alban Iliri has acted in violation of Article 3 of the Convention, by violating the custody rights given to a person, in this case Mrs. Adije Iliri, according to the laws of the state where the children were permanent residents before their displacement or holding. It is undisputable that the permanent residence of both Mr. Alban Iliri, and Mrs. Adije Iliri, was in the Austria and that both had joint custody over their minor children.

Also, in accordance herewith, Article 12 of the Convention provides that where a child has been wrongfully removed or retained in terms of Article 3 and, at the date of the commencement of the proceedings before the judicial or administrative authority of the Contracting State where the child is, a period of less than one year has elapsed from the date of the wrongful removal or retention, the authority concerned shall order the return of the child forthwith."

The Minister of Justice also drew the attention of the Chief Prosecutor to the fact that Article 13(3) of the Hague Convention, provides that *"In considering the circumstances referred to in this Article, the judicial and administrative authorities shall take into account the information relating to the social background of the child provided by the Central Authority or other competent authority of the child's habitual residence".* In the Minister's opinion, the District Court in Prizren basing itself on the facts contained in the Report of the Center for the Social Work in Suhareka of 15 December 2009, concluded that the children were under the care of the father, whereas, in the present case,

such a report should have been provided by the state where the child enjoyed permanent residence, i.e. Austria, and not the Center for Social Work in Suhareka.

41. Thereupon, the Chief Prosecutor filed a request for protection of legality with the Supreme Court, stating that the District Court had erroneously applied the Hague Convention. He proposed to the Supreme Court that the challenged decision be squashed and the case be returned for retrial.

42. On 10 June 2010, the Supreme Court, by Decision Mlc.2/2010, rejected the request for protection of legality as ungrounded and confirmed the decision of the District Court in Prizren. According to the Supreme Court, it resulted from the case file that the father had initiated divorce proceedings and that the children, who had been brought to Kosovo with the consent of their mother, were now under the care of the father in Studencan in the municipality of Suhareka.

43. The Supreme Court accepted as fair and legal the decision of the District Court, by which the request of the Ministry of Justice of the Republic of Kosovo dated 26 June 2009, based on the request of the Ministry of Justice of the Republic of Austria to return the children to their mother in Austria, was rejected and admitted, in its entirety, the reasoning and factual conclusions of the District Court. In the Supreme Court's opinion, the legal stance of the District Court was to be considered fair, due to the reasons that it had previously been confirmed that the return of the children to stay within the care of their mother in Austria presented a real danger that the children would suffer psychological damage by putting them in an intolerable situation, since they were now more than one year in Kosovo and had become familiar with the environment in which they were living and attending school. Moreover, according to the Supreme Court, the decisiveness of the eldest child, who had just turned ten, not to return to his mother and stay within her care in Austria, should be taken into account.

44. The Supreme Court concluded that, due to the above reasons, it also considered that, pursuant to Article 1.3 of the Hague Convention, the District Court in Prizren was not obliged to order the return of the children. Moreover, since in the meantime, after the children's return to Kosovo, divorce proceedings had been initiated, ultimately it would be decided to which parent the children would be entrusted and what their contact would be with the other parent.

45. Thereupon, the lawyer of the mother filed a proposal for repetition of procedure with the Supreme Court, which was dealt with by a single judge on 23 August 2011. The lawyer stated that in the session for review of the request of the Ministry of Justice to return the children, both the mother and the prosecutor were not given the opportunity to participate and that, therefore, the decision [of the District Court] constituted a violation of the contentious procedure.

46. However, the Supreme Court, by Decision PPC.no. 33/2011 rejected as unfounded the Applicant's request for repetition of the procedure before the District Court in Prizren (I.Agj.no.2/2009-16 dated 19 January 2010). The Supreme Court held that there were no new facts or evidence to allow the repetition of the procedure. Furthermore, the Supreme Court held that *"It is not contentious the fact that the mother of the children [...] with residence in Austria where she initiated the procedure for returning the minor children, and in the procedure for deciding on the request of the Ministry of Justice for returning the children to their mother [...], the procedural parties are the Ministry of Justice and the respondent* [the Applicant's husband] *who participated in the procedure, thus this court finds that by not inviting her to participate in the session, the court of first instance did not act illegally. As regards the allegation mentioned in the proposal for repetition of the procedure, that the court of first instance had not invited the competent Public Prosecutor to participate, the Supreme Court finds that it is not obligatory that the prosecutor participates in the session where the respondent is heard, since no provision of UNMIK Regulation 2004/29 for protection against international abduction of children, or the Hague Convention for civil aspects of international child abduction* [provides for this]. *[T]hus the Supreme Court finds that the non-participation of the prosecutor in this session does not constitute an essential violation of the proceedings in which the challenged decision was taken."*

47. The Supreme Court concluded that "*considering that in the proposal for* repetition *of the procedure no new facts and evidence which might have lead to a more favorable final decision, if those facts and evidence had been used in the previous procedure, have been presented [...], this court deems that there are no valid reasons for repetition of the procedure and that, therefore, the proposal to repeat the procedure* [before the District Court] *is ungrounded*."

48. Thereupon, the Applicant filed an appeal against this decision with the Supreme Court.

49. On 8 December 2011, the Supreme Court, by Decision Ac. no. 95/2011, rejected the Applicant's complaint as unfounded, considering that the Supreme Court in its decision of 23 August 2011 *"[…] rightly rejected the request for repetition of procedure, because there was no new evidence nor facts based on which a different more favorable decision would have been issued in the previous procedure".*

Applicant's allegations

50. The Applicant alleges that the Decision of the District Court in Prizren (I. Agj. No. 2/2009 of 19 January 2010), the Decision of the Supreme Court (PPC. No. 33/2011 of 23 August 2011) and the Decision of the Supreme Court (Ac. no. 95/2011 of 8 December 2011) were taken in violation of Article 31 [Right to Fair and Impartial Trial] of the Constitution and Article 6 (Right to fair trial) of ECHR, because neither the Applicant nor the Public Prosecutor had been summoned to participate in the proceedings. In particular, the Applicant alleges that *"By the decision of the District Court in Prizren I.A.Gj. no. 2/2009 -16 dated 19.01.2010 and from the minutes of the main hearing undoubtedly results that the Applicant and District Public Prosecutor in Prizren have not even been invited and have not even participated in the trial, although their participation was obligatory pursuant to provisions of Article 4.2 of UNMIK Regulation no. 2004/29 for Protection Against International Abduction of Children. This Regulation was based exclusively on Convention for Civil Aspects of International Abduction of Children dated 25.10.1980."*

51. The Applicant further alleges that *"By provision of Article 4.2 of the Regulation it is foreseen that District Public Prosecutor, where the child was found, is competent to undertake legal actions on behalf of applicant. But, neither [she] (in the capacity of supervisor and custodian of her children pursuant to Article 1, § 1, subparagraph c) of the Regulation) nor the District Public Prosecutor (Article 4, § 1, subparagraph 2 of the Regulation) was enabled participation at the main hearing pursuant to the Regulation and Article 31 of the Constitution of the Republic of Kosovo and Article 6, paragraph 1 of European Convention for Human Rights and Freedoms."*

52. Furthermore, the Applicant, alleges, that pursuant to Article 4.2 of UNMIK Regulation 2004/29, *"The district court shall transmit the application to the district public prosecutor with jurisdiction over the*

territory where the child is discovered. The district public prosecutor shall be competent to act on an application on behalf of the applicant."

Admissibility of the Referral

53. In order to be able to adjudicate the Applicant's Referral, the Court has to assess beforehand whether the Applicant has met all the requirements of admissibility, which are foreseen by the Constitution, the Law and the Rules of Procedure.

54. The Court needs to determine first whether the Applicant is an authorized party within the meaning of 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."* In this respect, the Referral was submitted with the Court by an individual. Therefore, the Applicant is an authorized party, entitled to refer this case to the Court under Article 113.7 of the Constitution.

55. In addition, the Supreme Court is considered as a last instance court to adjudicate the Applicant's case. As a result, the Court determines that the Applicant has exhausted all the legal remedies available to her under Kosovo law.

56. Furthermore, an Applicant, in accordance with Article 49 of the Law, must submit the Referral within 4 months after the final court decision. On 8 December 2011, the Supreme Court took the Decision Ac. no. 95/2011, whereas the Applicant received the Decision on 14 January 2012. The Applicant submitted the Referral to the Court on 11 May 2012. Therefore, the Applicant has met the necessary deadline for filing a referral to the Constitutional Court.

57. Finally, Article 48 of the Law establishes: *"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."* In this respect, the Court notes that the Applicant challenges the Supreme Court Decision, Ac. no. 95/2011, whereby, allegedly, her rights guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution and Article 6 [Right to a fair trial] of the ECHR have been violated. Therefore, the Applicant has also fulfilled that requirement.

58. Since the Applicant is an authorized party, has met the necessary deadlines to file a referral with the Court, has exhausted all the legal

remedies, and accurately clarified the allegedly violated rights and freedoms, including the decision subject to challenge, the Court determines that the Applicant has complied with all requirements of admissibility.

59. Since the Applicant has fulfilled the procedural requirements for admissibility, the Court needs now to examine the merits of the Applicant's complaint.

Constitutional Assessment of the Referral

60. The Court notes that the Applicant complains exclusively that her rights guaranteed by Article 31 [Right to a Fair Trial] of the Constitution and Article 6 [Right to a fair trial] ECHR have been violated by the District Court in Prizren, since the latter had not invited the Public Prosecutor in Prizren and herself to the court hearing of 19 January 2010 where the request of the Ministry of Justice of the Republic of Kosovo, based on the request of the Ministry of Justice of the Republic of Austria, to return her three minor children to their habitual place of residence in Austria, was rejected by Decision I.Agj.no. 2/2009-16.

61. The Applicant also complains that Decisions PPC.no. 33/2011, dated 23 August 2011, and A.c.no. 95/2011, dated 8 December 2011, of the Supreme Court of Kosovo, by which the proposal of her lawyer to repeat the proceedings before the District Court in Prizren in order for the Public Prosecutor and herself to participate in those proceedings, was rejected a first time by the Supreme Court and then on appeal.

62. In view of the Applicant's complaints, the Court will, therefore, ascertain whether the District Court in Prizren and the Supreme Court, by applying the provisions of UNMIK Regulation no. 2004/29 and the Hague Convention have secured to the Applicant the guarantees set forth in Article 31 of the Constitution and Article 6 ECHR.

63. In view thereof, the Court notes that, when rejecting the Applicant's proposal for repetition of the proceedings before the District Court, the Supreme Court held, in its decision of 23 August 2011, that it is not contentious that in the procedure for deciding on the request of the Ministry of Justice for returning the children to the Applicant, the procedural parties were the Ministry of Justice and the respondent (the Applicant's husband) who participated in the proceedings. In the

Supreme Court's opinion, by not inviting the Applicant to participate in the proceedings, the District Court had not acted illegally.

64. Moreover, the Supreme Court also held that it was not obligatory that the Public Prosecutor would participate in the session where the respondent (the Applicant's husband) was heard, since no provision of UNMIK Regulation 2004/29 or the Hague Convention provided for this.

65. As to the Supreme Court's findings, the Court will not go into the question whether or not the Supreme Court was right in determining who were the procedural parties in the proceedings before the District Court or whether the Public Prosecutor should have been invited to the proceedings before that court. As mentioned above, the Court will only consider whether, in the circumstances of the case, the Applicant's rights under 31 of the Constitution and Article 6 ECHR were infringed, since she was unable to participate herself in the return proceedings.

66. The Court notes that the return proceedings before the District Court in Prizren were initiated by a request of the Kosovo Ministry of Justice, pursuant to paragraph 3(d) of Section 3 [General proceedings] of UNMIK Regulation 2004/29, according to which the Ministry of Justice, upon the receipt of a "foreign application" pursuant to the Hague Convention, shall take all appropriate measures to secure the prompt return of the child [...], inter alia, by initiating the institution of judicial proceedings with a view to obtaining the return of the child [...]. The "foreign application" emanated from the Austrian Ministry of Justice acting as the Central Authority of the children's' habitual residence following a request from the Applicant for assistance in securing the return of the children by virtue of Article 8 of the Hague Convention.

67. In this connection, the Court notes that neither UNMIK Regulation 2004/29, nor the Hague Convention expressly provides that, in judicial proceedings regarding child abduction, both parents should be entitled to participate. Only Section 4(2) of UNMIK Regulation 2004/29 stipulates that "The District public prosecutor shall be competent to act on an application on behalf of the applicant."

68. Be that as it may, as it appears from the submissions, in particular, from the decision of the Supreme Court of 23 August 2011, the Public Prosecutor was not present in the proceedings where the husband was heard. Moreover, the Supreme Court also found that the non-participation of the prosecutor in the session did not constitute an

essential violation of the proceedings in which the challenged decision was taken.

69. The Court, therefore, considers that it is inconceivable that, in the present case, the District Court in its findings of 19 January 2010, concluded, without having invited the Applicant to participate in the proceedings, that it was not bound to order the return of the children, pursuant to Article 13(b) of the Hague Convention, since there was a grave risk that their return would expose them to physical or psychological harm or otherwise place the children in an intolerable situation.

70. Although the Minutes of the District Court in Prizren show that the Protocol of the District Court in Ried im Innkreis, containing the request of the Applicant to return her children, was read out, the Minutes also mention that the Applicant's husband as well as his lawyer were present at the hearing, where the former stated that there was no question of child abduction and that the return to the Applicant in Austria would have serious consequences for the children, since they attended school and were good students, while the Applicant lived in Austria. The husband also stated that the children had created big emotional bonds with him and that the decision of the District Court would have an impact on their psychological and emotional development.

71. In these circumstances, the Court observes that, by not having been present at the above court proceedings, the Applicant was unable to refute the statements of her husband and other interested parties and was deprived of the possibility to convince the District Court that the children should be returned to their place of habitual residence in Austria in accordance with the Hague Convention. In the Applicant's opinion, this situation constituted a violation of her right to a fair trial.

72. The Court emphasizes that, according to the ECtHR case law, one of the aspects of the right to fair trial is the principle of equality of arms, implying that each party must be afforded a reasonable opportunity to present his/her case under conditions which do not place him/her at a substantial disadvantage vis-à-vis his/her opponent (see*, inter alia, Dombo Beheer N.V. v. The Netherlands,* Application no. 14448/88, ECtHR Judgment of 27 October 1993).

73. As to the present case, the Court is of the view that the presence of her husband and his lawyer at the proceedings before the District Court in

Prizren placed the Applicant in a substantial disadvantage vis-à-vis her husband, since she was unable to present arguments and evidence and challenge the submissions of her husband during the course of the proceedings (see, *inter alia*, Case KI 103/10, Shaban Mustafa – Constitutional Review of the Judgment of the Supreme Court, Rev. no. 406/2008 of 3 September 2010, Judgment of 20 March 2012 and Case KI 108/10, Fadil Selmanaj – Constitutional Review of Judgment of the Supreme Court, A. no. 170/2009 of 25 September 2009).

74. As a consequence, the Supreme Court should have allowed the Applicant's lawyer's request for repetition of the proceedings before the District Court in Prizren instead of rejecting the request by decision of 23 August 2011 and the Applicant's appeal against that decision on 8 December 2011.

75. In these circumstances, the Court finds that the Applicant's rights to a fair trial, as guaranteed by Article 31 of the Constitution and Article 6 (1) ECHR have been violated.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113 (1) of the Constitution, Article 20 of the Law on Court and Rule 56 of the Rules of Procedure, on 5 July 2013, unanimously

DECIDES

I. TO DECLARE the Referral admissible;

II. TO HOLD that there has been a breach of Article 31 [Right to a Fair and Impartial Trial] of the Constitution, in conjunction with Article 6 [Right to Fair Trial] ECHR;

III. TO DECLARE invalid the decisions of the Supreme Court of Kosovo PPC. no. 33/2011, dated 23 August 2011 and Ac. no. 95/2011, dated 8 December 2011;

IV. TO ORDER the District Court in Prizren to repeat the proceedings of 9 and 13 July 2009 and to invite the Applicant to participate in these proceedings;

V. TO REMAIN seized of the matter pending compliance with that order;

VI. TO ORDER 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. TO DECLARE that this Judgment effective is immediately.

Judge Rapporteur
Ivan Čukalovič

President of the Constitutional Court
Prof. Dr. Enver Hasani

Case No. KI52/12
Applicant
Adije Iliri
Constitutional Review of the Decision of the Supreme Court of the Republic of Kosovo,
Ac. no. 95/2011, dated 8 December 2011
Concurring Opinion
of
Judge Almiro Rodrigues

Introduction

1. I welcome the Constitutional Court Judgment, declaring invalid the decisions of the Supreme Court of Kosovo PPC.no.33/2011, dated 23 August 2011, and Ac. no. 95/2011, dated 8 December 2011, and ordering the District Court in Prizren to repeat the proceedings of 9 and 13 July 2009, and to invite the Applicant to participate in these proceedings.

2. However, I respectfully disagree with the reasoning the Court utilized. Here below, I will state specifically the reasons why I do not agree with the reasoning in the opinion of the Court.

3. In fact, two intertwined decisions of the Supreme Court are under review: Decision Mlc. no. 2/2010 of 10 June 2010, confirming the Decision I. Agj. no. 2/2009/16 of the District Court of Prizren, dated of 19 January 2010; and Decision Ac. no. 95/2011 dated of 8 December 2011, rejecting as unfounded the Applicant's request for repetition of the procedure in the case I.Agj.no.2/2009/16 of the District Court of Prizren,dated of 19 January 2010. In sum, these two Decisions of the Supreme Court were taken in relation to the same and unique Decision I. Agj. no. 2/2009/16 of the District Court of Prizren, dated 19 January 2010, and one decision cannot be seen without the other, as they are logically interdependent.

4. In fact, the order of the Constitutional Court to the District Court in Prizren to repeat the proceedings of 9 and 13 July 2009, and to invite the Applicant to participate in these proceedings, is not in accordance with the legal consequence of declaring invalid the decisions of the Supreme Court of Kosovo PPC.no.33/2011, dated 23 August 2011, and A.c.no. 95/2011, dated 8 December 2011.

5. In addition, Rule 74 (1) of the Rules of Procedure of the Court establishes that

> *In the case of a Referral made pursuant to Article 113.7 of the Constitution if the Court determines that a court has issued a decision in violation of the Constitution, it shall declare such decision invalid and remand the decision to the issuing court for reconsideration in conformity with the Judgment of the Court.*

6. In my view, the Court went beyond its jurisdiction when concluding with the order to the District Court *"to repeat the proceedings of 9 and 13 July 2009 and to invite the Applicant to participate in these proceedings"*. The Constitutional Court should have confined itself to "*declare such decision invalid and remand the decision to the issuing court* [the Supreme Court] *for reconsideration in conformity with the Judgment of the* [Constitutional] *Court"*. It is up to the Supreme Court to reconsider its Judgment in conformity with the Judgment of the Constitutional Court.

7. It is true that, in accordance with the principles of fair trial, a decision-making body only qualifies as a "tribunal" if, before giving its decision, it affords each of the parties an opportunity to present their point of view.

8. However, in the interest of procedural efficiency, particularly in those cases which require a speedy decision, summary procedures exist which are initially unilateral: for instance, provisional or protective measures or, as in the present case, urgent execution of a request.

9. In such cases, the judge decides either on the basis of the allegations made by the plaintiff alone or by the prosecuting authorities, insofar as these allegations have at least a *fumus boni iuris* and are suitably convincing, or on the basis of a judicial decision immediately executable. In this case, the decision is merely provisional and the interested party can start appropriate proceedings in the competent court in order to have it set aside; but, in that event, the proceedings become adversarial. This is wholly in keeping with the requirements of Article 6 (1) of the ECHR.

10. The purpose of my concurring opinion is to examine those two decisions of the Supreme Court, in order to distill the legal consequences.

11. I am aware of that to arrive at the field of constitutionality, which is the core jurisdiction of the Constitutional Court, I will cross sometimes the domain of legality. However, that occurs only for the purpose of better explaining my view on the substantive constitutional aspects of the case.

12. In this respect, I will state the summary of the pertinent and relevant facts in relation to each of the decisions, indicate the applicable law, assess these facts in the light of the applicable law and draw a conclusion.

The Decision of the Supreme Court Mlc. no. 2/2010 of 10 June 2010

13. The Supreme Court, by that Decision Mlc. no. 2/2010, rejected the request for protection of legality filed by the Public Prosecutor, and confirmed the decision I. Agj. no. 2/2009/16 of the District Court of Prizren, dated 19 January 2010, by which it was concluded that "*the court is not obligated to order the return of child*".

Summary of the pertinent and relevant facts

14. The Applicant Adije Iliri lived together with her husband and three children in Austria at Fischerstrasse 5/11, 4910 Ried in Innkreis, until, following a trip to Kosovo, she returned to Austria without her children and husband, who remained together in Kosovo.

15. After February 2009, the Applicant was in fact denied access to her children by her husband, and was unable to exercise her parental obligations because her husband had kept the children with him to live in Kosovo.

16. On 21 April 2009, the Applicant filed with the District Court in Austria a Request for the Return of the Children to their habitual residence. Following that request, the District Court in Austria started appropriate proceedings in order to guarantee the return of the children.

17. Subsequently, on 25 May 2009, the Austrian Federal Ministry of Justice, as the Austrian central authority according to the Hague Convention of 25 October 1980 on the civil aspects of international child abduction (hereinafter, the Convention on Abduction), filed a request (No. MBJ-C935-233/0001-I 10-2009) with the Ministry of Justice of the Republic of Kosovo for the return of the Applicant's three minor children to their habitual residence.

18. On 26 June 2009, the Ministry of Justice of the Republic of Kosovo, upon the request of the Federal Ministry of Justice of the Republic of Austria, filed a request with the District Court in Prizren asking it to issue an order securing the return of the children to their habitual residence in Austria.

19. On 2 July 2009, the District Court notified the District Public Prosecutor of the request of the Ministry of Justice of the Republic of Kosovo and asked the District Public Prosecutor *"to act on the application on behalf of the applicant"*, pursuant to Article 4 (2) of UNMIK Regulation No. 2004/29 on Protection Against International Abduction of Children (hereinafter, the UNMIK Regulation).

20. On 19 January 2010, the District Court [I.Agj.no.2/2009-16] rejected the request, stating that

> *"The case in question according to the District Court evaluation regardless the provisions of the Article* [Article 3 of Convention for civil aspects of international abduction of child] *in question the court is not obligated to order the return of child pursuant to Article 13 item (b) when it exist a serious risk that the return of children will expose the children to physical or psychological damage or put a child in front of an intolerable situation".*

21. On 10 June 2010, the Supreme Court rejected as ungrounded the request for protection of legality filed by the Public Prosecutor and confirmed the decision of the District Court in Prizren, considering that *"the District Court in Prizren was not obligated to order the return of these children".*

Applicable Law

22. Article 22 of the Constitution establishes that

> *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:*
>
> *(...)*
>
> *(2) European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols;*
>
> *(...)*

(7) Convention on the Rights of the Child.

23. Article 50 of the Constitution establishes that

1. Children enjoy the right to protection and care necessary for their wellbeing.

2. Children born out of wedlock have equal rights to those born in marriage.

3. Every child enjoys the right to be protected from violence, maltreatment and exploitation.

4. All actions undertaken by public or private authorities concerning children shall be in the best interest of the children.

5. Every child enjoys the right to regular personal relations and direct contact with parents, unless a competent institution determines that this is in contradiction with the best interest of the child.

24. Article 53 of the Constitution 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.

25. UNMIK Regulation took into account *"the principles and objectives of the Convention on the Civil Aspects of International Child Abduction of 25 October 1980"* and recognized *"the need to protect children from the harmful effects of their wrongful removal or retention and to establish procedures to ensure the prompt return of children wrongfully removed or retained and to ensure that rights of custody and of access are effectively respected"* (Introduction, paragraph 3 and 4).

26. Furthermore, for the purposes of the UNMIK Regulation, *"Convention" means the Convention on the Civil Aspects of International Child Abduction of 25 October 1980"*. In addition, Section 1 a) states that *"all actions pursuant to the present Regulation in relation to an application shall be undertaken in accordance with the Convention"*.

27. On the other side, the UNMIK Regulation is applicable under Article 145 of the Constitution which establishes that

(...)

2. Legislation applicable on the date of the entry into force of this Constitution shall continue to apply to the extent it is in conformity with this Constitution until repealed, superseded or amended in accordance with this Constitution.

28. In addition, the Convention on Abduction aims

"to secure the prompt return of children wrongfully removed to or retained in any Contracting State" (Article1, item a).

29. The Convention on Abduction also envisages removing a parent's incentive to abduct a child to a more favorable jurisdiction and preventing the consequences of wrongfully uprooting children from their homes.

30. For that purpose, Article 7 (f) of the Convention on Abduction provides that

"the Central Authorities shall co-operate with each other and promote co-operation amongst the competent authorities in their respective States to secure the prompt return of children".

31. Particularly, the Central Authorities are obliged to take all appropriate measures in order

"to initiate or facilitate the institution of judicial or administrative proceedings with a view to obtain the return of the child".

Assessment

32. As said above, the Supreme Court concluded that

"It is not contentious the fact that the mother of the children [...] with residence in Austria [...] *initiated the procedure for returning the minor children [...].*

33. Thus, it is indisputable that the subject matter under discussion before the Supreme Court should be "*the procedure for returning the minor children"* to their habitual residence.

34. However, the Supreme Court confirmed the decision of the District Court that held that "*the court is not obligated to order the return of*

child pursuant to Article 13 item (b) when there exists a serious risk that the return of children will expose the children to physical or psychological damage or put a child in front of an intolerable situation".

35. The adoption and confirmation of that conclusion is against the right of the children to return to their habitual residence and renders the Convention on Abduction ineffective in accomplishing that main objective.

36. The Constitutional Court has already confirmed that consideration when it similarly held that *"Kosovo regular courts are not competent to assess the merits of that decision [of a foreign court]; they are only competent for the execution of the decision of the [foreign court], pursuant to Article 3 (1.1) of the Convention on the Civil Aspects of International Child Abduction"*. (See Decision of 10 December 2012, in Case No. KI 126/12, Constitutional Review of the Supreme Court Judgment, Mlc. no. 21/2012, dated 8 November 2012).

37. The Decision I. Agj. no. 2/2009/16 of the District Court of Prizren, which was confirmed by the Supreme Court, infringed the Convention on Abduction when, invoking Article 13 item (b) of the same Convention, simply concluded that *"the District Court in Prizren was not obligated to order the return of these children"*.

38. As a matter of fact, the main intent of the Convention on Abduction is to cause the return of a child to his or her "habitual residence". If extraordinary circumstances exist, which suggest that return is exceptionally not appropriate, then other procedural requirements must be taken into account, as established by the coordinated legal provisions of the UNMIK Regulation and the Convention on Abduction.

39. The European Court of Human Rights (hereinafter, the ECtHR) concluded that*"a change in the relevant facts might exceptionally justify not enforcing a final return order, but had to be satisfied that this change had not been brought about by the State's failure to take all reasonable measures. (...) The Court found that the [foreign] authorities had failed to take promptly all measures that could reasonably have been expected of them to enforce the return order (...).* (See case Sylvester v. Austria, Applications nos. 36812/97 and 40104/98, 24 April 2003).

40. Moreover, the efficient and effective application of the Convention on Abduction requires that the State's authorities be convinced that the

State of the habitual residence of the child is in principle best placed to decide upon questions of custody and access, which are not the subject matter of the proceedings on ordering the return of the children.

41. In this respect, the ECtHR also found that the State "*should have taken or caused to be taken all provisional measures, including extra-judicial ones, which could have helped prevent "further harm to the child or prejudice to the interested parties". However, the authorities did not take any such measure but limited themselves to representing the applicant before the [requested foreign] courts. The Court considers therefore that the authorities failed to observe their full obligations under Article 7 of the Hague Convention".* (See case of Monory v. Hungary & Romania, Application no. 71099/01, 5 April 2005).

42. Furthermore, the procedural right of the child to the prompt return to the habitual residence aims to ensure effectively the rights of the child, as established by the Convention on the Rights of the Child, to be protected from family violence, to know and be cared for by his or her parents, not be separated from his or her parents against their will and to maintain personal relations and direct contact with both parents on a regular basis.

43. TheUNMIK Regulation and the Convention on Abduction establish the competent court to execute the order on securing the prompt return of children. Section 4.1 of the UNMIK Regulation foresees that

> *"the district court which has jurisdiction over the territory where the child is discovered shall be competent to review an application, to issue decisions and orders relating to such application and to execute such decisions and orders".*

44. Thus, the District Court of Prizren is the *tribunal established by law* to order the prompt return of children to the habitual residence. "Established by law" also means "established in accordance with law". Therefore, the requirement established by Article 6 of the ECHR is infringed if a tribunal does not function in accordance with the particular rules that govern it. (See *Zand v. Austria* No 7360/76, 15 DR 70 at 80 (1978) Com Rep).

Conclusion

45. In these circumstances, the Supreme Court Decision Mlc. no. 2/2010 of 10 June 2010, confirming the Decision I. Agj. no. 2/2009/16 of the District Court of Prizren, dated of 19 January 2010, by not having ordered the immediate return, violated the rights of the children to the prompt return to the habitual residence, as guaranteed by the Constitution of Kosovo, the UNMIK Regulation and the Convention on Abduction, and the right to a competent court established by law, and in accordance with the law, to order the prompt return to their habitual residence.

The Decision Ac. no. 95/2011 dated of 8 December 2011, rejecting as unfounded the Applicant's request for repetition of the procedure

46. The Supreme Court, by that Decision Ac. no. 95/2011, *"rejected as ungrounded the appeal of the legal representative of children – mother Adije Iliri, with residency in Austria - filed against the decision of Supreme Court of Kosovo PPC.no.33/11 dated 23.08.2011"*. On the other hand, the Decision PPC.no.33/11 taken by the Supreme Court had rejected *as ungrounded the proposal of the legal representative of the children – mother Adije Iliri, with residency in Austria - for repetition of the procedure terminated by the decision of the District Court in Prizren I.Agj.no.2/2009 -16 dated 19.01.2010*. That Decision of the District Court of Prizren had concluded that "*the court is not obligated to order the return of child"*.

47. Both the Supreme Court final Decisions Mlc. no. 2/2010 of 10 June 2010 and Decision Ac. no. 95/2011 of 8 December 2011 were enacted in relation to the same decision of District Court in Prizren I.Agj.no.2/2009/16, dated 19.01.2010, and on the same subject matter of ordering the return of child.

48. Furthermore, it must be noted that the Supreme Court in both the Decisions acknowledged that the Applicant, "*mother Adije Iliri, with residency in Austria",* was not acting on her own behalf, but rather as *"legal representative of the children"*.

Summary of the pertinent and relevant facts

49. On 19 January 2010, the District Court (Decision I. Agj. no. 2/2009/16) rejected the request of the Ministry of Justice of Kosovo, reasoning that *"the fact that the children since the divorce are under the care of their father [...] and that the same have created a strong emotional bond with their father and that the same attend the school in Kosovo, in*

concrete case there is a serious risk that the return of children will have a negative impact on psychological and physical development of children".

50. On 10 June 2010, the Supreme Court (Decision Mlc. no. 2/2010), rejected the request for protection of legality, and confirmed that reasoning and decision of the District Court in Prizren.

51. On 23 August 2011, the Supreme Court (Decision PPC. No. 33/2011), decided that

> "*from the side of the court of first instance was not invited to participate the competent Public Prosecutor" and*
>
> "*to the detriment* [of the Applicant] *by not inviting her to participate in the session, the court of first instance did not make illegal action".*

52. On 8 December 2011, the Supreme Court (Decision Ac. no. 95/2011) rejecting as unfounded the Applicant's complaint, held that it's Decision PPC. No. 33/2011, of 23 August 2011, *"[…] rightly rejected the request for repetition of the procedure because there was no new evidence or facts based on which a different more favorable decision would have been issued in the previous procedure".*

53. On 7 August 2012, the District Court in Prizren informed the Constitutional Court that "*the invitation for participation in the session dated 13.07.2009, was not sent to Ms. Adije Iliri".*

54. In conclusion, it is not disputable that the Public Prosecutor and the Applicant were not present in the proceedings in which the District Court took the Decision I. Agj. no. 2/2009/16, of 19 January 2010, which decision was confirmed by the challenged Decision Ac. no. 95/2011, of 8 December 2011, of the Supreme Court.

Applicable Law

55. Article 31 of the Constitution establishes that

> *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.

56. Article 54 of the Constitution also establishes 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.

57. Article 9 of the Convention on the Rights of the Child establishes that

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine (...) that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as (...) one where the parents are living separately and a decision must be made as to the child's place of residence.

2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.

58. Article 13 (3) of the Convention on Abduction, provides that

"In considering the circumstances referred to in this Article, the judicial and administrative authorities shall take into account the information relating to the social background of the child provided by the Central Authority or other competent authority of the child's habitual residence".

59. Section 1 (b) of the UNMIK Regulationdefines that

"Application" means an application pursuant to the Convention for assistance in securing the return of a child alleged to have been wrongfully removed or retained, within the meaning of Article 3 of the Convention, or to make arrangements for organizing or securing the effective exercise of the rights of access pursuant to the Convention.

60. Section 4 (1 and 2) of the UNMIK Regulation also provides that

The district court which has jurisdiction over the territory where the child is discovered shall be competent to review an application, to issue decisions and orders relating to such application and to execute such decisions and orders.

The district court shall transmit the application to the district public prosecutor with jurisdiction over the territory where the child is discovered. The district public prosecutor shall be competent to act on an application on behalf of the applicant.

61. In addition, Section 5 (2) of the UNMIK Regulation also foresees that

Judicial proceedings shall be conducted in accordance with the applicable Law on Non-Contested Procedure unless otherwise provided by the present Regulation or the Convention.

62. Finally, Section 8 of the UNMIK Regulation foresees that

The present Regulation shall supersede any provision in the applicable law that is inconsistent with it.

63. Article 6 (1) of the European Convention states that

In the determination of his civil rights and obligations (…), everyone is entitled to a fair (…) hearing within a reasonable time by an independent and impartial tribunal established by law.

Assessment

64. It must be recalled that the subject matter under adjudication in the proceedings is "*the procedure for returning the minor children",* meaning the execution of the request of the Austrian authorities. However, the subject matter inappropriately turned into deciding on the merits of custody and access of children.

65. In fact, the District Court rejected the order to return the children to their habitual residence, because *"in the concrete case there is a serious risk that the return of the children will have a negative impact on the psychological and physical development of the children"*. The Supreme Court confirmed that reasoning and decision. Furthermore, the Supreme Court established that the competent Public Prosecutor was

not invited to participate and the court of first instance did not make an illegal action by not inviting the Applicant to participate in the session.

66. In that case, the procedural right to a fair trial of the Applicant, as the *"legal* representative *of children",*aims to ensure the rights of the children to return to their habitual residence, as established by the Austrian authorities. The Applicant is acting on behalf of the children, in accordance with her parental obligations.

67. The Applicant claims that the Supreme Court Decision Ac. no. 95/2011, dated 8 December 2011, rejecting as unfounded the Applicant's request for repetition of the procedure was taken in violation of Article 31 of the Constitution and Article 6 of the ECHR.

68. Furthermore, the Applicant alleges that neither the Applicant (as overseer and custodian of her children) nor the Public Prosecutor (as competent to act on an application on behalf of the Applicant) has been summoned to participate, and she did not, in fact, participate in the proceedings.

69. The Applicant concludes that she has not received a "fair hearing", within the meaning of Article 31 of the Constitution and Article 6 (1) of the European Convention.

70. The Supreme Court acknowledged all the above summarized facts.

71. On the other hand, pursuant to Section 4 (2) of the UNMIK Regulation,

"thepublic prosecutor shall be competent to act on an application on behalf of the applicant".

72. However, since the proceedings on return became proceedings on the merits of custody of the children, the Applicant became a party in her own right, and her participation became obligatory throughout the proceedings.

73. Nevertheless, the Supreme Court confirmed the finding of the District Court and concluded that *"by not inviting her to participate in the session, the court of first instance did not make an illegal action".*

74. Thus, the challenged decision violated the right of the Applicant as guaranteed by Article 31 of the Constitution and Article 6 (1) of the European Convention.

75. The right to a fair trial is a general reference to a complex of other rights and principles, including the equality of arms. The notion of "equality of arms", as mentioned in the Judgment, implies that everyone who is a party to the proceedings shall have a reasonable opportunity of presenting her case to the Court under conditions which do not place her at substantial disadvantage *vis-à-vis* her opponent.

76. That conclusion is confirmed by the ECtHR that, in similar cases, considered that Article 6 does not always require a right to a public hearing and to be present irrespective of the nature of the issues to be decided. (S*ee, among other authorities*, Fejde v. Sweden, application 12631/87, Judgment of 29 October 1991). The subject matter of the proceedings before the District Court of Prizren is the execution of the order to return the children to the habitual residence requested by the Austrian authority. The mere execution of the order on return does not require the presence of the Applicant.

77. However, account must be taken of the entirety of the proceedings in the domestic legal order and to the manner in which the applicant's interests were actually presented and protected before the District Court of Prizren and the Supreme Court, particularly in the light of the nature of the issues to be decided by it. (S*ee among other authorities*, Helmers v. Sweden, application no. 11826/85, Judgment of 29 October 1991). The issue which was, in substance, decided by the District Court of Prizren was custody of the children. Then the parental rights of the Applicant became central. Therefore, the Applicant has the right to be present and have the opportunity of presenting her case to the Court under conditions which do not place her at substantial disadvantage.

78. Thus, the significance of this right is that the principle of the court hearing her case not only serves the purposes of clarifying the factual basis of the decision, but also ensures the respect of human rights in such a situation, in which the Applicant must be given the opportunity to assert herself with factual and legal arguments.

79. 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". (*See mutatis mutandis* Gusak v. Russia, 7 June 2011, Application no. 28956/05, para 27).

Conclusion

80. In these circumstances, the Applicant was not given the opportunity to present her arguments, to submit petitions before the regular courts and to present her views on the facts before the decision was made.

81. Consequently, her right to a fair and impartial trial by a tribunal established by law, as guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution and Article 6 [The right to a fair trial] ECHR was violated.

General Conclusion

82. In sum, the violation of the principle of equality of arms is a consequence of the first original violation of the right to a tribunal established by law committed by the courts not having ordered the return of the children.

83. For all these reasons, the Constitutional Court, with the reserve made above, should have ordered to the District Court in Prizren to execute the request of the Austrian authority on returning the children to their habitual residence.

84. In all, it is up to the Supreme Court to reconsider its Judgments in conformity with the Judgment of the Constitutional Court.

Almiro Rodrigues
Judge

KI 137/12, Ata Ibishi and others, date 12 July 2013- Constitutional Review of the judgment of the District Court in Prizren Gz.br.99/2010, of 5 June 2012

Case KI 137/12, Resolution on Inadmissibility of 25 June 2013

Keywords: Individual Referral, exhaustion of legal remedies, right to fair and impartial trial, property dispute

The Applicants filed the Referral based on Article 113.7 of the Constitution of Kosovo, claiming that District Court in Prizren, both procedurally and substantially violated their rights guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo, since according to the Applicants the District Court in Prizren did not treat their appeal in a proper manner, but only gave a general evaluation without real and based reasoning, without logical content on the refusal of the claimants' appeal and approval of the first instance judgment."

The Court concluded that the Applicants in their submission, have not substantiated in whatever manner, why they consider that legal remedies mentioned in Law No. 03/L-006 on Contested Procedure, would not be available, and if available, would not be effective and, therefore, not need to be exhausted and that the abstract allegation that available remedies are ineffective does not satisfy the exhaustion requirement.

Therefore, the Court found the Referral inadmissible due to not exhaustion of legal remedies.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI137/12
Applicants
Ata Ibishi and Others
Constitutional Review of the judgment of the District Court in Prizren Gž.br.99/2010, of 5 June 2012

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

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

Applicants

1. The Applicants are Ata Ibiši, Šefki Ibishi, Sejdi Ibiši, Ramadan Ibiši and Ajša Sadiku from village Mlika, Municipality of Dragash.

Challenged decision

2. The Applicants challenge the judgment of the District Court in Prizren Gž.br.99/2010, of 5 June 2012, which was served to the Applicants on 28 August 2012.

Subject Matter

3. The Applicants claim that District Court in Prizren, through its judgment Gž.br.99/2010, of 5 June 2012, both procedurally and substantially violated their rights as guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo (hereinafter: "The Constitution") in conjunction with Article 6.1 of the [Right to a Fair Trial] of the European Convention on Human Rights (hereinafter: "ECHR") in conjunction with Article 1 of Protocol 1 to the ECHR.

Legal Basis

4. The Referral is based on 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: 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 31 December 2012, the Applicants submitted the Referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the "Court").

6. On 14 January 2013, the President of the Constitutional Court, with Decision No.GJR.KI-137/12, appointed Judge Snezhana Botusharova as Judge Rapporteur. On the same date, the President of the Constitutional Court, with Decision No.KSH.KI-137/12, appointed the Review Panel composed of Judges Robert Carolan (Presiding), Altay Suroy and Ivan Čukalović.

7. On 27 February 2013, the Court informed the Applicants that the referral was registered, and requested from the Applicants to fill in the official form of the referral. The Applicants did not reply on this request until the day of deliberation.

8. On 27 March 2013, the Constitutional Court sent a letter to the Municipal Court in Prizren, requesting submission of the return receipt in order to prove the date when the Applicants had received the judgment Gž.br.99/2010 of the District Court in Prizren, of 5 December 2012.

9. On 4 April 2012, the Court received a letter from the Municipal Court in Prizren, attached to which was a copy of the return receipt, which confirmed the date of service of the judgment to the Applicants.

10. On 25 June 2013 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 an unspecified date the Applicants filed a lawsuit with the Municipal Court in Dragash, requesting confirmation of the ownership over an area of 4,83 m², which in May 2007 was fenced by another person R.S. , and attached to his cadastral parcel No. 632, which according to the Applicants belongs to them, respectively it is part of cadastral parcel No. 631.

12. On 12 January 2010, Municipal Court in Dragash adopted judgment P.br.43/07, which rejected the lawsuit of the Applicants as ungrounded. In the reasoning part of this judgment is stated that: *"The court in this legal matter administered the evidence and performed an onsite inspection by the court in the presence of geodesy experts eng. M.H. and X. I., read the conclusions of their findings as well as listened as witnesses the same, reviewed the sketch drafted by the hired experts, and heard the witness S.I., reviewed a copy of the plan issued by the Directorate for Cadastre and Geodesy dated 13.11.2006, so that with the full evaluation of all the administered evidence one by one and in mutual relation with the other evidence and confirmed facts, and pursuant to article 8 of the LCP decided as in the enacting clause of this judgment…"*

13. On an unspecified date, the Applicants filed an appeal with District Court in Prizren, against judgment P.br.43/07, of Municipal Court in Dragash.

14. On 5 June 2012, District Court in Prizren adopted its judgment Gž.br. 99/2010, which rejected the appeal of the Applicant as ungrounded, and confirmed the judgment P.br.43/07, of Municipal Court in Dragash, adopted on 12 January 2010.

Applicants' allegations

15. The Applicants alleges that the judgment of the District Court violated the rights as guaranteed by the Constitution and the ECHR, respectively Article 31 [right to a fair and impartial trial] of the Constitution and Article 6 paragraph 1 [right to a fair trial] of the ECHR in conjunction with Article 1 of the Protocol 1 to the ECHR.

16. According to the Applicants the "*violation of their rights is a consequence of the actions of the first instance court – Municipal Court in Dragash, which failed to preserve its impartiality during this procedure in detriment of the Applicants and also applied wrongfully the provisions of substantive law.* "

17. Furthermore, the Applicants claim that *"Municipal Court refused to consider the proofs presented by the Applicants, which would prove important facts related to the property dispute in question."*

18. In addition, the Applicants allege that District Court in Prizren did not treat their appeal in a proper manner, but *"only gave a general evaluation without real and based reasoning, without logical content on the refusal of the claimants' appeal and approval of the first instance judgment."*

Admissibility of the Referral

19. The Court observes that, in order to be able to adjudicate the Applicants' complaint, it is necessary to first 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.

20. In this respect, the Court refers to Article 49 of the Law on Constitutional Court provides:

"The referral should be submitted within a period of four (4) months. The deadline shall be counted from the day upon which the claimant has been served with a court decision. 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. The Court notes that the referral was submitted to the Court by mail 3 (three) days after the deadline. However, taking into account that the first working day after the deadline was 31 December 2012, the date on which the referral was submitted, the Court considers that the referral was submitted in compliance with Article 49 of the Law.

22. Moreover, the Court refers to Article 113.7 of the Constitution which 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."

and Article 47.2 of the Law which provides that:

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

23. In this respect, the Court notes that the principle of subsidiary requires that the Applicants exhaust 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.

24. 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). 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).

25. In the present case, the Court notes that the Applicants in their submission, have not substantiate in whatever manner, why they consider that legal remedies mentioned in Law No. 03/L-006 on Contested Procedure**,** would not be available, and if available, would not be effective and, therefore, not need to be exhausted (see *mutatis mutandis* AhmetArifaj v Municipality of Klina – KI23/09, Resolution on Inadmissibility of 20 April 2010). Applicants, however, must first attempt to seek relief through available remedies before concluding that such remedies are ineffective. The abstract allegation that available remedies are ineffective does not satisfy the exhaustion requirement (see Tmava et al. v. Ministry of Transport and Telecommunications, KI-17/10, Resolution on Inadmissibility of 15 October 2010).

26. Therefore, the Applicants have 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.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 20 of the Law and the Rule 36 (1) a) of the Rules of Procedure, on 8 July 2013, unanimously

DECIDES

I. TO REJECT the Referral as Inadmissible;

II. TO NOTIFY this decision to the Parties

III. TO PUBLISH the decision in the Official Gazette, in accordance with Article 20 (4) of the Law; and

IV. This Decision is effective immediately.

Judge Rapporteur
Snezhana Botusharova

President of the Constitutional Court
Prof. Dr. Enver Hasani

KI 128/12, Shaban Hoxha, date on 12 July 2013- Request for Constitutional review of the Judgment of the Supreme Court of Kosovo, Rev. no. 316/2011, of 14 June 2012

Case KI 128/12, Resolution on Inadmissibility of 8 July 2013

Keywords: Individual referral, manifestly ill-founded, Resolution on inadmissibility

The Applicant alleges that the challenged judgment has violated his rights guaranteed by the Constitution of the Republic of Kosovo, as follows: Article 49 (Right to Work and Exercise Profession), Article 24 (Equality before the Law) and Article 6 of European Convention on Human Rights (Right to a Fair and Impartial Trial).

The Applicant also states that the Supreme Court of Kosovo, by rendering the revision upon his request, put him into unequal position before the law, because in the case identical with his case, it rendered the Judgment Rev. no. 152/2009, dated 12 April 2010, by which that court approved the revision of that Applicant, while it rejected the revision filed by him.

In these circumstances, the Applicant has not sufficiently substantiated his allegation and he has not referred the matter in a legal manner and it cannot be concluded that the Referral is well-founded, therefore the Court, pursuant to the Rule 36 paragraph 2 items c and d, finds that the Referral should be rejected as manifestly ill-founded and consequently rejected the Referral as inadmissible.

RESOLUTION ON INADMISSIBILITY
in
Case no. KI128/12
Applicant
Shaban Hoxha
Request for constitutional review of the Judgment of the Supreme Court of Kosovo, Rev. no. 316/2011, of 14 June 2012

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

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

Applicant

1. The Applicant is Mr. Shaban Hoxha (hereinafter: the Applicant) from Prishtina, with residence in Prishtina, "Nazim Gafurri" Str., no. 13.

Challenged decision

2. The challenged decision of the public authority is the Judgment of the Supreme Court in Prishtina,Rev. no. 316/2011, dated 14 June 2012, for which, in the form for submission of Referral to the Court the party has stated that it was served on him on 4 December 2012.

Subject matter

3. The subject matter of the case submitted to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) on 6 December 2012 is the constitutional review of the Judgment of the Supreme Court in Prishtina, Rev. no. 316/2011, dated 14 June 2012, by which the Applicant's revision, filed against the Judgment of the District Court in Prishtina, Ac. no. 784/2009, dated 11 March 2011, was rejected.

Legal basis

4. Article 113.7 of the Constitution; Article 22 of the Law on Constitutional Court of the Republic of Kosovo, Nr. 03/L-121, of 15 January 2009, and Rule 56 (2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo.

Proceedings before the Court

5. On 10 December 2012, the Applicant submitted the Referral to the Constitutional Court and the same was registered with the Court under No. KI128/12.

6. On 14 January 2013, by Decision GJ. R. KI128/12, the President of the Court appointed the Deputy President, Prof. Dr. Ivan Čukalović, as Judge Rapporteur. On the same day, the President appointed the Review Panel composed of judges:Almiro Rodrigues (Presiding), Snezhana Botusharova and Kadri Kryeziu (members).

7. On 25 March 2013, the Court notified the Applicant and the Supreme Court of the registration of Referral.

8. On 17 June 2013, 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. On 23 October 2003, Kosovo Energy Corporation(hereinafter: KEK) – Pension Fund, rendered Decision no. 171/29 on application for pension, which is dedicated to the Applicant Mr. Shaban Hoxha, thereby approving Mr. Hoxha's request for early pension at the KEK, namely pension of "B" category, all this in compliance with UNMIK Regulation 2001/35 and with KEK Pension Fund Statute.

10. In the abovementioned decision it was determined that the payment of pension for Mr. Hoxha will start on 1 November 2003 and will end on 1 December 2008, while the amount of monthly pension shall be 105 Euros. In the decision it was also stated that the unsatisfied party may file an appeal within the time limit of 15 days with the Committee for Resolution of Disputes, through the KEK- Pension Fund Administration.

11. From the documentation submitted by the Applicant together with the Referral, the Court finds that no appeal was filed against the decision of the KEK -Pension Fund.

12. After 1 December 2008, KEK terminated the payment of pension to Mr. Shaban Hoxha and this fact is concluded by the Judgment of the Municipal Court in Prishtina, CI. No. 437/2008.

13. On 26 March 2009, the Municipal Court in Prishtina rendered Judgment CI. No. 437/2008, by which it rejected the claim of the claimant, Mr. Shaban Hoxha from Prishtina, where he had requested from the Court to oblige the respondent KEK to pay the pension to him according to the Decision no. 171/129, dated 23 October 2003, starting from 1 December 2008 until the conditions for payment exist.

14. In the reasoning of this Judgment, the Municipal Court in Prishtina concluded among others:

> "*The parties did not dispute the fact that the claimant realized supplementary pensions for 60 months, at a monthly amount of 105 Euros, nor they disputed the fact that after 60 months, to the claimant such payment was terminated, respectively, on 01.12.2008."* The Court also concluded that "*the fact was determined that the respondent fulfilled in entirety its obligations towards the claimant, provided by the claimant's decision on pension"* and that *"it follows that the statement of claim of the claimant on extension of the pension of payment even after the date 01.12.2008 is ungrounded, therefore it decided to reject the same as such."*

15. On 11 March 2011, the District Court in Prishtina rendered Judgment Ac. no. 784/2009, by which it rejected the appeal of Mr. Shaban Hoxha as ungrounded, with the reasoning that *"according to this court, the first instance court's conclusion, that the statement of claim of claimant is ungrounded, is fair. The first instance court judgment is based on a correct and complete determination of factual situation, upon which the substantive law was applied correctly."*

16. On 14 June 2012, the Supreme Court of Kosovo, deciding upon the request of the Applicant, rendered Judgment Rev. 316/2011, by which it rejected the revision filed by the Applicant against the Judgment of the District Court in Prishtina as ungrounded.

17. In the reasoning of the Judgment, the Supreme Court stated that: *"The Supreme Court of Kosovo, starting from such state of the matter, found that the courts of lower instances have correctly applied the substantive law, when they found that the statement of claim of the claimant is ungrounded."*

18. Finally, on 10 December 2012, unsatisfied with the courts' decisions, Mr. Hoxha filed a Referral with the Constitutional Court.

Applicant's allegations of constitutional violations

19. The Applicant alleges that the challenged judgment has violated his rights guaranteed by the Constitution of the Republic of Kosovo, as follows: Article 49 (Right to Work and Exercise Profession), Article 24 (Equality before the Law) and Article 6 of European Convention on Human Rights (Right to a Fair Trial).

20. The Applicant also states that the Supreme Court of Kosovo, by rendering the revision upon his request, put him into unequal position before the law, because in the case identical with his case, it rendered the Judgment Rev. no. 152/2009, dated 12 April 2010, by which that court approved the revision of that Applicant, while it rejected the revision filed by him.

Assessment of admissibility of the Referral

21. In order to be able to adjudicate the Applicant's Referral, the Constitutional Court first assesses whether the Applicant has met the admissibility requirements laid down in the Constitution, the Law on Constitutional Court and Rules of Procedure.

22. In this regard, the Court refers to Article 113.1 of the Constitution [Jurisdiction and Authorized Parties] which provides:

> *"The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties".*

23. 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.*

24. Referring to the Applicant's Referral and alleged violations of the constitutional rights, the Constitutional Court concludes that the Applicant has exhausted all legal remedies available to him under the law, and he has filed the Referral within legal time limit provided by Article 49 of the Law on Constitutional Court, therefore in these circumstances, the Court will review merits of the alleged constitutional violations, as presented by the Applicant.

25. In this respect, the Court emphasizes that the Constitutional Court is not a fact-finding court and on this occasion it wants to emphasize that the correct and complete determination of factual state is the full jurisdiction of regular courts, as in this case of the Supreme Court by rejecting the claimant's revision or of the District Court in Prishtina by rejecting the appeal of the appellant and that its role (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 fourth instance court (see*, mutatis mutandis,* i.a., Akdivar v. Turkey, 16 September 1996, R. J. D, 1996-IV, par. 65).

26. The mere fact that Applicants are unsatisfied with the outcome of the case cannot serve as the right to file an arguable claim on violation of Article 31 of the Constitution or Article 6 of ECHR *(*see *mutatis mutandis* Judgment ECHR Appl. No. 5503/02, Mezotur-Tisazugi Tarsulat vs. Hungary, Judgment of 26 July 2005 or Tengerakisvs.Cyprus,no.35698/03, decision dated 9 November 2006, §74).

27. The Applicant did not present any valid argument that would support his allegations of violation of Article 49 of the Constitution and apart from the claim that he had a lawful decision on pension and his request that the pension should continue to be paid, he did not justify how his constitutionally guaranteed right was violated. Further, the regular courts, in regular and legal proceedings, have concluded that the obligations that derive from the decision of the respondent KEK and which are in favor of Mr. Hoxha have been fulfilled in their entirety. In fact, the Applicant did not challenge at all the proceedings and the process in its entirety, but he challenged the final outcome of the court process, which was not in his favor.

28. Furthermore, in order for a judgment or a resolution of a public authority to be declared unconstitutional, the Applicant should *prima facie* show before the Constitutional Court that, "the decision of the

public authority, as such, will be an indicator of a violation of the request to a fair trial and if, the unreasonableness of that decision is so striking, that the decision can be considered as grossly arbitrary." (See, ECtHR, Khamidov vs. Russia, no. 72118/01, Judgment dated 15 November 2007, § 175).

29. In the Judgment of Supreme Court, Rev. 316/2011, dated 14 June 2012, the Constitutional Court has not found elements of arbitrariness or alleged violation of human rights, as alleged by the Applicant.

30. As regards the allegation of violation of the right guaranteed by Article 24 of the Constitution (Equality before Law), which the Applicant alleges that it has been violated, justifying this with the fact that in an identical case the Supreme Court rendered a different judgment, the Court concludes that in the case mentioned by the Applicant, the judicial process was in essence fundamentally different.

31. In fact, in the case of the Applicant Z. B. (which is alleged to be identical), also a KEK pensioner, the Municipal and District Court decided in favor of the Applicant Z. B., while, after revision filed by KEK, the Supreme Court (Rev. no. 152/2009, of 12 April 2010), approved as grounded the KEK revision, that is, the revision of the responding party and not claimant's revision, and in these circumstances, the Court cannot conclude that there was a violation of Article 24 of the Constitution.

32. The Court also states that the Applicant did not present as evidence the act of individual agreement concluded between him and KEK, as the Applicants of the Referrals filed by groups of KEK employees had, as well as former pensioners of this company, where it was stated that the pension would be paid "until the establishment and functioning of the Invalidity and Pension Insurance Fund in Kosovo" (*See Judgments of the Constitutional Court, dated 23 June 2010, of the Applicant Mr. Imer Ibrahimi and 48 others, and the Applicant Mr. Gani Prokshi and 15 others*), but he had a decision on pension on a precisely fixed term, which he accepted and did not challenge it, therefore the Court has not found arguments to treat this Referral as other abovementioned cases before this Court which were filed by groups of former KEK employees.

33. In these circumstances, the Applicant has not sufficiently substantiated his allegation and he has not referred the matter in a legal manner and it cannot be concluded that the Referral is well-founded, therefore the Court, pursuant to the Rule 36 paragraph 2 items c and d, finds that the Referral should be rejected as manifestly ill-founded and consequently

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 20 of the Law on Constitutional Court and in compliance with the Rule 56 (2) of the Rules of Procedure, on 8 July 2013, 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
Prof. dr. Ivan Čukalović

President of the Constitutional Court
Prof. dr. Enver Hasani

KI 60/13, Bujar Shatri, date 12 July 2013- Requesting Constitutional Review of the regular court proceedings against Mr. Bujar Shatri.

Case KI 60/13, Resolution on Inadmissibility of 19 June 2013

Keywords: non-disclosure of identity, non-exhaustion, right to privacy, violations of individual rights and freedoms

The applicant filed a Referral pursuant to Article 113.7 of the Constitution of Kosovo alleging that *"In the case file of the criminal offence, which was closed with the Judgment of the Municipal Court of 18 December 2012 becoming final, the court order of the pre-trial judge is missing, i.e. the order for tapping calls and SMS, which leads to violation of the right to privacy for an individual through illegal interception of communication, a right guaranteed by Article 36 of the Constitution of Kosovo."* Furthermore, the Applicant requests the Court not to have his identity disclosed because he is an official person.

On the issue of the admissibility of the Referral, the Court held that the Referral was inadmissible because the Applicant has not pursued available legal remedies for the alleged violation of his right to privacy. 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.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI60/13
Applicant
Bujar Shatri
Constitutional review of the regular court proceedings against Bujar Shatri

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Enver Hasani, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Kadri Kryeziu, Judge and
Arta Rama-Hajrizi, Judge.

Applicant

1. The Referral is submitted by Bujar Shatri (hereinafter: the "Applicant"), residing in Prizren.

Challenged decision

2. The Applicant challenges the regular court proceedings against him initiated by the Municipal Public Prosecutor with the indictment of 12 November 2008 and the following court decision that was taken.

Subject matter

3. The Applicant alleges that *"Article 36, item 3 of the Constitution, Article 12 of the Universal Declaration of Human Rights and Article 8 of the International Convention of Human Rights were violated in the regular court proceedings against the Applicant Mr. Bujar Shatri, by the District Court in Prishtina with Decision Ap. no. 159/2011, dated 28 December 2011 as well as by the State Prosecutor"*.

4. Furthermore, the Applicant requests the Court not to disclose his identity because he is a public official.

Legal basis

5. The Referral is based on 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: 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 April 2013, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the "Court").

7. On 29 April 2013, the President of the Constitutional Court, with Decision No.GJR.KI-60/13, appointed Judge Snezhana Botusharova as Judge Rapporteur. On the same date, the President of the Constitutional Court, with Decision No.KSH.KI-60/13, appointed the Review Panel composed of Judges Almiro Rodrigues (Presiding), Kadri Kryeziu and Enver Hasani.

8. On 14 May 2013, the Referral was communicated to the Basic Court in Prishtina and the State Prosecutors Office.

9. On 19 June 2013, 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 25 January 2008, the UNMIK Customs Service submitted to the Police a request to investigate criminal offences committed by customs officers. The initiation of this case was made as a result of suspicions resulting from the interception of telecommunications in another criminal case.

11. On 11 September 2008, the Police submitted to the District Public Prosecutor criminal charges against, amongst others, the Applicant for suspicion of having committed the criminal acts specified in Article 339 (Abusing Official Position or Authority), Article 25 (Assistance) and

Article 304 (Failure to Report Criminal Offences or Perpetrators) of the Provisional Criminal Code of Kosovo (hereinafter: the "PCCK").

12. On 12 November 2008, the Municipal Public Prosecutor filed an indictment (5710-15/2008) with the Municipal Court in Prishtina against the Applicant for having committed the criminal act specified in Article 304 (Failure to Report Criminal Offences or Perpetrators) of the PCCK.

13. On 10 February 2009, the Municipal Court in Prishtina confirmed the indictment of the Municipal Public Prosecutor (Decision KA. No. 394/08).

14. On 29 March 2011, the Municipal Court in Prishtina (Decision P. no. 496/2009) rendered a decision on the admissibility and inadmissibility of evidence.

15. On 16 May 2011, the Municipal Court in Prishtina (Judgment P. no. 496/2009) acquitted the Applicant from the criminal charge because the criminal charge was not supported by any evidence.

16. On 14 June 2011, the Municipal Public Prosecutor complained against the Judgment of the Municipal Court of Prishtina of 16 May 2011 to the District Court in Prishtina.

17. On 28 December 2011, the District Court in Prishtina (Decision Ap. no. 159/2011) approved the complaint of the Municipal Public Prosecutor and annulled the Judgment of the Municipal Court of 16 May 2011 and returned the case to the Municipal Court in Prishtina for retrial. The District Court in Prishtina held that *"the challenged Judgment for now cannot stand as it contains essential violations of the criminal procedure provisions provided in Article 403 paragraph 1 item 12 of the Provisional Criminal Procedure Code of Kosovo [...] because it does not contain reasons for the decisive facts, the reasons given are unclear and the conclusion of the first instance court based on the administered evidence and the evidence it declared inadmissible for the time being cannot stand."*

18. On 17 September 2012, the Applicant sent a letter to the President of the Supreme Court and the President of the District Court in Prishtina complaining that his human rights and freedoms have been violated because the District Court of Prishtina, *"[...] a panel of judges took an*

unlawful decision to declare as admissible the transcripts with the content of SMS which are considered as a telephonic communication while there is no judicial order of the pretrial judge on the measure "interception of communication" under Article 258 paragraph 2 subparagraph 4 of the Provisional Criminal Procedure Code of Kosovo. It is very clear based on the applicable law that the content of the telephonic messages (SMS) cannot be considered to fall in the "record of phone calls and sms". The content of the SMSes is considered communication, the interception of which requires the obtaining of a judicial order pursuant to Article 258 paragraph 2 subparagraph 4 of the Provisional Criminal Procedure Code of Kosovo. This judicial decision is also completely in contradiction with Chapter II of the Constitution of Kosovo, because Article 36 item 3 of the Constitution guarantees the individual's Right to Privacy, I quote "Secrecy of correspondence, telephony and other communication is an inviolable right. This right may only be limited temporarily by court decision if it is necessary for criminal proceedings or defense of the country as defined by law." For the violation to be more drastic in the case file except for the missing of a judicial order of the pre-trial judge, in the case file for me – residing in Prizren, there is no order whatsoever for the metering of phone calls and SMS by the prosecutor in the case, which adds to my concern about the illegal interception of communications and violation of privacy."

19. On 18 September 2012, the President of the Supreme Court replied to the Applicant stating that *"[…] now we as a Supreme Court can neither comment nor interfere with the judicial decisions of the lower instances. […] but you should wait for the ending of the legal proceedings which for the time being are pending."*

20. On 25 October 2012, the Municipal Court in Prishtina (Judgment P. no. 1786/2012) in the retrial acquitted the Applicant from the criminal charge because the criminal charge was not supported by any evidence. The Applicant claims that this Judgment became final on 18 December 2012.

21. Furthermore, no supporting documentation was provided on the reasons for the Applicant not to have his identity disclosed.

Applicant's allegations

22. The Applicant alleges that *"In the case file of the criminal offence, which was closed with the Judgment of the Municipal Court of 18 December 2012 becoming final, the court order of the pre-trial judge is missing,*

i.e. the order for tapping calls and SMS, which leads to violation of the right to privacy for an individual through illegal interception of communication, a right guaranteed by Article 36 of the Constitution of Kosovo."

Admissibility of the Referral

23. 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 as further specified in the Law and the Rules of Procedure.

24. In this respect, the Court notes Article 113.1 and Article 113.7 of the Constitution which provide:

"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".

and Article 47.2 of the Law, which provides: *"The individual may submit the referral in question only after he/she has exhausted all the legal remedies provided by the law."*

25. In this respect, the Court notes that the principle of subsidiary 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.

26. 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). 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).

27. In the present case, the Court notes that the Applicant received a favorable judgment by the Municipal Court of Prishtina acquitting him of the criminal charge. However, the Applicant requests that the Constitutional Court renders a decision on whether the Applicant's right to privacy has been violated. In this regard, the Court notes that the Applicant has not pursued available legal remedies for the alleged violation of his right to privacy.

28. Therefore, 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.

29. As to the Applicant's request for not having his identity disclosed, 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 disclosed.

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 4 July 2013, unanimously

DECIDES

I. TO REJECT the Referral as Inadmissible;

II. TO REJECT the Applicant's request not to have his identity disclosed;

III. TO NOTIFY this Decision to the Parties;

IV. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20 (4) of the Law;

V. TO DECLARE this Decision effective immediately.

Judge Rapporteur
Snezhana Botusharova

President of the Constitutional Court
Prof. Dr. Enver Hasani

KI39/13, Bardhyl Krasniqi, date 12 July 2013- Constitutional Review of the Decision of former District Court in Prizren KA. No. 31/2012, dated 14 March 2012, and of the Decision KA. No. 31/2012, dated 20 March 2012

Case Nr. KI39/13, Resolution on Inadmissibility of 19 June 2013

Keywords: individual referral, criminal dispute, right to fair and impartial trial, violation of criminal law, manifestly ill-founded.

The Applicant claimed that the former District Court in Prizren, by Decision KA. No. 31/2012 dated 14 March 2012, violated his constitutional rights guaranteed by Article 31 of the Constitution. The Applicant alleged that the judicial authority, by the abovementioned Decisions, committed a violation of criminal law and violation of his fundamental rights, by accusing and keeping him unfairly in the detention on remand for the criminal offence of "*aggravated murder in co-perpetration*" under Article 147, paragraph 1, item 4 e of PCCK. He claimed that the court is not impartial, because of family ties between the Prosecutor and the Forensic Doctor with the victim of the alleged murder.

The Court in this case reviewed the matters regarding the pre-trial proceedings and regarding the main hearing of the case. In the first, the Court noted that the Applicant did not show by any evidence, how and why the former District Court in Prizren violated his rights and fundamental freedoms guaranteed by the Constitution. Whereas, as for the main hearing of the case, the Court found that the Referral is premature since the case was still pending with the regular courts. Therefore, In accordance with the principle of subsidiarity, the Applicant was obliged to exhaust all legal remedies provided by law, as stipulated by Article 113.7 of the Constitution. In all, the Referral was found inadmissible.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI39/13
Applicant
Bardhyl Krasniqi
Constitutional Review of the Decision of former District Court in Prizren KA. no. 31/2012, dated 14 March 2012, and of the Decision
KA.no.31/2012, dated 20 March 2012

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

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

Applicant

1. The Applicant is Mr. Bardhyl Krasniqi, from the village of Dejnë, municipality of Rahovec.

Challenged Decision

2. The challenged court decision is the Decision of the former District Court in Prizren (KA. no. 31/2012), dated 14 March 2012, and the Decision (KA. No. 31/2012) dated 20 March 2012, which, according to the Applicant, were served on him on 13 April 2012.

Subject Matter

3. The subject matter of this Referral is the constitutional review of the Resolution of the former District Court in Prizren (KA. No. 31/2012) dated 14 March 2012 and the Resolution (KA. No. 31/2012) dated 20 March 2012. The Applicant alleges that these Decisions violated his right to a fair and impartial trial.

Legal basis

4. The Referral is based on Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the "Constitution"), Article 47.1 of the Law on the Constitutional Court of Republic of Kosovo, No. 03/L-121 of 15 January 2009 (hereinafter: the "Law"), and Rule 28 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the "Rules").

Proceedings before the Court

5. On 14 March 2013, the Applicant submitted his Referral to the Constitutional Court.

6. On 25 March 2013, the President of the Courtappointed Judge Snezhana Botusharovaas Judge Rapporteur and the Review Panel composed of Judges: Robert Carolan (Presiding), Almiro Rodrigues (member) and Prof. Dr. Enver Hasani (member).

7. On 3 April 2013, the Court notified the Applicant about the registration of the Referral and requested him to provide the necessary documents to complete the Referral.

8. On 12 April 2013, the Constitutional Court requested the Basic Court in Prizren to provide the complete case file of the Applicant, including the indictment of the District Public Prosecutor (PP.no.239/2011) dated 20 February 2002, and the decisions of all court instances.

9. On 23 April 2013, the Court received the document I.GJA.no.1/13-61, dated 18 April 2013, from the Basic Court in Prizren, which notified the Constitutional Court that the Applicant's case file (P.nr.61/12) had been transferred to the Basic Court in Gjakova, according to subject matter jurisdiction.

10. On 13 May 2013, the Basic Court in Gjakova, submitted the complete case file of the Applicant, in compliance with the Court's request.

11. On 19 June 2013, the Review Panel reviewed the report of the Judge Rapporteur, and recommended to the Court that the Referral be declared inadmissible.

Summary of facts

12. On 20 February 2012, the District Public Prosecutor of Prizren filed an indictment (PP.no.239/2011) against the Applicant and his brother, Mr. Halil Krasniqi, charging them with murder and assistance in the commission of murder, under article 146. in conjunction with article 25 of the Provisional Criminal Code of Kosovo (PCCK).

13. On 14 March 2012, the former District Court of Prizren (KA. no.31/12) confirmed the indictment against the Applicant and Mr. Halil Krasniqi The Applicant and Mr. Halil Krasniqi pleaded not-guilty to these criminal charges. In the conclusion part of the Resolution regarding the confirmation of the indictment the court stated:

> *"Since the judge for confirmation of indictment reachedthe conclusion that the circumstances do not exist for dismissing the indictment and terminating the criminal proceedings against the defendents for the criminal offences of which they are charged, as provided for by Article 316, paragraph 1-3 of the Provisional Criminal Procedure Code of Kosovo (PCPCK), and the indictment contains in itself sufficient evidence, which justifies the reasonable suspicion that the defendants have committed the criminal offences for which they are charged, therefore confirmed the same. Therefore, the court decided as perthe enacting clause of this resolution in compliance with Article 316, paragraph 4 and Article 318, paragraph 1 item 1 and paragraph 2 of PCPCK."*

14. On 20 March 2012, the former District Court of Prizren rendered Decision KA. no.31/12, amending its previous Decision (KA. 31/12), dated 14 March 2012., in the introductory part, deleting the criminal offence of murder, provided by Article 146 of PCCK and of assistance in the commission of the criminal offence of murder under Article 146 in conjunction with Article 25 of PCCK, and replacing these with the criminal offence of co-perpetration of Aggravated Murder under Article 147 paragraph 1 item 4, in conjunction with Article 23 of the PCCK. The court, justified this modification of the resolution as follows:

> *"By the decision of this court KA.no.31/2012, dated 14.03.2012, the indictment was confirmed against the accused Halil Krasniqi and Bardhyl Krasniqi [...] because in co-perpetration they have committed the criminal offence of aggravated murder as provided for by Article 147, paragraph 1, item 4, in conjunction with Article 23 of the PCCK. The judge for confirmation of indictment concluded that during the preparation of the ruling an omission was made and that, in the introductory part, enacting clause and reasoning whereby*

instead of criminal offences of murder as provided for by Article 146 of PCCK and assistance in commission of criminal offence of murder as provided for by Article 146 in conjunction with Article 25 of PCCK, should stand only the criminal offence of commission in co-perpetration of aggravated murder as provided for by Article 147, paragraph 1, item 4, in conjunction with Article 23 of the PCCK."

15. On 20 April 2012, the defense counsel of the Applicant filed an appeal in the Supreme Court of the Republic of Kosovo (hereinafter: Supreme Court) against the Decision of the former District Court (P.no.61/12) dated 20 April 2012, regarding the extension of detention on remand/confirmation and amendment of the indictment against the Applicant and his brother Mr. Halil Krasniqi.

16. On 23 April 2012, the former District Court of Prizren, submitted to the Supreme Court the case file P. nr.61/12, with respect to the accused.

17. On 19 December 2012, the Supreme Court, by Decision P.no.300/2012, rejected as ungrounded the appeal of the defense counsel filed against the resolution of the former District Court of Prizren (P.no.61/2012) dated 20 April 2012.

18. On 19 December 2012, the former District Court in Prizren (Decision, P.no.61/2012) rendered a decision on extension of detention on remand, as it is stated in the Resolution, for 2 (two) more months until 21 February 2013.

19. On 14 February 2013, the State Prosecutor, respectively the Serious Crimes Department pursuant to Article 193, paragraph 1, of the Criminal Procedure Code of Kosovo (CPCK) and Article 187, paragraph1, sub-paragraphs 1.1, 1.2, item 1.2.1, 1.2.3, of the CPCK, filed a request for extension of detention on remand against the Applicant and his brother Mr. Halil Krasniqi.

20. On 19 February 2013, the Basic Court in Gjakova, by Decision P.no. 61/12 PZ1, dated 19 April 2013, extended the detention on remand from 21 February 2013 until 21 April 2013 for the accused Halil Krasniqi and the Applicant.

21. On 19 April 2013, the Basic Court in Gjakova, by Decision P.no. 61/12 PZ1 dated 19 April 2013, extended detention on remand from 21 April 2013 until 21 June 2013 against the Applicant and the accused Halil Krasniqi.

22. It appears that the main hearing in the criminal case against the Applicant has not yet commenced.

Applicant's allegations

23. The Applicant alleges that the former District Court in Prizren, by Decision KA.nr.31/2012 dated 14 March 2012, and as amended on 20 March 2012, violated his constitutional rights, guaranteed by Article 31 [Right to Fair and Impartial Trial].

24. The Applicant alleges that the judicial authority, by the abovementioned Decisions, committed a violation of criminal law and violation of his fundamental rights, by accusing and keeping him unfairly in the detention on remand for the criminal offence of "aggravated murder in co-perpetration" under Article 147 paragraph 1 item 4 e of PCCK. He claims that the court is not impartial, because of family ties between the Prosecutor and the Forensic Doctor with the victim of the alleged murder.

Admissibility of the Referral

25. In order to be able to adjudicate the Applicant's Referral, the Court has to assess beforehand whether the Applicant has met the requirements of admissibility, which are foreseen by the Constitution and further specified by the Law and the Rules of Procedure.

26. In the present case, the Court refers to Article 113, paragraph 1 *[Jurisdiction and Authorized Parties]* which provides that:

> 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".*

27. Article 47 (2) of the Law on Constitutional Court also provides:

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

28. The Court also refers to Article 48 of the Law on Court, which provides that:

> *"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".*

29. Furthermore, Rule 36 (1) (a) and (c) of the Rules of Procedure provides 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, or*
>
> *(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, or*
>
> *(c) the Referral is not manifestly ill-founded.*

30. From the case file, the Court notes that the Applicant challenges the decisions of the former District Court in Prizren, by which he alleges that his constitutional rights, guaranteed by Article 31 [Right to Fair and Impartial Trial] were violated. He further claims that the former District Court in Prizren, by Resolution KA. No. 31/12 dated 20 March 2012 committed violation of criminal law and his fundamental rights, by accusing and keeping him unfairly in detention on remand for the criminal offence of "aggravated murder in co-perpetration" under Article 147 paragraph 1 item 4 e of PCCK. He claims that the court is not impartial.

Regarding the pre-trial proceedings

31. The Constitutional Court notes that the Applicant does not show by any evidence, how and why the former District Court in Prizren violated his rights and fundamental freedoms guaranteed by the Constitution.

32. As regards to the allegation for violation of the criminal law by former District Court in Prizren, the Court considers that those allegations may be of the scope of legality. It is the jurisdiction of the regular courts to apply relevant provisions of the law, in compliance with the

circumstances of the case, in the present case, with the weight of the charged criminal offence.

33. In this regard, the Court refers 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."*

34. The Constitutional Court would like to recall that it is not the task of the Constitutional Court to deal with errors of fact or the law (legality) allegedly committed by regular courts unless they may have infringed upon the rights and freedoms protected by the Constitution (constitutionality).

35. Therefore, the Court should not act as a court of fourth instance, when considering the decisions rendered by the regular courts. It is the role of the regular courts to interpret and apply the pertinent rules of both procedural and substantive law (see, *mutatis mutandis*, Garcia Ruiz v. Spain, no. 30544/96, § 28, European Court on Human Rights [ECHR] 1999-1).

36. The Constitutional Court did not find that the pertinent proceedings of the former District Court 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).

37. Nevertheless, the Applicant does not explain why and how his rights were violated, he does not substantiate a *prima facie* allegation on constitutional grounds and did no provide evidence that show that his rights and freedoms guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution and Article 6 of ECHR have been violated by former District Court in Prizren. The Applicant has not substantiated his claim that the prosecutor and the forensic doctor have family relationships with the victim of the crime of which he is accused, nor has the Applicant demonstrated how these alleged family relationships may have affected the judgment of the former District Court of Prizren.

Regarding the main hearing of the case

38. The Court observes that the challenged Decision of the former District Court in Prizren (KA. No. 31/2012) dated 20 March 2012 was served on

the Applicant on 12 April 2012. The Constitutional Court received the Applicant's case file on 27 April 2013, on which occasion it realized that the Applicant's detention on remand had been extended several times, initially by the former District Court in Prizren and later by the Basic Court in Gjakova (Decision, P.no. 61/12 PZ1 dated 19 April 2013), from 21 April 2013 until 21 June 2013.

39. After 13 May 2013, the Constitutional Court does not posses any information regarding the main trial of the case. Therefore, since the Applicant's case is still within the pre-trial phase of proceedings, and the Applicant will still have ample opportunity to present his claims of judicial bias within the main trial proceedings, from this point of view, the Court considers that the Referral is premature. As such, the question arises whether the Applicant has exhausted all available legal remedies.

40. In accordance with the principle of subsidiarity, the Court considers that the Applicant is obliged to exhaust all legal remedies provided by law, as stipulated by Article 113 (7) of Constitution and the other legal provisions, as mentioned above.

41. In fact, the purpose of the exhaustion rule is to allow to the regular courts the opportunity of settling an alleged violation of the Constitution. The exhaustion rule is operatively intertwined with the subsidiary character of the constitutional justice procedural frame work (See, *mutatis mutandis*, Selmouni v. France [GC], § 74; Kudla v. Poland [GC], § 152; Andrasik and Others v. Slovakia (dec.).

42. Thus 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. Otherwise, the Applicant is liable to have its case declared inadmissible by the Constitutional Court, when failing to use the regular proceedings or failing to report a violation of the Constitution in the regular proceedings. That failure shall be understood as a giving up of the right to further object to the alleged violation. (See, Resolution in Case No. Kl. 07/09, Deme KURBOGAJ and Besnik KURBOGAJ, Review of Supreme Court Judgment Pkl.nr. 61/07 of24 November 2008, paragraph 18).

43. Whenever a judicial decision is challenged on the basis of some legal position that is unacceptable from the viewpoint of human rights and fundamental freedoms, the regular courts that rendered the decision

must be afforded the opportunity to reconsider the challenged decision. That means that, every time human rights violation is alleged, such an allegation cannot as a rule arrive to the Constitutional court without being considered firstly by the regular courts.

44. Therefore, the Court finds that the Applicant has neither built, nor shown, a *prima facie* case, either on merits or on the admissibility of the Referral.

45. From the reasons above, the Court concludes that the Applicant's Referral with respect to the pre-trial proceedings of the confirmation of indictment, pursuant to Rule 36.1 item (c) of the Rules of Procedure, is considered as manifestly ill-founded.

46. In all, the Court concludes that the Applicant's Referral is inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Rule 36.1 (c) and Rule 56 (2) of the Rules, on 8 July 2013, unanimously:

DECIDES

I. TO REJECT the Referral as Inadmissible;

II. TO NOTIFY this Decision to the Parties;

III. TO PUBLISH this Decision in accordance with Article 20.4 of the Law; and

IV. This Decision is effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Snezhana Botusharova	Prof. Dr. Enver Hasani

KI 35/13, Sali Shala, date 12 July 2013- Constitutional Review of the Judgment of the Supreme Court of the Republic of Kosovo, Pkl. no. 189/2012.

Case KI 35/13, Resolution on Inadmissibility of 17 June 2013

Keywords: individual referral, manifestly ill-founded, right to fair and impartial trial, violation of individual rights and freedoms

The applicant, Mr. Sali Shala, filed a Referral pursuant to Article 113.7 of the Constitution of Kosovo challenging the Judgment of the Supreme Court of the Republic of Kosovo, Pkl. no. 189/2012 of 26 December 2012, as being taken in violation of his rights guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution and Article 6 of the ECHR, because allegedly the judgments of the District Court in Peja and the Supreme Court are in violation of the principle reformatio in pejus "[...] no one can be injured from its appeal, cannot have hassle for his appeal, as it happened in the concrete case."

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.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI35/13
Applicant
Sali Shala
Constitutional Review of the Judgment of the Supreme Court of the Republic of Kosovo, Pkl. no. 189/2012, dated 26 December 2012.

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Enver Hasani, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Kadri Kryeziu, Judge and
Arta Rama-Hajrizi, Judge.

Applicant

1. The Referral is submitted by Mr. Sali Shala (hereinafter: the "Applicant"), residing in the village Lipovec, Municipality of Gjakova.

Challenged decision

2. The Applicant challenges the Supreme Court judgment, Pkl. no. 189/2012, of 26 December 2012, which was served on the Applicant on an unspecified date.

Subject matter

3. The Applicant alleges that his rights under Article 21 [General Principles], Article 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo (hereinafter: the "Constitution") and Article 6 (Right to fair trial) of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: the "ECHR") have been violated.

Legal basis

4. The Referral is based on 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: 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 11 March 2013, the Applicant submitted the Referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the "Court").

6. On 25 March 2013, the President of the Constitutional Court, with Decision No.GJR.KI-35/13, appointed Judge Arta Rama-Hajrizi as Judge Rapporteur. On the same date, the President of the Constitutional Court, with Decision No.KSH.KI-35/13, appointed the Review Panel composed of Judges Altay Suroy (Presiding), Snezhana Botusharova and Kadri Kryeziu.

7. On 29 March 2013, the Referral was communicated to the Supreme Court of the Republic of Kosovo.

8. On 29 March 2013, the Court requested the Applicant to submit the following additional documents:

   a. Judgment of the Municipal Court in Gjakova, P. No. 263/09, of 9 March 2011;

   b. Judgment of the Municipal Court in Gjakova, P. No. 263/09, of 10 May 2011;

   c. Judgment of the District Court in Peja, Ap. no. 60/11, of 21 December 2011;

   d. Judgment of the Supreme Court, Api. No. 3/2012, of 23 September 2012; and

9. On 18 April 2013, the Applicant replied to the Court submitting the requested additional documents.

10. On 3 June 2013, the President of the Constitutional Court, with Decision No.GJR.KI-35/13, replaced Judge Arta Rama-Hajrizi with Judge Ivan Čukalović as Judge Rapporteur.

11. On 17 June 2013, the Review Panel considered the report of the Judge Rapportuer and made a recommendation to the Court on the Inadmissibility of the Referral.

Summary of facts

12. On 9 March 2011, the Municipal Court in Gjakova (Judgment P. no. 263/09) found the Applicant guilty for having committed the criminal act of theft under Article 252 paragraph 1 of the Provisional Criminal Code of Kosovo (hereinafter: "PCCK") and issued a punitive order fining him with 300 euro. The Applicant pursuant to the legal advice written in the Judgment objected this Judgment to the Municipal Court in Gjakova.

13. On 10 May 2011, the Municipal Court in Gjakova (Judgment P. no. 263/09) acquitted the Applicant from the charge because it was not proven that the Applicant had committed the criminal act. The Municipal Public Prosecutor complained against this Judgment to the District Court in Peja.

14. On 15 November 2011, the District Court in Peja (Judgment Ap. no. 60/11) approved the complaint of the Municipal Public Prosecutor and found the Applicant guilty for having committed the criminal act of theft under Article 252 paragraph 1 of the PCCK fining him with 1.200 euro. The Applicant filed a complaint against this Judgment to the Supreme Court.

15. On 23 August 2012, the Supreme Court (Judgment Api. no. 3/2012) rejected the Applicant's complaint and upheld the Judgment of the District Court in Peja. Both the State Prosecutor and the Applicant each of them filed a request for protection of legality with the Supreme Court against the Judgment of the District Court in Peja, Ap. no. 60/11 of 15 November 2011, and the Judgment of the Supreme Court, Api. no. 3/2012 of 23 August 2012.

16. On 26 December 2012, the Supreme Court (Judgment Pkl. no. 189/2012) rejected as unfounded the Applicant's and the State Prosecutor's request for protection of legality. The Supreme Court held that *"The District Court in Peja, acting upon the complaint of the Municipal Public Prosecutor, Judgment Ap. no. 60/2011 of 15*

November 2011, modified the judgment, so that it found the accused Sali Shala guilty for the criminal offence of theft as provided by Article 252 par. 1 of PCCK and imposed the fine of €1.200. According to Article 480 of the Provisional Criminal Procedure Code of Kosovo, in such situations the courts are not bound by the principle reformatio in peiuss, and this deviation from this principle applies to both courts, the first instance court and the second instance court, because if the court of first instance, instead of fine, following the objection, would impose imprisonment sentence and the public prosecutor would complain this judgment, the second instance court would not be limited by any legal provision to impose on the accused a harsher sentence. The same situation would be also when the court imposes a higher fine, while the second instance court, following the complaint of the public prosecutor would have a chance to increase even more the fine, within the minimum of the maximum. If during the review, the court of first instance would be able to impose the imprisonment sentence, why then the second instance court cannot impose the same type of punishment, but at a higher amount, as it acted in this case, since in one aspect, the court of second instance legally took a role of the first instance court. So, the allegations of the State Prosecutor and those of the defence, whether the principle reformatio peiuss has been violated are unsubstantiated by law."

Applicant's allegations

17. The Applicant alleges that the judgments of the District Court in Peja and the Supreme Court are in violation of the principle *reformatio in pejus "[...] no one can be injured from its appeal, cannot have hassle for his appeal, as it happened in the concrete case."*

18. In this respect, the Applicant alleges that his rights under Article 21 [General Principles], Article 31 [Right to Fair and Impartial Trial] of the Constitution and Article 6 (Right to fair trial) of the ECHR have been violated.

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 as further specified in the Law and the Rules of Procedure.

20. In this respect, the Court notes that, for a prima facie case on the admissibility of the referral, the Applicant must show that the proceedings in the Supreme Court, viewed in their entirety, have not been conducted in such a way that the Applicant has had a fair trial or other violations have been committed by the Supreme Court.

21. Thus, the Court refers 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."*

22. 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).

23. 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).

24. As a matter of fact, the Applicant does not substantiate a prima facie claim on constitutional grounds and did not provide evidence showing that his rights and freedoms have been violated by the Supreme Court. The Supreme Court provided the Applicant with a well reasoned judgment interpreting the principle *reformatio in pejus* and explaining why this principle cannot be applied in the Applicant's case, i.e. the District Court acted and decided upon the complaint of the Municipal Public Prosecutor and not upon the Applicant's complaint.

25. Thus, the Court cannot conclude that the relevant proceedings in the Supreme 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).

26. Therefore, the Applicant did not show prima facie why and how the Supreme Court violated his rights as guaranteed by the Constitution and ECHR. Thus, the Court considers the Referral inadmissible as manifestly ill-founded.

FOR THESE REASONS

The Constitutional Court, pursuant to Rule 36 (1.c) and Rule 56 (2) of the Rules of Procedure, on 8 July 2013, unanimously

DECIDES

I. TO REJECT the Referral as Inadmissible;

II. TO NOTIFY this Decision to the Parties;

III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20 (4) of the Law;

IV. TO DECLARE this Decision effective immediately.

Judge Rapporteur
Ivan Čukalović

President of the Constitutional Court
Prof. Dr. Enver Hasani

KI 12/13, Fatime Thaqi, date 12 July 2013- Constitutional review of the Judgment of the Supreme Court of Kosovo, A no. 1330/2012 of 27 December 2012.

Case KI 12/13, Resolution on Inadmissibility, of 8 July 2013.

Keywords: *Individual Referral, manifestly, ill-founded*

The Applicant alleges that the challenged judgment has violated the following human rights protected by the Constitution: Article 24 [Equality Before the Law], Article 31 [Right to Fair and Impartial Trial], Article 6 of European Convention of Human Rights (Right to a Fair Trial).

With reference to the Applicant's Referral and her rights guaranteed by the Constitution, which are alleged to have been violated, the Court concludes that: In Article 51 of the Constitution [Health and Social Protection] paragraph 2 is clearly foreseen: *"Basic social insurance related to unemployment, disease, disability and old age shall be regulated by law."*

The Constitutional Court, after having reviewed the Applicant's allegations of the violation of Article 24 of the Constitution [Equality Before Law], concluded that before this court, the Applicant did not present facts which would prove her allegation, because in fact, apart from the conclusion that she met the criteria for pension, she did not provide any evidence as to what was the inequality before the law that she was subject to and *vis-a-vis* which persons she was treated as unequal before the law in the judicial and administrative bodies.

Under these circumstances, the Applicant *"has not sufficiently substantiated his claim"*has failed to submit the referral in legal manner, and based on the foregoing, the Court finds pursuant to Rule 36, paragraph 2, items c and d, that it should reject the Referral as manifestly ill-founded.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI12/13
Applicant
Fatime Thaqi
Constitutional review of the Judgment of the Supreme Court of Kosovo
A no. 1330/2012 of 27 December 2012

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

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

Applicant

1. The Applicant is Ms. Fatime Thaqi from village Llapushnik, Municipality of Drenas.

Challenged decision

2. The challenged decision of the public authority is the Judgment of the Supreme of Kosovo, A. no.1330/2012, of 27 December 2012, which was served on Applicant on 16 January 2013.

Subject matter

3. The subject matter of the case submitted to the Constitutional Court of the Republic of Kosovo on 4 February 2013 is the constitutional review of the Judgment of the Supreme Court of Kosovo A. no. 1330/2012 of 27 December 2012 by which the Supreme Court rejected the lawsuit of the Applicant for assessment of the legality of the Ruling of the Ministry of Labor and Social Welfare no. 506-406 dated 20.06.2012 in the procedure of the administrative conflict.

Alleged violations of the constitutionally guaranteed rights

4. The Applicant alleges that the challenged judgment has violated the following human rights protected by the Constitution:

   a) Article 24 (Equality Before the Law),

   b) Article 31 (Right to Fair and Impartial Trial),

   c) Article 6 of European Convention of Human Rights (Right to a Fair Trial).

Legal basis

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

Applicant's complaint

6. The Applicant stated that the doctor's commissions of the Ministry of Labor and Social Welfare (hereinafter: the MLSW) rejected in illegal way "the right to disability pension" although she met criteria for such a pension, while the Supreme Court of Kosovo, by rejecting her claim in the procedure of administrative conflict, made also the same violation, because according to the Applicant, she has permanent disability for work and she proved this by medical documentation.

Proceeding before the Court

7. On 4 February 2013, the Constitutional Court received the Referral of Ms. Fatime Thaqi and registered it with no. KI 12/13.

8. On 26 February 2013 by decision GJR 12/13, the President of the Court appointed the Judge Rapporteur, the judge prof.dr. Ivan Čukalović and the Review Panel composed of judges: Altay Suroy (presiding) and Snezhana Botusharova and Arta Rama as panel members, and by a subsequent decision of the President, Judge Arta Rama-Hajrizi was replaced by the President of the Court, Prof. Dr. Enver Hasani, as a member of the Review Panel.

9. On 12 March 2013, the Constitutional Court notified the Supreme Court of Kosovo and the Applicant's representative.

10. On 15 May 2013 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. On 27 December 2004 Ms. Fatime Thaqi from village Llapushnik, Municipality of Drenas submitted a request to the Ministry of Labor and Social Welfare– Department of Pension Administration(hereinafter: MLSW-DPA) of Kosovo, by which she requested from this institution to recognize her the right to Disability Pension.

12. On 1 November 2005, MLSW-DPA rendereddecision with file no. 5064068, approving her request for pension and informing her that this Applicant enjoys the right to pension at the amount of 40€ per month, while for the previous months she will be paid the amount of 200 €.

13. In this decision it was also stated that Ms. Thaqi "will be invited for the review" of this decision after three years from the day of approval of the decision on pension. In the decision, in the legal remedy it was also stated that "an appeal against this decision is allowed within fourteen (14) days from the day this decision was notified", namely to the Appeals Council of this Ministry.

14. On 14 December 2011, the Doctor's Commission for reassessment of MLSW rendered "Decision after Reassessment" with the same number of file 5064068 which was dedicated to Ms. Fatime Thaqi, where it was stated that "your request for disability pension has been REJECTED," by concluding at the same time that the Applicant "does not have full and permanent disability"which consequently implied that the pension approved by the decision of 1 November 2005, from 14 December 2011 was no longer paid to Ms. Fatime Thaqi.

15. On 20 June 2012, the Appeals Council for Disability Pensions of the MLSW rendered Ruling no. of file 5064068, by which it rejected the appeal of Ms. Fatime Thaqi and concluded that the Decision of the first instance was "fully based and in compliance with the Law no. 2003/23."

16. In the reasoning of this Ruling, it was stated that the Doctor's Commission of first instance has correctly and completely determined the factual situation and the fact that the candidate does not meet the criteria under Article 3 of the Law 2003/23 and the fact that the commission of the second instance, composed of medical experts of respective fields, has completely analyzed the health documentation of the Applicant and concluded the same situation as in the enacting clause of the decision of first instance.

17. On 27 December 2012, the Supreme Court of Kosovo, deciding upon the lawsuit of Ms. Thaqi in Administrative Conflict proceedings, rendered Judgment A. no. 1330, REJECTING the lawsuit filed by Ms. Thaqi.

18. In the reasoning of its judgment, the Supreme Court stated that "the respondent has correctly applied the substantive law, when it concluded that the claimant does not meet the criteria provided by Article 3 of Law for Disability Pensions and that the doctor's commissions, composed of medical experts of respective fields have correctly determined the health condition of the plaintiff, therefore the Supreme Court from the allegations in the lawsuit does not find any evidence that it should have decided differently or that the decisions of MLSW are illegal.

19. On 4 February 2013, the Applicant submitted her referral to the Constitutional Court, by attaching to it also the discharge list from the University Clinical Center of Kosovo (UCCK), from which could be seen that she was treated in that center from 15 January 2013 until 24 January 2013.

Assessment of admissibility of the Referral

20. In order to be able to adjudicate the Applicant's Referral, the Court has to assess beforehand whether the Applicant has met all the admissibility requirements, which are laid down in the Constitution, the Law on the Constitutional Court and the Court's Rules of Procedure.

21. With respect to this, the Court refers to Article 113.1 of the Constitution (Jurisdiction and the Authorized Parties), which provides that:

> *"The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties."*

22. The Court also takes into account:

Rule 36 of the Rules of Procedure, which provides that:

"(1) The Court may only deal with Referrals if:

c) the Referral is not manifestly ill founded."

23. With reference to the Applicant's Referral and her rights guaranteed by the Constitution, which are alleged to have been violated, the Court concludes that:

24. In Article 51 of the Constitution [Health and Social Protection]paragraph 2 is clearly foreseen: "*Basic social insurance related to unemployment, disease, disability and old age shall be regulated by law*."

25. From legal definition of Article 51 of the Constitution it is clearly seen that the social insurance for "disability, unemployment and old age" is regulated by LAW, in this case the issue of disability pension is regulated by the Law No.2003/23 on Disability Pensions in Kosovo approved by Kosovo Assembly on 6 November 2003.

26. The procedures for application and meeting the criteria for enjoying this right are set forth in this Law, and so is the right to appeal the decisions, when the parties are unsatisfied with decisions regarding their requests.

27. The Administrative Committees of MLSW, by rendering the decision dated 14 December 2011 and the Ruling dated 20 June 2012, acted precisely in compliance with the provisions of this law. Furthermore, the Supreme Court while reviewing their legality in the administrative conflict proceedings by its final Judgment A. no.1330, of 27 December 2012, qualified them as entirely legal and grounded.

28. The Constitutional Court, after having reviewed the Applicant's allegations of the violation of Article 24 of the Constitution (Equality Before Law), concluded that before this court, the Applicant did not present facts which would prove her allegation, because in fact, apart from the conclusion that she met the criteria for pension, she did not provide any evidence as to what was the inequality before the law that she was subject to and vis-à-vis which persons she was treated as unequal before the law in the judicial and administrative bodies.

29. With respect to the allegations regarding the violation of Article 31 of the Constitution and Article 6 of ECHR (Fair and Impartial Trial),

however the Constitutional Court did not find facts, which would confirm grounded allegation for violation of these provisions, because, beside mentioning the same fact about meeting the criteria for disability pension, the Applicant did not substantiate by any fact the irregularity of the proceedings, be those before medical committees as administrative bodies that decided based on the law, or before the Supreme Court in the administrative conflict proceedings.

30. The Constitutional Court is not a fact-finding court and on this occasion it wants to emphasize that that the correct and complete determination of the factual situation is a full jurisdiction of regular courts and in this case also of administrative bodies and that its role is only to ensure compliance with the rights guaranteed by the Constitution, therefore, it cannot act as a "fourth instance court" (see, *mutatis mutandis*, i.a., Akdivar v.Turkey, 16 September 1996, R. J. D, 1996-IV, para. 65).

31. The Constitutional Court has subsidiary role compared to regular national judicial or administrative systems and it is desirable that the national courts or competent administrative bodies with effective decision making competencies initially have a possibility of deciding on the issues of the compliance of the internal law with the Constitution (see ECtHR decision-*A, B and C against Ireland* [DHM], § 142).

32. 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-Tisazugi Tarsulat vs. Hungary, Judgment of 26 July 2005).

33. In the same conditions and circumstances, the Constitutional Court had decided in the same way in case KI101/11 when it rendered the Resolution on inadmissibility, by rejecting the Referral filed before it as manifestly ungrounded.

34. Under these circumstances, the Applicant “has not sufficiently substantiated his claim” ,has failed to submit the referral in legal manner , and based on the foregoing, the Court finds pursuant to Rule 36 paragraph 2 items c and d that it should reject the Referral as manifestly ill-founded, and consequently

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 20 of the Law on Constitutional Court and in compliance with the Rule 56 (2) of the Rules of Procedure, on 8 July 2013, 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
Prof. Dr. Ivan Čukalović

President of the Constitutional Court
Prof. Dr. Enver Hasani

KI 09/12, Lavdërije Telaku, date 16 July 2013- Request for Constitutional review of the Decision of the Supreme Court of Kosovo Rev. I. no. 481/2009 dated on 18 October 2011 and Judgment ofthe Supreme Court of Kosovo Ac. no. 79/2011 dated on 24 November 2011

Case KI 09/12, Resolution on Inadminissibility of 25 June 2013

*Keywords:*Individual Referral, manifestly ill-founded, Resolution on Inadmissibility, family dispute

The Applicant filed the Referral based on Article 113.7 of the Constitution of Kosovo, claiming that the Decision of the Supreme Court Rev.I. nr. 481/2009 and Judgment of the Supreme Court Ac.no.79/2011, concerning a family dispute have violated her rights guaranteed with the Constitution. The Applicant alleges that the consequences of these decisions violate her rights guaranteed with the Constitution of the Republic of Kosovo, without mentioning which specific rights.

The Court notes that the Applicant in her Referral stated that the judgments and decisions of the regular courts violated Family Law, respectively provisions regulating the issue of housing. However, the Applicant did not specify which provisions of the Constitution or the Law have been violated.

The Constitutional Court reiterated 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 and that it is the role of the later to interpret and apply the pertinent rules of both procedural and substantive law. 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.

Since the Applicant failed to show why and how the regular courts violated her rights as guaranteed by Constitution, the Court declared the Referral inadmissible.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI 09/12
Applicant
Lavdërije Telaku
Request for Constitutional review of the Decision of the Supreme Court of Kosovo Rev. I. no. 481/2009 dated on 18 October 2011
and
Judgment of the Supreme Court of Kosovo Ac. no. 79/2011 dated on 24 November 2011

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

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

Applicant

1. The Applicant is Mrs. Lavdërije Telaku (hereinafter: the Applicant), residing in Prizren.

Challenged decision

2. The challenged decisions are: Decision of the Supreme Court of the Republic of Kosovo, (hereinafter: Supreme Court) Rev. I. nr. 481/2012 of 18 October 2011 andJudgment of the Supreme Court, Ac nr. no. 79/2011 of 24 November 2011

Subject matter

3. The subject matter of the Referral is the assessment of the Constitutionality of the Supreme Court Decision Rev. I. no. 481/2009 of 18 October 2011 and the Supreme Court Judgment Ac. no. 79/2011 of 24 November 2011, concerning a family dispute. The Applicant claims that

the consequences of these decisions violate her rights guaranteed with the Constitution of the Republic of Kosovo (hereinafter: the Constitution), without mentioning which specific rights.

Legal basis

4. Article 113.7 of the Constitution, Article 47 of the Law no. 03/L-121 on the Constitutional Court of the Republic of Kosovo of 16 December 2008, which entered into force on 15 January 2009 (hereinafter: Law) and rule 28 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: Rules of Procedure).

Proceedings before the Court

5. On 31 January 2012, the Constitutional Court received the Referral submitted by the Applicant and registered it under no. KI 09/12.

6. On 1 February 2012, the Applicant has been notified on the registration of this Referral and additional documentation was required from her in order to complete the submitted referral.

7. On 21 February 2012, the President, by Decision No. GJR. 09/12, appointed Altay Suroy as Judge Rapporteur. On the same date, the President, by Decision No. KSH. 09/12, appointed the Review Panel composed of Judges: Ivan Čukalović (Presiding), Gjyljeta Mushkolaj (member) and Iliriana Islami (member).

8. On 2 July 2012, the President, by Decision GJR. 09/12 reappointed the new Review Panel composed of judges: Ivan Čukalović (presiding), Kadri Kryeziu, is appointed to replace Judge Gjyljeta Mushkolaj, since her terms of office as judge of the Constitutional Court had expired on 26 June 2012, and Arta Rama-Hajrizi, is appointed to replace Judge Iliriana Islami because her term of office on the Court had expired on 26 June 2012.

9. On 5 September 2012, from the Applicant was required to provide additional documentation respectively some decisions of the regular courts, regarding her case.

10. On 14 September 2012, the Applicant submitted the documentation required by the Court.

11. On 25 June 2013 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 of the Referral had concluded on 7 February 1992 with A. T. From Prizren. From this marriage the couple has three children.

13. Due to deterioration of family relations, in 2004 they started living separately.

14. On an unspecified date the former husband of the Applicant, A.T. filed a request for divorce with District Court in Prizren.

The Procedure related to Decision of the Supreme Court Rev. I. no. 481/2009, in which the Applicant was presented as a plaintiff

15. On 15 March 2007 the Municipal Court in Prizren adopted its Judgment C. no. 21/2007, which approved the request of E.T., L.T., and F.T, who are represented by the Applicant as their legal representative.

16. In the operative part of the Municipal Court approved the request of the Applicant and ordered A.T. " *to pay to the plaintiff as alimony 150 € for each minor child or in total 450 € a month , until the 5th of the coming month starting from 19.01.2007*" [...] "*until the legal requirements are in force or until this judgment is amended.*"

17. On an unspecified date A.T., files an appeal with the District Court in Prizren against Judgment C.br.21/2007.

18. On 17 June 2007, District Court in Prizren adopted Judgment Ac. nr. 241/2007, partially approving the appeal of A.T. and amends the Judgment C.nr.21/2001 of the Municipal Court in Prizren.

19. In the operative part of the Judgment, District Court states that "*A.T. from Prizren is obliged to contribute for supporting the minor children...*" [...] *" as alimony to pay 80 € for each child, or in total 240 € a month, every 5th of the coming month starting from the date when the lawsuit was filed until the legal requirements are in force or until this judgment is amended.*"

20. On 30 January 2008 the Applicant submitted a request for emergency protection with the Municipal Court in Prizren requesting this court to "*order the responsible person A.T. from Prizren to pay monthly rent in an amount of 100 € for the protected party"*

21. On 30 January 2008, Municipal Court in Prizren adopts decision C.nr.865/07, approving the request and issues the order for emergency protection of the protected party.

22. In the operative part the Municipal Court *"orders the defendant A.T. to pay the monthly rent, in an amount of 100 € for the protected party, starting from 12 December 2005..."* [...] *" the emergency protection order is effective immediately and the appeal does not suspend the execution"*

23. On 27 March 2008, A.T. files an objection against the decision to allow the execution of decision C.nr.865/07.

24. On 19 May 2008, Municipal Court adopts decision E.nr. 95/08, rejecting the objection of A.T. as ungrounded.

25. On 1 December 2008 deciding on an appeal of the defendant A.T., which was filed against Municipal Court in Prizren decision C.nr. 865/07 of 30 January 2008, District Court in Prizren adopted Decision AC.nr.105/08 annulling the Decision of Municipal Court and returns the case to first instance court for repeating the procedure and retrial.

26. District Court in the reasoning part stated that"*District Court confirmed that the factual situation was not fairly and completely assessed, which caused to wrong application of the substantive law."*

27. On 19 May 2009, Municipal Court in Prizren in a repeated procedure adopts decision C. nr. 874/2008, rejecting the Applicant's request for emergency protection order. In the same time Municipal Court rejected request of the Applicant to use a part of the house where the used to live together while they were married.

28. In the reasoning part of its decision, Municipal Court in Prizren stated that *"The court of first instance rejects the request of protected party to issue an order for emergency protection, because District Court in Prizren on 15 June 2007 adopted decision Ac. br. 241/2007 obliging A.T. to pay monthly alimony in an amount of 80 € for each child"* [...] *"...based on its assessment the court does not find any reason to issue*

an order for emergency protection which would oblige the defendant to pay the monthly rent…"

29. On an unspecified date the Applicant filed an appeal with the District Court in Prizren against decision C. nr. 874/2008 of the Municipal Court in Prizren for alleged violations of the provisions of civil procedure.

30. On 2 September 2009, District Court in Prizren adopts decision Ac.nr.323/2009, rejecting the appeal of the Applicant as ungrounded and confirms the decision C. nr. 874/2008 of Municipal Court in Prizren.

31. In its decision, District Court explained that it did not found that during the procedure there were violations of the provisions of civil procedure, even though, in her appeal, the Applicant did not specify which provisions were allegedly violated.

32. On an unspecified date the Applicant filed a request with the Supreme Court for revision of the District Court decision Ac. nr. 323/2009.

33. On 18 October 2011, Supreme Court adopted decision Rev. I. nr. 484/2009, rejecting the Applicant's request as ungrounded.

34. In the reasoning part of its decision, the Supreme Court stated that:

"The court of first instance, after the administration of the necessary evidence and hearing of the representative of Center for Social Welfare in Prizren, found that actions of the defendant do not constitute domestic violation as it is provided by Article 2.1.j of UNMIK Regulation 2003/12"

[…]

"The court of second instance in s procedure of appeal has confirmed completely the factual assessment and legal position of the court of first instance, rejecting as ungrounded the appeal of protected party and confirmed the decision the court of first instance"

The Procedure related to Judgment of the Supreme Court Ac. no. 79/2011, in which the Applicant is presented as defendant

35. On 9 June 2011, District Court in Prizren adopted judgment C.nr.45/2011, which ended the marriage of the Applicant and A.T. with a divorce.

36. In its judgment, District Court rejected the Applicant's request for alimony in an amount of 250 €, while the request to live in the common house of A.T. or ordering him to pay monthly rent was declared ungrounded.

37. As a legal basis of it decision, Supreme Court states that "*the request of the defendant is rejected, since the plaintiff does not have a house on his name"* [...] *" and taking into account that he is not employed, and currently does not realize any income, he is not able to pay the rent."*

38. On an unspecified date, the Applicant filed an appeal with the Supreme Court, against Judgment C.nr.45/2011 of District Court in Prizren.

39. On 24 November 2011, Supreme Court adopted judgment Ac.nr.79/2011, which rejected the appeal of the Applicant as ungrounded and confirmed Judgment C.nr.45/2011 of District Court in Prizren.

40. In reasoning its judgment Supreme Court stated *"The court of first instance, based on the factual situation has applied correctly and completely the substantive law, when it rejected the request of the defendant for housing in the plaintiff's house or paying the rent for her."* [...] *"District court has considered all the facts and found that the plaintiff cannot be obliged for alimony and housing, because he is not employed and does not realize any income from other sources..."*

Applicant's allegations

41. The Applicant alleges that her rights as guaranteed by the Constitution have been violated. However, she does not specify any particular constitutional provision.

42. Furthermore, the Applicant states that during the procedures in the regular courts were caused violations of provisions of Family Law in relation to housing.

43. The Applicant also states that her former husband A.T. evicted her from the house and later did not allow her to come back.

44. Finally, the Applicant requests from the Constitutional Court:

"*to annul the disputed decisions of the regular courts and approve the requests presented in submitted lawsuits"*

Assessment of the admissibility of Referral

45. The Court observes that, in order to be able to adjudicate the Applicant's complaint, 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.

46. In this respect, the Court notes that Article 113.1 and Article 113.7 of the Constitution 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".

and Article 48 of the Law, which provides:

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

47. The Court notes that the Applicant in her referral stated that the judgments and decisions of the regular courts violated Family Law, respectively provisions regulating the issue of housing. However, the Applicant did not specify which provisions of the Constitution or the Law have been violated.

48. 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*, García Ruiz v. Spain, no. 30544/96, § 28, European Court on Human Rights [ECHR] 1999-I).

49. 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).

50. However, having examined the documents submitted by the Applicants, the Constitutional Court does not find any indication that the proceedings before Supreme Court were in any way unfair or tainted by arbitrariness (see *mutatis mutandis* Application No. 53363/99, Vanek v. Slovak Republic, ECHR Decision of 31 May 2005).

51. Therefore, the Applicants failed to show why and how the regular courts violated her rights as guaranteed by the Constitution. The Court notes that Decision of the Supreme Court of Kosovo Rev. I. no. 481/2009 dated on 18 October 2011 and Judgment of the Supreme Court of Kosovo Ac. no. 79/2011 dated on 24 November 2011were well argued and reasoned.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Articles 20 and 48 of the Law, rule 36.2(b) and (d) of the Rules of Procedure, on 8 July 2013, unanimously

DECIDES

I. TO REJECT the Referral as Inadmissible;

II. TO NOTIFY this decision to the Parties

III. TO PUBLISH the decision in the Official Gazette, in accordance with Article 20 (4) of the Law; and

IV. This Decision is effective immediately.

Judge Rapporteur
Altay Suroy

President of the Constitutional Court
Prof. Dr. Enver Hasani

KI 26/13, Vahide Bajrami, date 16 July 2013- Constitutional Review of the Judgment of the Supreme Court of Kosovo A. no. 1107/2012 dated 05 November 2012

Case 26/13, Resolution on Inadminissibilty of 17 June 2013

Keywords; Individual Referral, constitutional review of the Judgment of the Supreme Court

The Applicant filed the Referral based on Article 113.7 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 4 March 2013, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo, requesting constitutional review of the Judgment of the Supreme Court of Kosovo.

The Applicant claimed that by that judgment, the following articles of the Constitution of Kosovo were violated: Article 51 [Health and Social Protection], Article 1 [Definition of state], Article 21 [General Principles], Article 22 [Direct Applicability of International Agreements and Instruments], Article 23 [Human Dignity], Article 31 [Right to Fair and Impartial Trial], Article 54 [Judicial Protection of Rights], and the following articles of the European Convention on Human Freedoms: Article 1 [Obligation to Respect Human Rights], Article 6 [Right to Fair Trial] and Article 13 [Right to Effective Remedy].

With the Decision of the President (no.GJR. KI 26/13, of 22 March 2013), Judge Ivan Čukalović was appointed as Judge Rapporteur. On the same day, with the Decision of the President KSH 26/13, was appointed the Review Panel composed of judges: Altay Suroy (Presiding), Snezhana Botusharova and Arta Rama Hajrizi. Upon the case review, the Court determined that the applicant did not sufficiently substantiate and prove her allegations with respect to constitutional violation of her rights by the Supreme Court. In addition, the Court notes that the judgments and decisions of the Municipal and District Court, as well as Supreme Court are well argued and show not arbitrariness.

Taking into account all the circumstances of the Referral, the Constitutional Court, on the session of 17 June 2013, concluded that the Referral is inadmissible since the presented facts do not in any way justify the allegation of a violation of the constitutional rights.

RESOLUTION ON INADMISSIBILITY
in
Case no. KI-26/13
Applicant
Vahide Bajrami
Constitutional Review of the Judgment of the Supreme Court of Kosovo
A. no. 1107/2012 dated 05 November 2012

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Enver Hasani, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Kadri Kryeziu, Judge and
Arta Rama-Hajrizi, Judge.

Applicant

1. The Applicant is Vahide Bajrami from the village Dumnica e Poshtme, Municipality of Vushtrri.

Challenged decision

2. The challenged decision is the Judgment of the Supreme Court of Kosovo,A. no. 1107/2012 dated 05 November 2012.

Subject matter

3. The subject matter is the Judgment of the Supreme Court of Kosovo, A. no. 1107/2012 dated 05 November 2012, which rejected the request of the Applicant that the right to pension of disability to be recognized.

Legal basis

4. The Referral is based on Article 113.7 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 (hereinafter: Law), and Rule 56, paragraph 2 of the Rules of Procedure (hereinafter: the Rules).

Proceedings before the Court

5. On 4 March 2013, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 29 March 2013, the Constitutional Court notified the Applicant and the Supreme Court of Kosovo that a procedure on constitutional review of decisions on the case no. KI-26-13 has been initiated.

7. On 17 June 2013, after the review of the report of the Judge Rapporteur Ivan Čukalović, the Review Panel composed of judges: Altay Suroy(Presiding), Snezhana Botusharovaand Enver Hasani, recommended to the full Court the inadmissibility of the Referral.

Summary of facts

8. The Applicant was by the Ministry ofLabour and Social Welfare (hereinafter: MLSW) - Department ofpensionadministration ofKosovo (hereinafter: DPAK) recognized her right to a disability pension for a period of five years, from 2004 to 2009, which was further extended for three years, from 2009 to 2012.
9. In 2012, following the end of the three-year period of entitlement of a disability pension, the Applicant was invited again for anassessment by the Medical Commission of the MLSW-DPAK.

10. On 17 May 2012, following the assessment of the Medical Commission, the MLSW-DPAK, by decision no. 5010360, rejected the request of the Applicant to be granted the continued right to a disability pension.

11. On 29 June 2012, the Applicant filed a complaint against the decision of the MLSW-DPAK, no. 5010360, of 17 May 2012.

12. On 14 August 2013, the Appeals Panel for Disability Pensions of MLSW-DPAK rejected the request of the Applicant to be recognized the right to a disability pension, and upheld the decision of the MLSW-DPAK, no. 5010360 dated 17 May 2012.

13. On 27 September 2012, against the decision of the Appeals Panel for Disability Pensions of MLSW-DPAK in case no. 5010360 of 14 August 2012, the Applicant filed a claim with the Supreme Court of Kosovo.

14. On 05 November 2012, by Judgment (Ac. no. 1107/2012) the Supreme Court of Kosovo rejected the claim of the Applicant with the following reasoning:

> *"Pursuant to the mentioned provision [Article 3.2 of Law no.2003/23 on Disability Pensions (LDP)] during the procedure of rendering the challenged resolution, evaluations and opinions of competent committees have been acquired. Those committees comprised of specialist doctors of respective fields, after evaluating the medical documentation and results of the direct review by the first instance committee, found that the claimant is not totally and permanently disabled."*
>
> *"The committees' opinions are clear and properly reasoned and present sufficient ground for rendering the challenged resolution, whereas the statement of claim does not manage to put them in doubt."*
>
> *"Considering that the legally authorized committees have found that the claimant is not totally and permanently disabled, that the first instance body and the respondent, during the procedure preceding the rendering of the challenged resolution respected the provisions of the administrative procedure, the Court found that the respondent, by rejecting the claimant's claim, correctly implemented the substantive right when it found that the claimant does not meet the criteria envisaged in Article 3 of the LDP, on benefiting from the right to a disability pension. "*

Applicant's allegations

15. The Applicant claims that by Judgment of the Supreme Court A. no. 1107/2012, dated 05 November 2012, the following articles of the Constitution of Kosovo are violated: Article 51 [Health and Social Protection], Article 1 [Definition of state], Article 21 [General Principles], Article 22 [Direct Applicability of International Agreements and Instruments], Article 23 [Human Dignity], Article 31 [Right to Fair and Impartial Trial], Article 54 [Judicial Protection of Rights], and the following articles of the European Convention on Human Freedoms: Article 1 [Obligation to Respect Human Rights], Article 6 [Right to Fair Trial] and Article 13 [Right to Effective Remedy].

16. The Applicant also demands from the Constitutional Court that;

"... through this referral I refer to the Constitutional Court to consider all presented facts and to declare the Supreme Court Judgment A.no. 1107/2012 unlawful and to return it for reconsideration..."

17. Finally, the Applicant proposes the Constitutional Court to:

"... Due to the closed session held by the Supreme Court, my right was not defended by anyone, therefore in this case I consider all legal remedies have been used to exercise my right and I believe that there is a ground that my case to be considered by the Constitutional Court..."

Relevant legal provisions validat the timeof the judgment ofthe Supreme Court

18. Law on Administrative Disputes no. 537,
Article 34. (1) provides:

"Administrative disputes are to be decided by the court in a session without the presence of the public."

Assessment of admissibility of the Referral

19. In order to be able to adjudicate the Applicant's 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. Article 48 of the Law on the Constitutional Court of the Republic of Kosovo provides:

„In his/her referral, the Applicant *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. The Applicant does not provide the precise date of receipt of the Decision of the Supreme Court A.No.1107/2012 of 05 November 2012, but from the case files, it may be seen that the referral of the Applicant was filed with the Constitutional Court on 04 March 2013, while the final decision on this case is the decision of the Supreme Court of Kosovo, A.No.1107/2012 of 05 November 2012. Hence, the Court finds that the Referral was duly filed in compliance with Article 49 of the Law.

22. According to the Constitution, the Constitutional Court is not a court of appeal, when reviewing the decisions rendered by regular courts. It is the role of regular courts to interpret the law and apply pertinent rules of procedure and material law (see, *mutatis mutandis*, García Ruiz v. Spain [GC], no. 30544/96, paragraph 28, European Court for Human Rights [ECHR] 1999-I).

23. The Applicant alleges that her rights were violated "*due to the closed session held by the Supreme Court, my right was not defended by anyone.* "

24. The legal provisions cited above of the Law on Administrative Disputes no. 537, which was theapplicable law at thetimeof the contested judgment ofthe Supreme Court, clearly shows that the Supreme Court decides on administrative disputes in a session without the presence of the public.

25. In this case, the Applicant was provided with numerous opportunities to present her case and challenge the interpretation of law which she considers to be erroneous, before the Medical Commissions of first and second instance, the MCYS-DPAK and the Supreme Court of Kosovo. Upon review of the proceedings in their entirety, the Constitutional Court could not find that the respective proceedings were in any way unfair or arbitrary (see, *mutatis mutandis*, Shub v. Lithuania, Decision of the ECtHR on admissibility of application, no. 17064/06 of 30 June 2009).

26. The Applicant has not provided any *prima facie* evidence to prove any violation of her constitutional rights (see, Vanek V. Slovak Republic, Decision of the ECtHR on admissibility of application, no. 53363/99 of 31 May 2005). The Applicant does not indicate in which manner in which the Article 24 of the Constitution and the Article 6 [ECHR] support her Referral, as provided by Article 113.7 of the Constitution and Article 48 of the Law.

27. Finally, the Court finds that the admissibility requirements were not met in this Referral. The Applicant did not manage to support by evidence that her constitutional rights and freedoms were violated by the challenged decision.

28. In consequence, 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 concludes that*

b) 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 paragraph 7 of the Constitution, Article 36 (2.b) of the Rules of Procedure, in the session held on 15 July 2013, unanimously

DECIDES

I. TO REJECT the Referral as Inadmissible;

II. TO NOTIFY this Resolution to the Parties;

III. TO PUBLISH this Resolution in the Official Gazette, in accordance with Article 20 paragraph 4 of the Law; and

IV. TO DECLARE this Resolution effective immediately.

Judge Rapporteur
Ivan Čukalović

President of the Constitutional Court
Prof. Dr. Enver Hasani

KI 30/13, Fatmir Metahysa, date 16 July 2013- Constitutional Review of the Judgment of the District Court in Peja, Ac. no. 527/12, dated 14 November 2012, and ofthe Judgment of the Municipal Court in Gjakova, C. no. 276/11, dated 14 June 2012

Case KI 30/13, Resolution on Inadminissibilty of 8 July 2013

Keywords: individual referral, inadmissible referral, manifestly ill-founded, right to work, right to an effective legal remedy

The Referral is based on Article 113.7 of the Constitution, Article 20 of the Law and Rule 56 (2) of the Rules of Procedure.The Applicant, among others, claimed that the decisions of the regular courts are unlawful because his case was reviewed in an erroneous manner and that the factual situation was determined in incomplete manner.

The Court stressed that questions of fact and law are matters of jurisdiction, autonomy and prerogative of regular courts. The Court further noted that the fact that the Applicant is unsatisfied with the outcome of the case, cannot serve him as the right to file an arguable claim for violation of the constitutional provisions. Due to the mentioned reasons, the Court, based on Article 113.7 of the Constitution, Article 20 of the Law and Rule 36 (1) c) of the Rules of Procedure, decided to reject the Referral as inadmissible.

RESOLUTION ON INADMISSIBILITY
in
Case no. KI30/13
Applicant
Fatmir Metahysa
Constitutional Review of the Judgment of the District Court in Peja, Ac. no. 527/12, dated 14 November 2012, and of the Judgment of the Municipal Court in Gjakova, C. no. 276/11, dated 14 June 2012

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

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

Applicant

1. The Applicant is Mr. Fatmir Metahysa, with residence in Gjakova.

Challenged decision

2. The Judgment of the Municipal Court in Gjakova, C. no. 276/11, dated 14 June 2012, and the Judgment of the District Court in Peja, Ac. no. 527/12, dated 14 November 2012.

Legal basis

3. Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), Article 20 of the Law on Constitutional Court of the Republic of Kosovo, No. 03/L-121, dated 15 January 2009 (hereinafter: the Law); and the Rule 56.2 of the Rules of Procedure of the Constitutional Court of Kosovo (hereinafter: the Rules of Procedure).

Subject matter

4. The subject matter is the Applicant's right and the obligation of his Employer, PTK j.s.c., in Prishtina, branch in Gjakova (hereinafter: Employer), to compensate to Applicant the difference of monthly salary for the position of the Fitter I and of Specialist Technician, respectively the difference of monthly salary between the fifth grade and seventh grade of the categorization of salaries.

Proceedings before the Court

5. On 7 March 2013, the Applicant submitted Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 22 March 2013, the President by Decision No. GJR. KI30/13, appointed Judge Altay Suroy as Judge Rapporteur. On the same day, the President by Decision No.KSH. KI30/13, appointed Review Panel composed of judges: Robert Carolan (Presiding), Ivan Čukalović and Enver Hasani (members).

7. On 3 April 2013, the Applicant was notified about registration of the Referral. On the same date, the Referral was communicated to the Municipal Court in Gjakova and District Court in Peja.

8. On 14 June 2013, the Review Panel considered the report of the Judge Rapporteur and proposed to the full Court the inadmissibility of the Referral.

Summary of facts, as evidenced by the documents submitted by the Applicant

9. On 4 July 2003, the Applicant, suffered grave bodily injuries while performing his working duty as a fitter, and as consequence, he was assigned by his employer to a new working place as a specialist technician. The difference in monthly salary between these two positions was 190.88 €.

10. On 9 July 2009, the Appeals Commission of the Employer, by Decision No. 01-3659/09, approved the Applicant's request for his re-assignment from the post of the Fitter I, to the post of specialist technician and his compensation in a retroactive manner for the time the Applicant was lawfully engaged as a Fitter I, but who in fact performed the duty of a specialist technician.

11. On 1 December 2010, the Employer and the Applicant concluded employment contract for indefinite time. The abovementioned contract,

among the other,provided that the Applicant will perform the working duties as Fitter I, in the unit Kosovo Telecom, and that the Applicant's basic salary is determined at the 5th grade.

12. On 6 December 2010, the Employer's Chief Executive, by Decision No. 01-5975, reassigned the Applicant in a new working place, where it determined that the Applicant performs work duties of a specialist technician and that the basic salary is determined at the 5th grade.

13. On 14 June 2012, the Municipal Court in Gjakova, by Judgment C. no. 276/11, provided:

> *"I. The statement of claim of the claimant Fatmir Metahysa (Applicant) from Gjakova is REJECTED as UNGROUNDED, hereby requesting that the respondent Post Telecommunication of Kosovo – J.S.C. in Prishtina, Branch in Gjakova, to pay the claimant assigned in the work and work duties Specialist Technician in Gjakova, in the name of personal monthly income, according to 7th grade at the amount of €908,01, as well as to compensate the difference of earned personal income for the finished works of the fitter (5th grade) for each month, at the amount of €190,88 per month, starting from 15.07.2008 until 01.01.2012, which reaches general gross amount of €9.509,74 as well as to compensate the costs of proceedings at the amount of €519,48, within the time limit of 7 days from the day this Judgment becomes final under the threat of forced execution."*

14. In the Judgment C. no. 276/11, dated 14 June 2012, the Municipal Court in Gjakova, inter alia stated that the Decision No. 01-5975 dated 6 December 2010, rendered by the Employer' Chief Executive *"was not challenged in a legally prescribed manner, therefore, it results that he agreed with it,"* respectively the Municipal Court in Gjakova concluded that the Applicant did not request judicial protection within legal time limits, provided by Article 78 and by Article 79 of the Law on Labour, No. 03/L-212.

15. On 14 November 2012, the District Court in Peja, by Judgment Ac. no. 527/12, upheld the Judgment of the Municipal Court in Gjakova, C. no. 276/11, dated 14 June 2012, whereas it rejected the appeal of the Applicant as ungrounded.

Applicant's allegations

16. The Applicant alleges that his basic rights that derive from the employment relationship were violated, since the difference of monthly salaries for the posts of the Fitter I and of the Specialist Technician was not compensated to him.

17. The Applicant alleges that the decisions of the regular courts are unlawful because his case was reviewed in an erroneous manner and that the factual situation was determined in incomplete manner.

18. The Applicant alleges that pursuant to Article 87 of the Law on Labour, he filed claim to the regular courts within legal time limits, while the latter have erroneously concluded that the statement of claim of the Applicant was statute-barred, so it was filed outside the legal time limits.

19. Furthermore, the Applicant proposes to the Court to protect the constitutionality and legality pursuant to Article 113.7 of the Constitution; the Articles: 46, 47, 48 and 49, of the Law; as well as Article 13 [Right to an Effective Remedy] of the European Convention on Human Rights (hereinafter: "ECHR").

Assessment of admissibility

20. In order to be able to adjudicate the Applicant's Referral, the Court has to assess beforehand whether the Applicant has met all the requirements of admissibility, which are foreseen by the Constitution and further specified by the Law and Rules of Procedure.

21. The Court refers 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."*

22. The Court also refers to the Rule 36 (1) c) of the Rules of Procedure:

> *36 (1) The Court may only deal with Referrals if:*
>
> *... (c) the Referral is not manifestly ill-founded.*

23. In the instant case, the Court notes that the regular court have reviewed the Applicant's allegations and rejected his appeal for monetary compensation as out of time, based on relevant provisions of the Labour Law.

24. The Court also reviewed that the Applicant complains that the regular courts have erroneously applied the substantive law, made procedural errors when concluding that his appeals are out of time.

25. The Court stresses that questions of fact and law are matters of jurisdiction, autonomy and prerogative of regular courts; in the present cases the Applicant's Referral raises questions of facts and of legality, which indeed are matters of original jurisdiction of regular courts and do not raise the constitutional questions.

26. The Court emphasizes that exhaustion of legal remedies does not imply only to follow legal-formal proceedings step by step, but also to raise constitutional questions before the regular courts, so that the Applicants can have a constitutional adjudication which would simultaneously allow regular courts to decide pursuant to constitutional norms *(see Article 102.5 of the Constitution).*

27. 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: AABRIINVEST University L.L.C., Prishtina vs. the Government of the Republic of Kosovo, Kl41/ 09, of 21 January 2010, and see mutatis mutandis, ECHR, Selmouni vs. France, no. 25803/94, Decision of 28 July 1999).*

28. On 29 January 2013, the Court similarly elaborated the question of exhaustion of legal remedies and the subsidiary character of the Constitution in the Decision on the request for interim measure and the Resolution on Inadmissibility in the Case no. KI139/12-Applicant Besnik Asllani, Constitutional Review of the Judgment of the Supreme Court of the Republic of Kosovo, Pkl. no. 111/2012 dated 30 November 2012.

29. In the Case No. KI139/12 regarding the principle of exhaustion of legal remedies and subsidiary character of the Constitution, the Court reasoned:

> *"Thus the principle of subsidiarity requires that the Applicant exhaust 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. Otherwise, the Applicant is liable to have its case declared inadmissible by the Constitutional Court, when failing to avail itself of the regular proceedings or failing to report a violation of the Constitution in the regular proceedings. That failure shall be understood as a giving up of the right to further object the violation and complain. (See Resolution, in Case No. Kl. 07/09, Demë KURBOGAJ and Besnik KURBOGAJ, Review of Supreme Court Judgment Pkl.nr. 61/07 of24 November 2008, paragraph 18).

Whenever a judicial decision is challenged on the basis of some legal position that is unacceptable from the viewpoint of human rights and fundamental freedoms, the regular courts that delivered the decision must be afforded with the opportunity to reconsider the challenged decision. That means that, every time a human rights violation is alleged, such an allegation cannot as a rule arrive to the Constitutional Court without being considered firstly by the regular courts.

…

In practice, nothing prevented the Applicant of having complained before the District and Supreme Courts about the alleged violation of his right to fair trial. If those Courts would consider the violation and would fix it, it would be over; if they either did not fix the violation or did not consider it, the Applicant would have met the requirement of having exhausted all remedies, in the sense that those Courts were allowed the opportunity of settling the alleged violation."

30. Constitutional Court is not a fact finding Court. Constitutional Court reiterates that the determination of complete and right factual situation is a full jurisdiction of regular courts and that its role is to provide the compliance with the rights, guaranteed by the Constitution and other legal instruments and therefore it cannot act as a "court of fourth instance ", *(see, mutatis mutandis, i.a., Akdivar v. Turkey,* 16 *September* 1996, *R.J.D, 1996-IV, para.65).*

31. Furthermore, the Referral does not indicate that the regular courts acted in an arbitrary or unfair manner. It is not the task of the Constitutional Court to replace its determination of facts with those of the regular courts. As a general rule, it is the task of these courts to assess the evidence before them. The task of the Constitutional Court is

to verify whether the procedures in the regular courts were fair in their entirety, including the way this evidence was taken, *(see ECtHR Judgment App.* No *13071/87* Edwards *against United Kingdom, paragraph* 3, *dated* 10 *July 1991).*

32. The fact that the Applicant is unsatisfied with the outcome of the case, cannot serve him as the right to file an arguable claim for violation of the constitutional provisions. *(See mutatis mutandis ECtHR Judgment Appl. no. 5503/02, Mezotur Tiszazugi Tarsulat against Hungary, Judgment dated* 26 *July 2005).*

33. Under these circumstances, the Applicant did not substantiate with evidence neither his allegations nor the violation of Article 13 [Right to an Effective Legal Remedy] of the ECHR, because the presented facts do not in any way show that the regular courts denied him the rights guaranteed by the Constitution.

34. Consequently, the Referral should be rejected as manifestly ill-founded pursuant to the Rule 36 (1) c) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 20 of the Law and Rule 36 (1) c) of the Rules of Procedure, on 8 July 2013, 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
Altay Suroy

President of the Constitutional Court
Prof. Dr. Enver Hasani

KI 44/13, Latif Latifaj, date 16 2013- Constitutional Review of the Judgment of the Supreme Court, Rev.no.19/2010, dated 21 January 2013.

Case KI 44/13, Resolution on Inadmissibility of 25 June 2013

Keywords: individual referral, judicial protection of rights, manifestly ill-founded, protection of property, right to fair and impartial trial, violation of individual rights and freedoms

The applicant, Mr. Latif Latifaj, filed a Referral pursuant to Article 113.7 of the Constitution of Kosovo challenging the Judgment of the Supreme Court of Kosovo, Rev.no.19/2010 dated 21 January 2013 (as well as the Judgment of the District Court in Gjilan Ac.no.50/2009 and the Judgment of the Municipal Court in Gjilan, C.no.244/2007 dated 10 November 2008), as being biased, unfair and arbitrary because the issue had been adjudicated already once by final decision of the Municipal Court in Gjilan.

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 Article 48 of the Law and Rule 36 (2) of the Rules of Procedure.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI44/13
Applicant
Latif Latifaj
Constitutional Review of the Judgment of the Supreme Court, Rev. no. 19/2010, dated 21 January 2013

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

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

Applicant

1. The Referral is submitted by Latif Latifaj, represented by Halil Ilazi, lawyer (the Applicant).

Challenged decision

2. The Applicant challenges the Judgment of the Supreme Court of Kosovo, Rev. no. 19/2010 of 21 January 2013, which was served on the Applicant on 5 February 2013.

Subject matter

3. The Applicant alleges that the Judgment of the Supreme Court of Kosovo, Rev. no. 19/2010 of 21 January 2013 (as well as the Judgment of the District Court in Gjilan Ac. no. 50/2009 and the Judgment of the Municipal Court in Gjilan C. no. 244/2007 of 10 November 2008), is biased, unfair and arbitrary due to violation of Article 31.1 and 2 (Right to Fair and Impartial Trial), Article 46.3 (Protection of Property), Article 54 (Judicial Protection of Rights), Article 22 (Direct Applicability of International Agreements and Instruments) of the Constitution of the

Republic of Kosovo (hereinafter: the "Constitution"), as well as Article 6 paragraph 1 of the European Convention for Protection of Human Rights and Fundamental Freedoms and item 1 of the Protocol I of this Convention (hereinafter: "ECHR").

Legal basis

4. The Referral is based on 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: the "Law") and Rule 56.2 of the Rules of Procedures of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 29 March 2013, the Applicant submitted the Referral to the Constitutional Court (hereinafter: the "Court").

6. On 16 April 2013, the President appointed Judge Altay Suroy as Judge Rapporteur and the Review Panel composed of Judges Snezhana Botusharova (Presiding), Ivan Čukalović and Enver Hasani.

7. On 10 May 2013, the Court notified the Applicant and the Supreme Court on the registration of the Referral.

8. On 25 June 2013, the Review Panel reviewed the report of the Judge Rapporteur and recommended to the Court on the inadmissibility of the Referral.

Summary of facts

9. On 25 October 2003, the Applicant filed a claim with the Municipal Court in Gjilan for confirmation of ownership of the real estate and annulment of sale-purchase contract of the real estate concluded in 2002 between the respondents, H.I. and Q.A.

10. On 17 March 2004, the Municipal Court in Gjilan (C.no. 560/03) by its judgment determined that the contract concluded between Q.A. and H.I is "NULL AND VOID" and as such *"without legal effect."* At the same time this decision obliged the respondent Q.A. "to deliver him into possession" the contested cadastral plot. According to this judgment, the Applicant had registered in his name the contested plot. The Municipal Court in Gjilan decided the matter in absence of the respondents, who were duly summoned to the hearing, while they did not justify their

absence. This judgment became final on 21 May 2004 and executable on 7 July 2004.

11. On 18 October 2005, Q.A. filed a claim with the Municipal Court in Gjilan against the Applicant for confirmation of ownership of the contested property, based on the sale-purchase in 1986 and acquisition by prescription.

12. In the response to the claim, the Applicant requested that this to be considered as an adjudicated matter (*res judicata*) with the final judgment of the same Court, C. no. 560/03, pursuant to Article 333 paragraph 2 of the Law on Contested Procedure. He also challenged the legal basis of the acquisition of ownership by prescription, in which case the time limit of 20 years was not met and the fact that the real estate was not in bona fide possession, since the respondent was not allowed to transfer the real estate.

13. On 21 November 2006, the Municipal Court in Gjilan (Judgment C. no. 515/2005) approved the claim, confirming that the claimant *"based on the sale-purchase in 1986 and based on acquisition by prescription is the owner of the cadastral plot"* in this contest. The Court also *"obliges the respondents to recognize this right to the claimant as well as to refrain and endure so that the claimant based on this judgment registers this immovable property in his name."* The Municipal Court in Gjilan concluded that Q.A. purchased the contested property on 30 October 1986 *"based on the verbal contract, respectively on manuscript"* from the Applicant's mother and that he paid the money for the plot in the amount of 15,000.00 Swiss Francs according to the agreement and he entered immediately into factual possession and use, which he possessed and used from that time until after 2000 without any obstruction.TheMunicipal Court in Gjilan also concluded that in 2002, Q.A., as factual possessor and with a purpose of transfer of ownership, had concluded the sale-purchase contract, certified by the Municipal Court in Gjilan on 19 July 2002, Vr. no. 1774/2002, of the contested plot with H.I. since this plot was under her name.The Municipal Court in Gjilan, regarding the Applicant's allegation that the matter was adjudicated, decided that this is not an adjudicated matter, because the subject matter and the claimants in the claim are different from the abovementioned case.

14. On 23 December 2006, the Applicant filed a complaint with the District Court of Gjilan against the Judgment of the Municipal Court, of 21

November 2006, due to substantial violations of the contested procedure, erroneous and incomplete determination of the factual situation and erroneous application of the substantive law, proposing that the same judgment to be modified or quashed.

15. On 14 March 2007, the District Court (Decision Ac. no. 33/2007) quashed the judgment of the Municipal Court C. no. 515/2005 and returned the matter for retrial, because the judgment contained *"substantial violations of Article 354 paragraph 2 item 13 of LCP"* and erroneous and incomplete determination of the factual situation. The District Court did not consider that the matter should be determined as adjudicated matter.

16. On 10 November 2008, the Municipal Court in Gjilan (Judgment C. no. 244/2007) approved once more the claim of the claimant Q.A. against the Applicant. The Court held that "*the claimant gained the right to ownership according to the sale-purchase, (of 1986) since between the parties have been fulfilled the mutual obligations according to contract in manuscript for the sale –purchase of immovable property and this contract, in compliance with Article 73 of Law on Obligations, is final*", but not based on prescription. At the same time the Court considered that *"this contentious matter cannot be treated as an adjudicated matter pursuant to Article 333 paragraph 2 of LCP since in the adjudicated legal matter according to final judgment, the party in procedure was the respondent as a claimant and now the claimant H.I. as the respondent and the legal ground was annulment of contract, while in this legal matter besides the claimant and the respondent we have two other respondents, who were not at all involved in the previous procedure and then in this contentious matter it is about legal ground of certification of ownership and based on sale-purchase and acquisition by prescription."*

17. On 27 December 2008, the Applicant filed a complaint against the Judgment of the Municipal Court in Gjilan C. no. 244/2007, claiming 1) substantial violations of the contested procedure; erroneous and incomplete determination of the factual situation; erroneous application of the substantive law. *Inter alia*, the Applicant in his complaint considered that this matter should be treated as adjudicated, that Q.A. did not possess the plot during the period of 20 years in bona fide and that in the present case *"neither the legal ground (Justus titullus) nor the way of acquiring (modus aquiredi) of the ownership were met, conditions which should (must) be fulfilled cumulatively in order that Q.A. could acquire ownership over the contested plot"*.

18. On 28 September 2009, the District Court in Gjilan (Judgment Ac. no. 50/2009) rejected as ungrounded the Applicant's complaint and upheld the Judgment of the Municipal Court C. no. 244/07, by not necessarily repeating the arguments of this judgment, since the factual situation has been correctly and completely determined and based on this, it has been determined that the claimant is the owner based on the sale-purchase agreement of the contested real estate. Against this judgment, the Applicant filed a revision with the Supreme Court of Kosovo.

19. On 21 January 2013, the Supreme Court of Kosovo (Judgment Rev.no.19/2010) rejected as ungrounded the Applicant's revision against the Judgment of the District Court in Gjilan Ac.no.50/2009. The Supreme Court held that "*the second instance court by correctly and completely determining the factual situation has correctly applied the provisions of the contested procedure and the substantive law when it found that the claimant's statement of claim is grounded. The second instance judgment contains sufficient reasons on relevant facts for a fair adjudication of this legal matter."Inter alia*, the Court concluded that the matter was not adjudicated and that there is no erroneous application of the substantive law and that the claimant is undoubtedly the owner of the contested real estate, based on the concluded contract in handwritten form in 1986 and which has been met in entirety.

Applicant's allegations

20. The Applicant alleges that the Judgment of the Supreme Court of Kosovo Rev. no. 19/2010 dated 21 January 2013 as well as the Judgment of the District Court in Gjilan Ac.no.50/2009 of 28 September 2009 and the Judgment of the Municipal Court in Gjilan C.no.244/2007 of 10 October 2008 are partial, unfair and arbitrary.

21. The Applicant alleges that the contest regarding the challenged plot was adjudicated once by the final decision of the Municipal Court in Gjilan C.no.560/03 of 17 March 2004, by declaring NULL and VOID the contract between Q.A. and H.I. as well as by requesting the delivery of the challenged cadastral plot, which plot was handed over to the Applicant in the executive procedure.

22. The Applicant alleges that the Supreme Court, by Judgment Rev.no.19/2010 of 21 January 2013 and the District Court by Judgment Ac.no.50/2009, in a partial and arbitrary manner approved the

judgment and arguments, which were concluded in the Judgment of the Municipal Court C.no.244/2007.

23. The Applicant alleges that in this case he was denied the rights, guaranteed by the Constitution of the Republic of Kosovo and specifically Article 31.1 and 2 (Right to Fair and Impartial Trial), Article 46.3 (Protection of Property), Article 54 (Judicial Protection of Rights), Article 22 (Direct Applicability of International Agreements and Instruments) as well as Article 6 paragraph 1 of the European Convention for Human Rights as well as Article 1, paragraph 1 of the Protocol I of this convention.

Admissibility of the Referral

24. In order to be able to adjudicate the Applicant's Referral, the Court observes that it needs to examine whether the Applicant has met the admissibility requirements laid down in the Constitution and further specified in the Law and the Rules of Procedure.

25. Article 113.1 of the Constitution determines the general framework of the legal requirements in order for a Referral to be declared admissible. It provides:

> *"1. The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties."*

26. Article 48 of the Law on Constitutional Court also provides that:

> *"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."*

27. Furthermore, Rule 36 (2) of the Rules of Procedures provides that:

> *"The Court shall reject a Referral as being manifestly ill-founded when it is satisfied that:*
>
> *[...], or*
>
> *(b) when the presented facts do not in any way justify the allegation of a violation of the constitutional rights, or; or*
>
> *[...],*

d) when the Applicant does not sufficiently substantiate his claim;

28. The Court notes that it is not its task to act as an appellate court or a court of fourth instance in respect to the decisions taken by regular courts. It is the role of the regular courts to interpret and apply the pertinent rules of both procedural and substantive law (see, Avdyli v. Supreme Court of Kosovo, KI 13/09, 18 June 2010; *mutatis mutandis*, Garcia Ruiz v. Spain [GC), no. 30544/96, § 28, European Court on Human Rights [ECHR] 1999-1).

29. 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 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. In the present case, the Applicant was afforded ample opportunities to present his case and to challenge the interpretation of the provisions of pertinent laws which he considered incorrect, before the Municipal Court and certified in the District Court and Supreme Court during the appellate and revision proceedings. Having examined the proceedings as a whole, the Constitutional Court does not find that the relevant proceedings were in any way unfair, partial or tainted by arbitrariness (see *mutatis mutandis*, Shub v. Lithuania, ECHR Decision on Admissibility of Application No. 17064/06 of 30 June 2009).

31. The Court notes that the Applicant has raised the *res judicata* matter, i.e.the adjudicated matter during the review of this case at municipal level, but also during the appellate proceedings in all instances. All instances have certified that in this case we do not have to do with such a matter.

32. The Court considers that there is nothing in the Referral, which indicates that the case lacked impartiality, or that the proceedings were in anyway unfair or which might be considered as a violation of the rights guaranteed by the Constitution or European Convention of Human Rights and its Protocols, which are directly applicable in Kosovo. The mere fact that the applicant is unsatisfied with the outcome of the case cannot in itself raise an arguable claim of a breach of Articles 31.1 and 2; Article 46.3; Article 54; Article 22 as well as Article 6.1; Article 1.1 of Protocol 1 of ECHR (see Memetoviq v. Supreme Court of

Kosovo KI 50/10, 21 March 2011; see *mutatis mutandis* Judgment ECHR Appl. No. 5503/02, Mezour-Tiszazugi Tarsulat vs. Hungary, Judgment of 26 July 2005).

33. Therefore, the Constitutional Court considers that the Applicant's allegations are manifestly ill-founded, pursuant to Article 48 of the Law and Rule 36 (2) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 48 of the law, Rule 36 (2) and Rule 56 (2) of the Rules of Procedure, on 8 July 2013, unanimously:

DECIDES

I. TO REJECT the Referral as Inadmissible;

II. TO NOTIFY the Parties of this Decision;

III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20.4 of the Law; and

IV. TO DECLARE this Decision effective immediately.

Judge Rapporteur
Altay Suroy

President of the Constitutional Court
Prof. Dr. Enver Hasani

KI 63/13, Safet Voca, date 16 July 2013- Constitutional Review of the requirement of the Special Chamber of the Supreme Court for appellants to provide English language translations of all documents

Case KI 63/13, Resolution on Inadmissibility of 15 July 2013

Keywords: Individual referral, authorized party, rejection of request for interim measure

The Applicant alleges that the provision of Article 25 (8) of the Annex to the Law on the Special Chamber, requiring from the Appellants to provide English language translations of all documents related to their appeal is in contradiction with constitutional determination of the official languages in Kosovo.

The Applicant alleges that the requirement to provide translations of documents into English language also constitutes discrimination on the basis of language against all citizens of Kosovo, when making an appeal to the Special Chamber of the Supreme Court, in violation of Article 24 (2) of the Constitution.

The Applicant also requests that, pursuant to Article 116 (2) of the Constitution, the Court orders the temporary suspension of the application of the requirement to provide English language translations, as contained in Article 25 (8) of the Annex of the Law on the Special Chamber, pending a final decision of the Court on the Referral.

With regard to the Applicant's right to submit a Referral under Article 113 (7) of the Constitution, the Court considers that the Applicant does not articulate an individual right or freedom which may have been violated, nor does he refer to any concrete action or decision of a public authority which may have violated his fundamental rights.

Therefore, the Court finds that the Applicant is also not an authorized party to request the temporary suspension of the Application of Article 25 (8) of the Annex to the Law on the Special Chamber. For this reason, the Applicant's request for an interim measure under Article 116 (2) of the Constitution must be rejected.

In conclusion, the Court finds that the Referral has not been submitted in a legal manner by an authorized party within the meaning of Article 113 (1) of

the Constitution and must be rejected as inadmissible, because the Applicant is not an authorized party and rejected the request for interim measure.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI63/13
Applicant
Safet Voca
Constitutional Review of the requirement of the Special Chamber of the Supreme Court for appellants to provide English language translations of all documents

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Enver Hasani, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Kadri Kryeziu, Judge, and
Arta Rama-Hajrizi, Judge.

The Applicant

1. The Applicant is Safet Voca, President of the Mitrovica Branch of the Chamber of Advocates. The Applicant is represented by Kapllan Baruti, a lawyer based in Mitrovica.

Challenged decision

2. The Applicant challenges the requirement of the Special Chamber of the Supreme Court that appellants to the Special Chamber must provide English language translations of all documents related to their appeal, based on Law no. 04/L-033, on the Special Chamber of the Supreme Court of Kosovo on Privatisation Agency Related Matters (hereinafter: Law on the Special Chamber). This requirement is specified in Article 25 (8) of the Rules of Procedure of the Special Chamber, in Annex to the Law on the Special Chamber.

Subject matter

3. The Applicant alleges that the requirement to submit English language translations of all documents constitutes a violation of the Constitution of Republic of Kosovo. The Applicant refers to Article 5 (1) on the Official Languages of Kosovo, Article 16 (1) and (4) on the Supremacy of the Constitution, and claims that the requirement discriminates on the basis of language in violation of Article 24 (2) of the Constitution.

Legal basis

4. The Referral is based on Article 113 (7) of the Constitution, Articles 47, 48 and 49 of Law No. 03/L-121 on the Constitutional Court (hereinafter, the Law), and Rules 28, 29 and 30 of the Rules of Procedure of the Constitutional Court (hereinafter, the Rules).

Proceedings before the Constitutional Court

5. On 23 April 2013, the Applicant submitted the Referral to the Court.

6. On 29 April 2013, the President, by Decision nr.KSH.KI63/13, appointed Judge Arta Rama-Hajrizi as Judge Rapporteur and appointed the Review Panel composed of Judges Altay Suroy (presiding), Snezhana Botusharova and Kadri Kryeziu.

7. On 13 May 2013, the Constitutional Court informed the Applicant of the registration of the Referral, and requested the Applicant to submit a duly completed official application form together with copies of all relevant decisions of public authorities.

8. On 16 May 2013, the Applicant submitted a completed application form.

9. On 17 June 2013, the President appointed Judge Robert Carolan as Judge Rapporteur, to replace Judge Arta Rama-Hajrizi.

10. On 20 June 2013, the Review Panel considered the Report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

Facts of the case

11. On 23 April 2013, the Applicant sent a letter to the Constitutional Court requesting a review of the constitutionality of the requirement of the Special Chamber of the Supreme Court for appellants to submit translations into English of all documents and decisions in relation to their appeal.

12. It does not appear that the Applicant was a party to any legal proceedings, or has intitiated any legal or other proceedings in relation to this request.

13. Article 25 (8) of the Annex to the Law on the Special Chamber provides that:

"Pleadings and supporting documents may be submitted in either the Albanian or Serbian language and accompanied by an English translation. Such translation shall be at the expense of the person or party submitting such pleading or document."

Legal arguments presented by the Applicant

14. The Applicant alleges that the provision contained in Article 25 (8) of the Annex of the Law on the Special Chamber, requiring appellants to submit translations into English of all documents and decisions in relation to their appeal, is in violation of the constitutional determination of the official languages of Kosovo.

15. Furthermore, the Applicant argues that, *"According to the provision of Article 5 (1) of the Constitution, the official languages in the Republic of Kosovo are Albanian and Serbian. Article 16, para.1 provides that the laws and other legal acts are in accordance with this Constitution, while paragraph 4 of the same provision states that every person and entity in the Republic of Kosovo is subject to the provisions of the Constitution."*

16. The Applicant points out that Article 102 (3) of the Constitution provides that, *"Courts shall adjudicate based on the Constitution and the Law".*

17. Furthermore, Article 2 (1) of the Law on the Use of Languages (Law No.02/L-37) specifies that, *"Albanian and Serbian and their alphabets are official languages of Kosovo and have equal status in Kosovo institutions,"* and Article 2 (2) states that, *"All persons have equal rights with regard to the use of the official languages in Kosovo institutions."*

18. Finally, Article 12 (1) of the Law on the Use of Languages specifies that, *"Official languages shall be used on an equal basis in judicial proceedings."*

19. The Applicant alleges that the requirement to provide translations of documents into the English language also constitutes discrimination on the basis of language against all citizens of Kosovo when making an appeal to the Special Chamber of the Supreme Court, in violation of Article 24 (2) of the Constitution.

20. The Applicant indicates in his Referral that his arguments and remarks are of a general nature and character, and that he is not referring to any particular case or set of proceedings.

21. The Applicant also requests that, pursuant to Article 116 (2) of the Constitution, the Court orders the temporary suspension of the application of the requirement to provide English language translations, as contained in Article 25 (8) of the Annex of the Law on the Special Chamber, pending a final decision of the Court on the Referral.

Assessment of the admissibility of the Referral

22. First of all, in order to be able to adjudicate the Applicant's Referral, the Court has to examine whether the Applicant has met all the requirements of admissibility, which are foreseen by the Constitution and further specified by the Law and Rules of Procedure.

23. The Court has specifically to determine whether the Applicant has met the requirements of Article 113 (1) of the Constitution and Article 47 (1) of the Law and of Rule 36 (3) (c) of the Rules of Procedure.

24. The Court refers to Article 113 (1) and (7) of the Constitution, which establish:

> 1. *"The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties.*
>
> [...]
>
> 7. *Individuals are authorized to refer violations by public authorities of their individual rights and freedoms guaranteed by the Constitution, but only after exhaustion of all legal remedies provided by law."*

25. Article 47 (1) of the Law provides that:

"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."

26. Furthermore, Rule 36 (3) (c) of the Rules of Procedure provides that:

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

[...]

c) the Referral was lodged by an unauthorized person;"

27. The Court notes that the Applicant states that he is not referring to any case or set of proceedings, but that his comments and arguments are of a general nature and character.

28. The Court notes further that the Applicant does not provide information regarding any legal or other proceedings or actions in relation to his complaints.

29. With regard to the Applicant's right to submit a Referral under Article 113 (7) of the Constitution, the Court considers that the Applicant does not articulate an individual right or freedom which may have been violated, nor does he refer to any concrete action or decision of a public authority which may have violated his fundamental rights.

30. In substance, the Court considers that the Applicant is asking for an advisory opinion, or an abstract review, of the constitutionality of the provision contained in Article 25 (8) of the Annex to the Law on the Special Chamber.

31. In these circumstances, the Court finds that, under Article 113 (1) of the Constitution, in conjunction with Rule 36 (3) (c) of the Rules of Procedure, the Applicant is not an authorized party to request a review of the constitutionality of a legal provision.

32. Therefore, the Court finds that the Applicant is also not an authorized party to request the temporary suspension of the application of Article 25 (8) of the Annex to the Law on the Special Chamber. For this reason,

the Applicant's request for an interim measure under Article 116 (2) of the Constitution must be rejected.

33. In conclusion, the Court finds that the referral has not been submitted in a legal manner by an authorized party, within the meaning of Article 113 (1) of the Constitution, and must be rejected as inadmissible because the Applicant is not an authorized party.

34. Consequently, for the reasons outlined above, the Referral is inadmissible.

FOR THESE REASONS

Pursuant to Article 113 (1) of the Constitution, Articles 46 and 47 (1) of the Law, and Rule 36 (3) (c) of the Rules of Procedure, on 15 July 2013, unanimously,

DECIDES

I. TO REJECT the Referral as Inadmissible;

II. TO REJECT the Request for an Interim Measure;

III. TO NOTIFY this Decision to the Parties;

IV. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20 (4) of the Law;

V. TO DECLARE this Decision effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Robert Carolan	Prof. Dr. Enver Hasani

KI 52/13, Halil Studenica, date 17 July 2013- Constitutional Review of the Resolution of the District Court in Peja Ac.no.69/2012, dated 12 April 2012

Case KI 52/13, Resolution on Inadminissibilty of 19 June 2013.

Keywords: individual Referral, constitutional review of the Decision of the District Court

The Referral is based on Article 113.7 of the Constitution, Article 47 of the Law on the Constitutional Court of the Republic of Kosovo no. 03/L-121 of 15 January 2009, and Rule 56 of the Rules of Procedure of the Constitutional Court.

On 08 February 2013, the Applicant submitted Referral to the Constitutional Court of the Republic of Kosovo and sought from the court the constitutional review of the Decision of the District Court

Applicant claims that the principles of equality before the law (Article 3 of the Constitution) and the principle of impartiality of the court (Article 31 of the Constitution) were violated by an erroneous determination of facts, particularly by the Judges of the second instance panel.

The President by Decision (no.GJR. KI 52/13) of 16 April 2013, appointed Judge Almiro Rodrigues as Judge Rapporteur. On the same day, the President (by Decision no. KSH. KI 52/13) appointed the Review Panel composed of Judges: Altay Suroy (Presiding), Kadri Kryeziu and Arta Rama Hajrizi.

The court upon reviewing the case concluded that the Referral was submitted out of the four months deadline provided by Article 49 of the Law on the Constitutional Court.

Under these circumstances, the Constitutional Court of Kosovo concluded that the Applicant has not submitted the Referral in a legal manner, because it is out of time limit and the referral is inadmissible.

RESOLUTION ON INADMISSIBILITY
in
Case no. KI52/13
Applicant
Halil Studenica
Constitutional Review of
the Resolution of the District Court in Peja Ac.no.69/2012,
dated 12 April 2012

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Enver Hasani, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Kadri Kryeziu, Judge and
Arta Rama-Hajrizi, Judge.

Applicant

1. The Applicant is Halil Studenica from Peja (hereinafter, the Applicant), represented by the lawyer Abdylaziz Daci from Peja.

Challenged decision

2. The Applicant challenges the Decision of the District Court in Peja Ac.no.69/2012, dated of 12 April 2012 and served on the Applicant on 5 June 2012.

Subject matter

3. *The Applicant alleges that the challenged decision violates the principle of equality before the law (Article 3 of Constitution) and the right to fair and impartial trial (Article 31 of Constitution).*

Legal basis

4. The Referral is based on Articles 113.7 of the Constitution of the Republic of Kosovo (hereinafter, the Constitution) and 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 (hereinafter, the Law) and the Rule 56. 2 of the Rules of Procedure of the Constitutional Court (hereinafter, the Rules).

Proceedings before the Constitutional Court

5. On 08 April 2013,the Applicant submitted Referral to the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).

6. On 10 April 2013, the Court notified the Applicant that the Referral is registered under KI52/13, and requested from the Applicant to submit to the Court the Referral in the form provided by the Rules of Procedure of the Court.

7. On 16 April 2013, the President appointed Judge Almiro Rodrigues as Judge Rapporteur and the Review Panel composed of judgesAltay Suroy (Presiding), Kadri Kryeziu and Arta Rama Hajrizi.

8. On 25 April 2013, the Applicant filed Referral in the requested form.

9. On 14 May 2013, after having considered the report of Judge Rapporteur, the Review Panel made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

10. On 12 March 2003, the Municipal Court in Peja rendered a final and binding Decision [C.br.404/02], thereby determining that the debtor obstructs the creditor (the Applicant) in free using the road registered as cadastral parcel no. 1571/4.

11. In the decision, the Court further ordered the debtor to stop all actions which obstruct the creditor in the free using the road, as well as to compensate to the Applicant the costs of proceedings in the amount of €780, within the time limit of 8 days from rendering the resolution under the threat of forced execution.

12. On 28 July 2003, the Applicant filed the proposal for execution of the decision with the Municipal Court in Peja.

13. *On 14 November 2011, the Municipal Court in Peja [Decision [E.no.558/11] rejected as inadmissible the Applicant's proposal for*

execution of the Decision, because it was out of time, and terminated the proceedings.

14. *On an unspecified date, the Applicant filed an appeal with the District Court in Peja against the Decision of the Municipal Court [E.no. 558/11].*

15. *On 12 April 2012, the District Court in Peja rejected the Applicant's appeal as ungrounded.*

16. *The Court in enacting clause states* „Thefirst instance court found that the proposal for execution was filed on 08 September 2003, which is seen from the seal of receipt when the forced execution was permitted under number E.no.91/2003. In the case file there is also another copy of proposal for execution dated 26.07.2003, but the same does not contain the court seal."[...] "Based on this verified factual situation the court of first instance decided as it was described more closely in the enacting clause of the challenged resolution and pursuant to provisions of Article 391 item (f) of the Law on Contested Procedure and Article 482 of the LCP, as well as Article 68 of the Law on Executive Procedure. In accordance with this, the legal stance of the first instance Court was entirely approved by the District Court."

17. *On 19 February 2013, the Applicant filed a request for protection of legality with the State Prosecutor of Kosovo.*

18. *On 25 February 2013, the State Prosecutor of Kosovo rejected the request of the Applicant, because* "all legal time limits for filing the request for protection of legality by the State Prosecutor have expired".

Applicant's allegations

19. The Applicant claims that the principles of equality before the law (Article 3 of the Constitution) and of impartiality of the court (Article 31 of the Constitution) were violated by an erroneous determination of facts, particularly by the judges of the second instance panel.

20. The Applicant alleges *„that someone has committed fraud by abusing official duty and the actors of corruption can be seen. The Applicant states that "because of all this, he addressed the presidents of the two courts trying to remove all obvious flaws. Waiting for them, the deadline, for filing the proposal to the Republic Prosecutor, has expired."*

21. The Applicant requests from the Court *to "conclude that the resolutions of now the former Municipal Court of Peja E.no. 558/11 dated 14 November 2011, as well as the Resolution of the District Court in Peja Ac. no. 69/2012 dated 12 April 2012, are unlawful and unconstitutional."*

Admissibility of the Referral

22. In order to be able to adjudicate the Applicant's Referral, the Court has to assess beforehand whether the Applicant has met all the requirements of admissibility, which are foreseen by the Constitution and further specified by the Law and Rules of Procedure.

23. In this respect, the Court refers to Article 113.1. of the Constitution which provides that:

The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties.

24. *The Court also takes into consideration Article 49 of the Law, which 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 (...).

25. 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: mutatis mutandis P.M. v. the United Kingdom Application no. 6638/03, of 24 August 2004)*

26. The Court notes that the State Prosecutor of Kosovo rejected the request of protection of legality because all legal time limits had been expired. The Court further notes that the challenged decision is dated 12 April 2012 and was served on the Applicant on 5 June 2012. The referral was submitted to the Constitutional Court on 08 April 2013. Thus, the referral is out of the four months deadline provided by Article 49 of the Law on the Constitutional Court.

27. Under these circumstances, the Applicant has not met the requirements for admissibility in terms of time limit in which the referral should be submitted to the Constitutional Court.

28. Therefore, the Applicant has not submitted the Referral in a legal manner, because it is out of time limit and the referral is inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113 (1) of the Constitution, Article 49 of the Law and Rule 36 (1) b) of the Rules of Procedure, on 8 July 2013, unanimously

DECIDES

I. TO REJECT the Referral as Inadmissible;

II. TO NOTIFY this Decision to the Parties;

III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20 (4) of the Law; and

IV. TO DECLARE this Decision effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Almiro Rodrigues	Prof. Dr. Enver Hasani

KI 57/13, Hajzer Beqiri, date 17 July 2013-Constitutional Review of the Special Chamber of the Supreme Court Judgment ASC.-ll-0035, of 23 November 2012

Case KI57/13, Resolution on Inadmissibility, of 20 June 2013

Keywords: individual referral, manifestly ill-founded

The Applicant claims that "the final decision…is discriminatory against me, since the Court had to consider the real situation in our health care system, and the patients scheduling major services in state hospitals have to wait for long periods due to large number of patients, and at time to file a complaint against the Court ruling, I had scheduled my graph with UCCK…"

The Applicant claims that Article 24 [Equality before Law] and Article 31 [Right to Fair and Impartial Trial] of the Constitution have been violated by the Special Chamber. Accordingly, the Court finds that the Referral was not referred to the court in a legal manner, pursuant to Article 113.1 of the Constitution, Article 48 of the Law and Rule 36 (1) c) and (2) d) of the Rules, and as such is inadmissible as manifestly ill-founded.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI57/13
Applicant
Hajzer Beqiri
Constitutional Review of the Special Chamber of the Supreme Court Judgment ASC.-11-0035, dated 23 November 2012

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

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

Applicant

1. The referral was filed by Hajzer Beqiri (Applicant), residing in Pristina.

Challenged decision

2. The Applicant challenges the Judgment ASC-11-0035 of the Appeal Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters (Special Chamber), dated 23 November 2012, which according to the Applicant, was served on him 11 January 2013.

Subject matter

3. The Applicant claims that "*the final decision…is discriminatory against me, since the Court had to consider the real situation in our health care system, and the patients scheduling major services in state hospitals have to wait for long periods due to large number of patients, and at time to file a complaint against the Court ruling, I had scheduled my graph with UCCK…*"

4. The Applicant claims that Article 24 [Equality before Law] and Article 31 [Right to Fair and Impartial Trial] of the Constitution have been allegedly violated by the Special Chamber.

Legal basis

5. The referral is based on Article 113.7 of the Constitution, Articles 46, 47, 48 and 49 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 17 April 2013, the Applicant submitted the Referral to the Court.

7. On 29 April 2013, the President appointed Judge Almiro Rodrigues as Judge Rapporteur and the Review Panel composed of Judges Snezhana Botusharova (Presiding), Kadri Kryeziu and Arta Rama-Hajrizi.

8. On 13 May 2013, the Secretariat notified the Applicant, Special Chamber and Privatization Agency in Kosovo (PAK) with the referral.

9. On 20 June 2013, after having considered the Report of the Judge Rapporteur, the Review Panel made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

10. On 23 November 2012, the Appeal Panel of Special Chamber of Kosovo issued the challenged judgment (ASC-11-0035) and rejected the Applicant's complaint against the final list of employees with eligibility to 20% to proceeds of privatisation of SOE "Ramiz Sadiku" in Pristina as out of time.

11. The Appeal Panel reasoned that "*Trial panel correctly evaluated the claim against final list, which he submitted after 27 March 2009, which was out of time. The trial panel came into conclusion that the complainant could not manage to provide valid justification for not respecting the legal time-limit since the medical evidence did not match with the time of time-limit claim.... Due to this and based on reasons*

presented in legal reasoning, the Appeal Panel reject the claim as ungrounded."

Applicant's allegations

12. The Applicant alleges that, although he presented medical evidence with his complaint to the Special Chamber, his complaint was rejected. He argues that, during the time he had to make medical check up, he had to wait for almost a year and, therefore, he missed the opportunity to submit his complaint to the Special Chamber in time.

13. The Applicant requests from the Court to "*annul the decision mentioned above and order the competent authorities to render a merit-based decision*."

Admissibility of the Referral

14. The Court first examines whether the Applicants have fulfilled the admissibility requirements set out in the Constitution, and as further specified in the Law and the Rules of Procedure.

15. The Court refers to Article 113 (1) of the Constitution which establishes that

> *"The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties.*

16. The Court takes into account Article 48 of the Law on the Constitutional Court which provides that

> *"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 a public authority is subject to challenge".*

17. In addition, the Court takes into consideration Rule 36 (2) of the Rules which foresees that

> *"The Court shall reject a Referral as being manifestly ill-founded when it is satisfied that:*
> *(d) when the Applicant does not sufficiently substantiate his claim;"*

18. The Constitutional Court recalls that, under the Constitution, it is not the task of the Constitutional Court to deal with errors of fact or of law (legality) allegedly committed by the Special Chamber in Kosovo, unless

and in so far as they may have infringed rights and freedoms protected by the Constitution (constitutionality).

19. 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,* Garcia Ruiz v. Spain [GC], no. 30544/96, para. 28, European Court on Human Rights [ECHR] 1999-I, see also Resolution on Inadmissibility in case no 70/11, Applicants Faik Hima, Magbule Hima and Bestar Hima, Constitutional review of the Judgment of the Supreme Court, A. No 983/08 dated 7 February 2011).

20. In this regard, the Constitutional Court notes that the Applicant have used all legal remedies prescribed by the Law on Contentious procedure, by submitting the appeal against Judgment of Trail Chamber of the Special Chamber and that the Appeal Chamber of the Special Chamber have taken into account and indeed answered his appeals on the points of law.

21. Therefore, the Court considers that there is nothing in the Referral indicating that the case lacked impartiality or that proceedings were otherwise unfair (see *mutatis mutandis*, Shub v. Lithuania, ECHR Decision on Admissibility of Application No. 17064/06 of 30 June 2009).

22. In conclusion, the Applicant has neither built a case on a violation of any of his rights guaranteed by the Constitution nor has he submitted any *prima facie* evidence on such a violation (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, 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*."

24. Accordingly, the Court finds that the Referral was not referred to the court in a legal manner, pursuant toArticle 113 (1) of the Constitution, Article 48 of the Law and Rule 36 (1) (c) and (2) d) of the Rules, and as such is inadmissible as manifestly ill-founded.

FOR THESE REASONS

The Constitutional Court pursuant to Article 113 (1) of the Constitution, Article 48 of the Law and Rule 36 36 (1) (c) of the Rules of the Procedure, on 15 July 2013, unanimously

DECIDES

I. TO REJECT the Referral as Inadmissible;

II. TO NOTIFY this Decision to the Parties;

III. TO PUBLISH this decision in the Official Gazette, in accordance with Article 20 (4) of the Law; and

IV. TO DECLARE this Decision immediately effective.

Judge Rapporteur	**President of the Constitutional Court**
Almiro Rodrigues	Prof. Dr. Enver Hasani

KI 136/12, Dušanka Petrovićand 26 others, date 18 July 2013- Constitutional Review of the Judgment of the Special Chamber of the Supreme Court of Kosovo ASC-09-0005, ASC-09-0007, ASC-09-0008 of 9 August 2012

Case KI 136/12, Resolution on Inadminissibilty of 18 July 2013

Keywords: Individual referral, referral submitted out of time, Resolution on inadmissibility

The Applicants in their Referral submitted on 28 December 2012 request *"the constitutional review of the Judgment of the Special Chamber of the Supreme Court of Kosovo, ASC-09-0008 dated 9 August 2012, with a proposal that the Constitutional Court after reviewing of the Referral and providing necessary documents by Special Chamber of the Supreme Court to determine that the Constitution of Kosovo has been violated, and that is Article 31, and as a consequence to ANNUL the challenged judgments and to return the matter for retrial or to approve the Referral and to MODIFY the challenged judgment so that in the final list of employees of SOE "Metohija-Rugova" from Peja are included the abovementioned employees and to allow them the right to compensation of 20% of sale proceeds from the privatization of the enterprise."*

The Court notes that the Referral was not submitted within the time limit in compliance with Article 49 of the Law, because the Applicants' representative states that the Judgment ASC-09-0005- ASC-09-0007- ASC-09-0008 of the Special Chamber of the Supreme Court of 9 August 2012, was served on them on 24 August 2012.

RESOLUTION ON INADMISSIBILITY
in
Case no. KI136/12
Applicant
Dušanka Petrovićand 26 others
Constitutional Review of the Judgment of the Special Chamber of the Supreme Court of Kosovo ASC-09-0005, ASC-09-0007, ASC-09-0008
of 9 August 2012

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

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

Applicants

1. Dušanka Petrović
2. Vulkić Vuko
3. Mirjana Jovanović,
4. Gutić Snežana
5. Dobrila Bogićević,
6. Babović Dušanka,
7. Janković Vladan
8. Jozović Irena
9. Čađenović Dragana
10. Bosković Liljana
11. Lekić Dragoljub
12. Vojislav Bojović
13. Dušica Lakićević
14. Vladislav Lakićević
15. Darmanović Valentina
16. Kuć Zorica
17. Lekić Marina
18. Dasić Dragan
19. Bagaš Marina
20. Nadica Martinović
21. Banjević Veljko
22. Karać Biljana
23. Sekulović Batrić
24. Radić Darko
25. Verica Aleksić
26. Stanija Krstić
27. Zdravković Janko

1. All of them employees of SOE “Metohija - Rugova” from Peja, represented by lawyer Dejan A. Vasić from Mitrovica.

Challenged decision

2. The challenged decision is the Judgment of the Special Chamber of Supreme Court of Kosovo, ASC-09-0005, ASC-09-0007, ASC-09-0008 of 9 August 2012, which according to Applicant was served on him on 24 August 2012.

Subject matter

3. The Applicants allege that by the Judgment of the Special Chamber of the Supreme Court of Kosovo, ASC-09-0005, ASC-09-0007, ASC-09-0008 of 9 August 2012, the rights guaranteed by the Constitution of the Republic of Kosovo, Article 31 [Right to Fair and Impartial Trial] were violated, since the Applicants were removed from the final list drafted by the Privatisation Agency of Kosovo (hereinafter: the PAK), on the occasion of privatization of the enterprise and in this way were denied the right to compensation of 20% of the sale proceeds after the privatization of the enterprise.

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 Constitutional Court of the Republic of Kosovoof 15 January 2009(hereinafter: the Law) and Rule 29 of the Rules of Procedure of the Republic of Kosovo (hereinafter: the Rules of Procedures).

Proceedings before the Constitutional Court

5. On 28 December 2012, the Applicants' representative submitted the Referral to the Constitutional Court.

6. On 14 January 2013, by Decision GJR 136/12, the President of the Court appointed Judge Ivan Čukalović as Judge Rapporteur. On the same day, the President of the Court appointed the Review Panel composed of judges: Almiro Rodrigues (Presiding) and Judges Snezhana Botusharova and Kadri Kryeziu, members.

7. On 28 January 2013, the Constitutional Court notified the Applicant regarding the registration of Referral, requesting from him to fill in the official form of the Court for registration of Referral.

8. On 28 January 2013, the Constitutional Court notified the Special Chamber of the Supreme Court of Kosovo and PAK regarding the registration of Referral.

9. On 7 February 2013, the Applicants' legal representative submitted to the Court the official form of the Court for registration of Referral.

Summary of facts

10. The Applicants used to work in SOE “Metohija- Rugova” from Peja.

11. With the privatization of SOE “Metohija- Rugova” from Peja, the Applicants were on the list drafted by PAK for compensation of 20% of the sale proceeds from privatization of the enterprise.

12. A group of employees lodged an appeal against the list drafted by PAK in the Special Chamber of the Supreme Court.

13. On 6 February 2009, the Special Chamber of the Supreme Court, acting upon the appeal filed other employees, who challenged the right of the Applicants for their inclusion in the final list, rendered the Judgment SCEL-08-0003, by which partly approved the appeal by excluding the Applicants from the final list.

14. On 9 August 2012, the Appeals Panel of the Special Chamber of Supreme Court, acting upon the appeal filed by the Applicants’ representative rendered the Judgment ASC-09-0005- ASC-09-0007- ASC-09-0008, by which it rejected the Applicants’ appeal, with a justification that they do not meet the requirements provided under Article 60.2 of UNMIK Administrative Instruction 2008/6.

Applicants’ allegations

15. The Applicants in their Referral submitted on 28 December 2012 request *“theconstitutional reviewof the Judgment of the Special Chamber of the Supreme Court of Kosovo, ASC-09-0005, ASC-09-0007, ASC-09-0008 dated 9 August 2012, with a proposal that the Constitutional Court after reviewing of the Referral and providing necessary documents by Special Chamber of the Supreme Court, to determine that the Constitution of Kosovo has been violated, and that is Article 31, and as a consequence to ANNUL the challenged judgments and to return the matter for retrial or to approve the Referral and to MODIFY the challenged judgment so that in the final list of employees of SOE "Metohija-Rugova" from Peja are included the abovementioned employees and to allow them the right to compensation of 20% of sale proceeds from the privatization of the enterprise.”*

Preliminary assessment of admissibility of the Referral

16. In order to be able to adjudicate the Applicant's Referral, the Court has to assess beforehand whether the Applicant has met all the requirements of admissibility, which are foreseen by the Constitution, as further specified in the Law and the Rules of Procedure.

17. In this respect, the Court refers to Article 113.1 of the Constitution where is provided:

> "*The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties*."

18. Regarding the Applicants' Referral, the Court refers to Article 49 of the Law, which provides:

> *"The referral should be submitted within a period of four (4) months. The deadline shall be counted from the day upon which the claimant has been served with a court decision. 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. To determine the fact whether the Applicant submitted his Referral within a period of four months, the Court is referred to the time the last decision was served on the Applicant as well as to the date of filing the Referral to the Constitutional Court.

20. From submitted documents, the Court notes that the Referral was not submitted within time limit in compliance with Article 49 of the Law, because the Applicants' representative states that the Judgment ASC-09-0005- ASC-09-0007- ASC-09-0008 of the Special Chamber of the Supreme Court of 9 August 2012 was served on them on 24 August 2012.

21. The Court further notes that the Applicant submitted his Referral in the Secretariat of the Constitutional Court on 28 December 2012, which implies that the Referral was submitted 4 days after the expiry of time limit provided by the Law.

22. Based on the above, it results that the Referral is out of time.

23. Therefore, the Referral should be rejected as inadmissible, due to non-compliance with legal time limit, provided by Article 49 of the Law.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 49 of the Law and Rule 36.1 (b) of the Rules of Procedure, in the session held on 18 July 2013, 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 Constitutional Court; and,

III. This Decision is effective immediately.

Judge Rapporteur
Ivan Čukalović

President of the Constitutional Court
Prof. Dr. Enver Hasani

KI 105/11, Bajro Aljimi, date 22 July 2013- Constitutional review of the Judgment of the Supreme Court of Kosovo Rev. No. 78/2008 dated 2 March 2011

Case KI105/11, Resolution on Inadminissibilty of 5 July 2013

Keywords: individual referral, civil dispute, human dignity, protection of property, universal declaration, manifestly ill-founded

In this case, the Applicant challenges the judgment of the Supreme Court of Kosovo, Rev. 78/2008, of 2 March 2011 alleging that *pursuant to Article 54 of the Constitution of the Republic of Kosovo, 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*. Therefore, based on the foregoing, the applicant files the present Referral with the Constitutional Court of the Republic of Kosovo demanding: a) Protection of human rights due to violations of human rights guaranteed by the Constitution and national laws, and b) Protection due to violations of human rights as guaranteed by international instruments and agreements which are directly applicable in the Republic of Kosovo.

After having reviewed the case in its entirety, the Court found that the relevant proceedings in the Supreme Court were not in any way unfair or arbitrary (see *mutatis mutandis*, Shub v. Lithuania, ECHR Decision on Admissibility of Application No. 17064/06 of 30 June 2009). The Constitutional Court reiterated that it is not a court of fourth instance, when considering the decisions taken by the lower instance courts.

As a conclusion, the Court finds that the Applicant's Referral does not meet the admissibility requirements, as the Applicant has failed to prove that the challenged decision has violated his rights and freedoms guaranteed by the Constitution.

Therefore, the Court declared this Referral inadmissible as manifestly ill-founded.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI105/11
Applicant
Bajro Aljimi
Constitutional review of the Judgment of the Supreme Court of Kosovo
Rev. No. 78/2008 dated 2 March 2011

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

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

Applicant

1. The Applicant is Mr. Bajro Aljimi from the village of Gërnçar, Municipality of Prizren.

Challenged decision

2. Challenged decision is the judgment of the Supreme Court of Kosovo, Rev. No. 78/2008 of 2 March 2011 (which the Applicant received on 18 April 2011), amending the Judgment of the District Court in Prizren and rejecting the request to return possession over property which the applicant's father donated according to donation contract concluded on 2.12.1969 between Mustafa Aljimi, from the Village of Grnčare, as the donor, on one side, and the Municipality of Prizren, as the receiver, on the other side.

Subject matter

3. The Applicant challenges the judgment of the Supreme Court of Kosovo No. 78/2008 of 2 March 2011 claiming that based on Article 54 of the Constitution there was a violation of Articles 23, 24 and 46 of the Constitution of the Republic of Kosovo, Article 17 of the Universal

Declaration of Human Rights (hereinafter: UDHR) and Article 1 of Protocol 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: ECHR).

Legal basis

4. Article 113.7 and 21.4 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), Article 22 of the Law on the Constitutional Court of Kosovo (hereinafter: the Law) and Rules 28 and 56.2 of the Rules of Procedure of the Constitutional Court (hereinafter: the Rules).

Proceedings before the Court

5. On 1 August 2011 the Applicant filed the Referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 23 August 2011, the President of the Constitutional Court (Decision No. GJR. 105/11 of 23 August 2011) appointed Judge Altay Suroy as Judge Rapporteur in the case and the Review Panel (Decision No. KSH. 105/11, of 23 August 2011) composed of judges: Snezhana Botusharova(presiding), Prof. Dr. Enver Hasaniand Prof. Dr. Gjyljeta Mushkolaj (members).

7. On 12 October 2011 the Constitutional Court informed the Applicant and the Municipal and District Court in Prizren as well as the Supreme Court of Kosovo that a procedure was initiated for the constitutional review of the decision that is challenged by the Applicant and that the case was registered in the Court's respective register under No. KI105/11.

8. On 19 October 2011, the District Court in Prizren, in its response stated that it had expressed its opinion on this case in its Judgment and that it did not want to express anything further.

9. On 14 November 2012, the President (Decision No. KSH. 105/11, of 14 November 2012) appointed Judge Ivan Čukalović as a member of the Review Panel instead of Judge Gjyljeta Mushkolaj, whose mandate as a Judge of the Constitutional Court had ended on 26 June 2012.

10. On 5 July 2013, 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. On 2 December 1969, a donation contract was concluded between Mustafa Aljimi, from the village of Gërnçar, as the donor, on one side, and the Municipality of Prizren, as the receiver, on the other side through which the donor donated to the receiver the cadastral plot No. 5248 in CZ „Keçishlak", land Class VII, in the area of 8.88.05 ha, registered in possession list No. 8418 CZ Prizren.

12. According to the contract, this plot of land was transferred to social property owned by the Municipal Assembly of Prizren, as per possession list 8418 CZ Prizren.

13. The former owner of the aforementioned real estate died on 26 March 1987 and he was survived by his sons as his legal heirs: Iljaz, Bajro and Izet Aljimi and his wife Qazime Aljimi, maiden name Maksuti, who passed away on 12 June 2007 (names of third parties are mentioned for the benefit of the reading by the Court while in the final decision we will put initials only).

14. Heirs of the late Mustafa Aljimi initiated through a claim with the Municipal Court in Prizren proceedings to have the contract annulled and the real estate returned, since they considered that the contract was signed by threatening the donor that his children will not be allowed education and employment and that other repercussive measures against him will follow.

15. After having reviewed the evidence, the Municipal Court in Prizren issued its Judgment C. No. 563/07 of 19 October 2007, by which it approved the claim and the statement of claim of the plaintiffs and determined that the contract on donation of the real estate, Leg. No. 1787/69 of 2.12.1969, concluded between Mustafa Aljimi, late, from the village of Grnčare, as the donor, on one side, and the Municipality of Prizren, as the receiver, on the other side, was invalid.

16. The District Court in Prizren, deciding upon appeal of the Municipality of Prizren, against the judgment of the Municipal Court in Prizren, rendered judgment Ac. No. 534/2007 On 16.1.2008, rejecting the appeal of the Municipality of Prizren as ungrounded and confirming the

judgment of the Municipal Court in Prizren, C. No. 563/07 of 19 October 2007.

17. Following the judgment of the District Court in Prizren the Applicant and his brothers filed a request to the Municipal Cadastral Office in Prizren to transfer ownership from the current owner Prizren MA to the new owners, Iljijaz Aljimi, Bajro Aljimi and Izet Aljimi. Subsequently, the Municipal Cadastral Office in Prizren issued Decision No. 027 No. 219/B of 7 February 2008, approving the request and allowing cadastral change, based on which the Applicant and his brothers were registered as new owners and they were issued a certificate of ownership rights UL-71813068-12596.

18. After registration of ownership over the cadastral plot P. No. 71813068-05248-0, the Applicant and his brothers concluded a contract on the sale of the real estate with Arbnor Vërmica, so the Applicant and his brothers, on one side, as the sellers, and Arbnor Vërmica, on the other side, as the purchaser, on 3 March 2008 concluded a sales contract for the real estate, Leg. No. 1233/2008 dated 5 March 2008, registered as cadastral plot P. No. P. No. -71813068-05248-0 for the price of € 60,000.00 (sixty thousand Euros).

19. In the meanwhile, the Municipality of Prizren filed a request for Revision with the Supreme Court of Kosovo, as an extraordinary legal remedy, against the judgment of the District Court in Prizren, Ac. No. 534/2007 of 16 January 2008.

20. The Supreme Court of Kosovo approved the revision, Rev. No. 78/2008, of 2 March 2011, and rendered a decision on the merits of the case by: *"AMENDING judgment of the District Court in Prizren, AC. No. 534.2007, of 16.01.2008, and Judgment of the Municipal Court in Prizren C. no. 563/2007, dated 19.10.2007, thereby REJECTING as ungrounded the claim suit of plantiffs requesting confirmation of nullity of contract on donation, signed by Mustafa Aljimi from the village of Gerncare, as the donor, and the Municipality of Prizren, as donee, certified by the Municipal Court in Prizren by act Vr. No. 1787/1969, dated 02.12.1969.",* among other things, stating in the reasoning the following:

> *"The confirmed fact is that for the donation contract, signed on 02.11.1969, as seen in the copy of the contract in the case files, provisions of the Law on Contract and Torts, which entered into*

force on 01.10.1979, and provisions of the Article 1106 of this Law, cannot be applied on contract relations established before the entry into force of this law.

The fact that the contractual party donated his land under the pressure of former municipal activists, as found by the first instance court, does not certify absolutely that such a contract is absolutely null, since according to the position of this Court, the threat mentioned was not of such nature which could pose serious hazard to the life, body or any important asset of the contractual party. As for the threat on the children on the contractual party that they would be prevented in completing education and employment, legal aid was available in competent bodies in a designated legal proceeding. Even if the assumption of lack of free will of the contractual party due to threatening, deception or fraud, according to general rules of civil law, such a contract would only be relatively invalid, and nullity of contract for such reasons may be claimed within a deadline of one year, from the day of acquiring knowledge on the cause of hazard, cease of cause of threat, while such a right loses objective timeline, when more than three years pass.

Due to the fact that all deadlines for claiming relative nullity of contract have been missed, deadlines which are preclusive, in the concrete case, there cannot be a claim on nullity of contract after the expiry of the timeline of 40 years, as the plaintiffs did in the concrete case."

Applicant's allegations

21. The Applicant challenges the judgment of the Supreme Court of Kosovo, Ref. No. 78/2008 of 2 March 2011 alleging that: *"pursuant to Article 54 of the Constitution of the Republic of Kosovo, 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.* Therefore, based on the foregoing, the applicant files the present Referral with the Constitutional Court of the Republic of Kosovo demanding:

a) *Protection of human rights due to violations of human rights guaranteed by the Constitution and national laws, and*

b) *Protection due to violations of human rights as guaranteed by international instruments and agreements which are directly applicable in the Republic of Kosovo."*

22. The Applicant refers to Articles 23 [Human Dignity], 24 [Equality before the Law] and 46 [Protection of Property] of the Constitution which guarantee human rights. He also refers to Article 17 of the UDHR and Article 1 of Protocol 1 to the ECHR providing that every natural or legal person is entitled to his property and that no one shall be deprived of his property.

Admissibility of the Referral

23. The Applicant states that Articles 23 [Human Dignity], 24 [Equality before the Law], 46 [Protection of Property] and 54 [Judicial Protection of Rights] of the Kosovo Constitution are the basis for his Referral.

24. The Court first assesses whether the Applicant has met the admissibility requirements laid down in the Constitution, and further specified in the Law and the Rules of Procedure of the Court.

25. In this regard, the Court refers to Article 113 (1) which establishes:

"1. The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties."

26. The Court also refers to Article 48 of the Law which sets forth the following:

"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."

27. Furthermore, Rule 36 (1) c) and (2) a) and b) of the Rules of Procedure provides:

(1) The Court may only deal with Referrals if:

[...]

c) the Referral is not manifestly ill-founded.

(2) 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 presented facts do not in any way justify the allegation of a violation of the constitutional rights."

28. In the present case, the Court notes that the Applicant challenges the Decision of the Supreme Court which he alleges that it has violated his rights and freedoms guaranteed by the Constitution and other instruments as a consequence of erroneous determination of facts and erroneous application of the law by the Supreme Court.

29. After having reviewed the case in its entirety, the Constitutional Court cannot consider that the relevant proceedings in the Supreme Court were in any way unfair or arbitrary (see mutatis mutandis, Shub v. Lithuania, ECHR Decision on Admissibility of Application No. 17064/06 of 30 June 2009).

30. The Constitutional Court reiterates that it is not a court of fourth instance, when considering the decisions taken by the lower instance courts. It is the role of the 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).

31. The Applicant did not submit any *primafacie* evidence showing a violation of his constitutional rights (see Vanek v. Slovak Republic, ECHR Decision as to Admissibility of Application no. 53363/99 of 31 May 2005). The Applicant does not substantiate his claim that his rights guaranteed under Articles 23, 24, 46 and 54 of the Constitution have been violated.

32. Therefore, the Court finds that the Applicant's Referral does not meet the admissibility requirements, neither on the merits nor on the admissibility of the Referral, as the Applicant has failed to prove that the challenged decision has violated his constitutionally guaranteed rights and freedoms.

33. In all, the Court concludes that the Applicant's Referral, pursuant to Rule 36.2 (a) and (b) of the Rules of Procedure, is manifestly ill-founded and consequently inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113 (1) of the Constitution, Rule 36.2 (a) and (b) of the Rules of Procedure, on 5 July 2013, by majority

DECIDES

I. TO REJECT the Referral as Inadmissible;

II. TO NOTIFY this Decision to the Parties;

III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20 (4) of the Law; and

IV. TO DECLARE this Decision effective immediately.

Judge Rapporteur
Altay Suroy

President of the Constitutional Court
Prof. Dr. Enver Hasani

KI 120/12, Vahide Braha, date 23 July 2013- Constitutional Review of the decision of the District Court in Prishtina, Ac. Nr. 1419/2011, of 17 July 2012 and notification of Public Prosecutor, KMLC. No. 81/12, of9 August 2012

Case KI 120/12, Resolution on Inadminissibilty of 5 July 2013

*Keywords:*Individual Referral, request for protection of legality, jurisdiction and authorized parties, right to fair and impartial trial, right to legal remedies, property dispute, legal representation.

The Applicant is a lawyer from Prishtina, who represented a client with regular jurisdiction courts in Prishtina. Due to dispute on the manner of submitting of the judicial decision, she submitted a proposal to the Public Prosecutor to request protection of legality, a request which was rejected.

The Applicant filed the Referral based on Article 113.7 of the Constitution of Kosovo, claiming that the challenged decision and the notification of the Public Prosecutor violate her right to a fair and impartial trial (Article 31 of the Constitution) and her right to legal remedies (Article 32 of the Constitution).

The Court found that the Applicant is not a party in the proceedings but a legal representative of one of the parties, i.e. acting on behalf of another person, who is affected by the decisions of public authorities. The Applicant submitted the Referral on her behalf, alleging violations of her individual constitutional rights, by not submitting the referral on behalf of her client for alleged violations of her client.

Therefore, the Court concludes that the Applicant cannot be considered an authorized party according to Article 113 paragraph 7 of the Constitution as her individual rights and freedoms guaranteed by the Constitution are not violated by public authorities.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI120/12
Applicant
Vahide Braha
Constitutional Review of the decision of the District Court in Prishtina, Ac. Nr. 1419/2011, of 17 July 2012 and notification of Public Prosecutor, KMLC. No. 81/12, of 9 August 2012

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Enver Hasani, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Kadri Kryeziu, Judge and
Arta Rama-Hajrizi, Judge.

Applicant

1. The Applicant is Ms. Vahide Braha, residing in Prishtina (hereinafter: the "Applicant").

Challenged Decision

2. The Applicant challenges the decision of the District Court in Prishtina, Ac. Nr. 1419/2011, of 17 July 2012 and the notification of the Public Prosecutor, KMLC. No. 81/12, of 9 August 2012, which were served upon the Applicant as a legal representative of her client, the plaintiff J.H., on unspecified dates.

Subject Matter

3. *The Applicant claims that the challenged decision and the notification of the Public Prosecutor violate her right to a fair and impartial trial (Article 31 of the Constitution) and her right to legal remedies (Article 32 of the Constitution).*

Legal basis

4. The Referral is based on Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the "Constitution"), Article 20 of the Law No. 03/L-121 on the Constitutional Court of Republic of Kosovo, of 15 January 2009 (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").

Proceedings before the Court

5. On 11 November 2012, the Applicant submitted the referral to the Constitutional Court.

6. On 4 December 2012, the President of the Court, with Decision No. GJR. KI 120/12, appointed Judge Snezhana Botusharova as Judge Rapporteur. On the same date, the President of the Court, with Decision No. KSH. KO. 97/12, appointed the Review Panel composed of Judges Robert Carolan (Presiding), Altay Suroy and Ivan Čukalović.

7. On 31 January 2013, the Court informed the Applicant and notified the Basic Court in Prishtina that the referral had been received and registered with the number KI120/12.

8. On 5 July 2013 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 8 May 2009 the Applicant was authorized by a written power of attorney to represent J.H. from Prishtina in a case regarding the revocation of a contract, before Municipality Court in Prishtina.

10. On 11 June 2009, the Municipal Court in Prishtina adopted judgment C. Nr. 1266/07, by which was rejected as ill-founded the request of the plaintiff J.H. from Prishtina, who was represented by the Applicant. This judgment was delivered to the Applicant as the plaintiff's legal representative on 6 July 2009.

11. On 22 July 2009, the Applicant submitted an appeal with the District Court in Prishtina, on behalf of her client against the judgment of the

Municipal Court [C. Nr. 1266/07] of 11 June 2009, pursuant to Article 181.1 of Law on Contested Procedure (hereinafter: LCP).

12. On 29 December 2010, the District Court in Prishtina adopted Decision Ac. Nr. 1167/2009, by which was rejected the appeal submitted by the Applicant on behalf of J.H. against thejudgment of the Municipality Court in Prishtina [C. Nr. 1266/07], of 11 November 2009. The District Court in the reasoning part of its decision stated: *"From the case files it appears that the appealed judgment of the court of first instance was handed to the lawyer of the plaintiff Vahide Braha on 06.07.2009, which can be seen from the delivery note under number 30, whilst the legal representative of the plaintiff filed the appeal with the first instance court on 22.07.2009, which means that the appeal was filed after the deadline provided by the law".*

13. On 25 January 2011, the Applicant as legal representative of her clientsubmitted to the Municipality Court the proposal to return the case to the previous state, claiming that she *"did not receive the judgment of the first instance court in compliance with the legal provisions deriving from Article 107, 110 and 111 of the LCP".*

14. On 26 April 2011, Municipality Court of Prishtina forwarded the proposal to the District Court in Prishtina.

15. On 31 May 2011, the District Court in Prishtina sent a Request for proper investigations / report to Municipality Court of Prishtina *"to act in order to remove all procedural dilemmas, resulting from the proposal of the representative of the plaintiff…".*

16. On 5 October 2011, upon the request from the District Court in Prishtina, the Municipality Court held a public hearing, in which the issue of handing over the Judgment of the Municipality Court in Prishtina [C. Nr. 1266/07] was clarified.

17. On the same date, the Municipality Court in Prishtina adopted Decision C. Nr. 1266/07, which rejected the request of the Applicant to return the case to the previous state, since it had been submitted after the deadline. In its decision the Municipality Court in Prishtina stated that as a court of first instance acting upon an order of the second instance court, it had undertaken all the procedural measures and confirmed that "*the attorney did not have any remark with regard to the manner of receiving the judgment, and did not inform the court about the manner*

of receiving the judgment, but she filed an appeal against the judgment of the first instance court, which was submitted to the court on 22.07.2009, without mentioning the issue of receiving the judgment, and stated that she has filed the appeal within the deadline provided by law".

18. On an unspecified date, the Applicant as an attorney for her client submitted an appeal against the Decision of the Municipal Court [C. Nr. 1266/07] of 5 October 2011.

19. On 17 July 2012, the District Court in Prishtina adopted Decision Ac. Nr. 1419/2011, which rejected the appeal of the Applicant. In its decision the District Court stated that *" the District Court panel reviewed the appeal in compliance with provisions of Article 208 in conjunction with Article 194 of the Law on Contested Procedure, and based on the allegations found that the appeal is not allowed...Since the panel considers that the appeal is filed against a decision which is not appealable, pursuant to Article 196 of the Law on Contested Procedure, the panel concludes that the appeal is not allowed."*

20. On an unspecified date, the Applicant acting as an attorney for her clientsubmitted a proposal to the Office of the Chief State Prosecutor to request protection of legality.

21. On 9 August 2012, the State Prosecutor adopted Notification KMLC nr. 81/12 by which the proposal of the Applicant for requesting protection of legality against the final decision of the Municipal Court in Prishtina [C. Nr. 1266/07] of 5 October 2011 and the decision of the second instance, District Court in Prishtina [Ac. Nr. 1419/2011], of 17 July 2012, was rejected stating that "*the State Prosecutor did not find any legal basis to request protection of legality"*

Applicant's allegations

22. The Applicant claims that *"the court of first instance and the court of second instance by rendering their decisions have caused violations of fundamental human rights guaranteed by Article 31 and 32 of the Constitution, Article 13 (1) of the European Convention on Human Rights (ECHR) - right to appeal. The Judge who dealt with this case was not impartial, as it is required by Article 6.1 of the Convention, or was biased".*

23. Furthermore, the Applicant claims that *" the District Court in rendering its decision as a court of second instance, when it stated that the party*

did not have the right to appeal, was under influence of the first instance court, and also did not review the case file and the reasons of the appeal."

24. The Applicant addresses to the Constitutional Court the following request:

"I request from the Constitutional Court to review and to give a legal, lawful and exact interpretation whether there is a violation of the Constitution, Law on Contested Procedure and European Convention on Human Rights, with regard to the rules on handing over the decisions, as foreseen by this law, to the parties in procedure and the possibility to return the case in previous state."

Admissibility of the Referral

25. *In order to be able to adjudicate the Applicant's Referral, the Court has to assess beforehand whether the Applicant has met the requirements of admissibility, which are foreseen by the Constitution and further specified by the Law and Rules of Procedure.*

26. In this respect, the Court refers to Article 113 (1), which establishes that "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 of the Law 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 refers to Article 48 of the Law on Court, which provides that *"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".*

28. In this respect, the Court notes that individuals are authorized to refer violations by public authorities of their individual rights and freedoms guaranteed by the Constitution. The act or omission in issue must directly affect the applicant (see Amuur v. France, No. 19776/92, ECtHR, Judgment of 25 June 1996)

29. In the present case, the Court notes that the Applicant is not a party in the proceedings but a legal representative of one of the parties, i.e.

acting on behalf of another person, who is affected by the decisions of public authorities. This is the plaintiff J.H., the client of the Applicant. The Applicant is submitting the Referral on her own behalf, alleging violations of her individual constitutional rights, not submitting the referral on behalf of her client for alleged violations of her client. The Applicant as said above does not appear to be party of her own in the regular courts' proceeding in the sense of the law provisions. She is the professional whose is supposed to defend the procedural rights of her client by following the law requirements and meeting the deadlines for appeal as she is authorised for that by her client.

30. Therefore, the Court concludes that the Applicant cannot be considered an authorized party according to Art. 113 paragraph 7 of the Constitution as an individual her individual rights and freedoms guaranteed by the Constitution are not violated by public authorities.

31. However, even if the Applicant had a power of attorney to represent her client in front of the Constitutional Court and act on behalf of her as her legal representative, which was not the case, she had not substantiated the claims in the referral. Assuming that the Applicant would argue that the decisions of the regular courts resulted in violations of her client's rights as guaranteed by the Constitution and the European Convention she had not presented any evidence or relevant facts to support that "Administrative or judicial authorities have violated her/his rights as guaranteed by the Constitution" (see Vanek v.Slovak Republic, No. 53363, ECtHR, Decision on Admissibility of 31 May 2005).

32. The Constitutional Court reiterates that it is not its task under the Constitution to act as a court of appeal, or court of fourth instance, in respect of the decisions taken by regular courts. It is their role to interpret and apply the pertinent rules of both procedural and substantive law (see, mutatis mutandis, Garcia Ruiz v. Spain, No. 30544/96, ECtHR, Judgment of 21 January 1999, para. 28)

33. 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 Case Edwards v. United Kingdom, No 13071/87, Report of the European Commission on Human Rights adopted on 10 July 1991).

34. However, having reviewed the documents submitted by the Applicant, the Constitutional Court does not find that the relevant proceedings were in any way unfair or tainted by arbitrariness (see mutatis mutandis, Vanek v.Slovak Republic, No. 53363, ECtHR, Decision on Admissibility of 31 May 2005).

FOR THESE REASONS

The Constitutional Court, pursuant to Articles 113.1 and 113.7 of the Constitution, Articles 20 and 48 of the Law and Rule 36. (2) b) of the Rules of Procedure, on 5 July 2013

DECIDES

I. TO DECLARE the Referral inadmissible, unanimously;

II. TO HOLD that the Applicant is not authorized party, by majority;

III. TO HOLD that the Referral is manifestly ill-founded, by majority;

IV. TO NOTIFY this decision to the Parties;

V. TO PUBLISH the decision in the Official Gazette, in accordance with Article 20 (4) of the Law; and

VI. This Decision is effective immediately.

Judge Rapporteur
Snezhana Botusharova

President of the Constitutional Court
Prof. Dr. Enver Hasani

KI 15/13, Muharrem Ademi, date 26 July 2013- Constitutional Review of the non-execution of the Judgment of the Municipal Court in Pristina Pl. No. 4492/92, dated 3 September 1996

Case KI15/13, Resolution on Inadminissibilty of 20 June 2013

Keywords: individual referral, non-exhaustion of legal remedies, resolution on inadmissibility

In his Referral, submitted on 5 February 2013, the Applicant requests from the Constitutional Court of the Republic of Kosovo the constitutional review of non-execution of the Judgment of the Municipal Court in Prishtina, Pl. No. 4492/92, of 3 September 1996 related, *inter alia*, to the compensation of Applicant's salaries he incurred in the period of an unlawful dismissal from the "Students' Center" in Prishtina.

The Court finds that the Referral does not fulfill the requirements of Article 113. 7 of the Constitution, Article 47 (2) of the Law, and Rule 36 (1) a) of the Rules of Procedure, and as such is inadmissible.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI15/13
Applicant
Muharrem Ademi
Constitutional Review of the non-execution Municipal Court in Pristina Judgment Pl. No. 4492/92 dated 3 September 1996

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

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

Applicant

1. The Applicant is Muharrem Ademi residing in Pristina, represented by Beqir Abdiu, a lawyer practicing in Pristina.

Challenged decision

2. The Applicant challenges non-execution of the Judgment of the Municipal Court in Pristina, Pl. No. 4492/92 dated 3 September 1996. The Applicant claims that challenged judgment became final on 22 November 1996.

Subject matter

3. The subject matter of the Referral is the assessment by the Constitutional Court of the Republic of Kosovo (hereinafter referred to as the "Court") of the constitutionality of the alleged non-execution of the Municipal Court in Pristina Judgment Pl. No 4492/92 dated 3 September 1996 related, *inter alia*, to the compensation of Applicant's salaries he incurred in the period of an unlawful dismissal from the "Students' Center" in Pristina.

Legal Basis

4. The Referral is based on Art. 113.7 of the Constitution; Articles 46, 47, 48 and 49 of 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 5 February 2013, the Applicant submitted a referral with the Constitutional Court.

6. On 26 February 2013, the President of the Court appointed Judge Robert Carolan as Judge Rapporteur and a Review Panel composed of Judges Snezhana Botusharova(Presiding), Kadri Kryeziu and Arta Rama-Hajrizi, and by subsequent decision of the President, Judge Arta Rama-Hajrizi was replaced by the president of the Court, Prof. Dr. Enver Hasani, as a member of the Review Panel.

7. On 18 April 2013, the Court notified the Applicant and the Municipal Court in Pristina of the registration of the Referral.

8. On 4 June 2013, the Applicant's lawyer has been asked to submit a duly signed authorization letter.

9. On 20 June 2013, after having considered the Report of the Judge Rapporteur, the Review Panel made a recommendation to the Court on the inadmissibility of the Referral.

Summary of Facts

10. The facts of the referral can be summarized as follows.

11. On 3 September 1996, the Municipal Court in Pristina issued the Judgment Pl. Nr.4492/92 by which the Applicant's claim was approved and a Decision of Director of the respondent (Students' center in Pristina) of 3 March 1992, relating to termination of the Applicant's employment was quashed as being unlawful. It was further stated *"[T]he respondent is obliged to reinstate the plaintiff to employment relationship in the position which corresponds his employment relationship…with all rights from the employment relationship…"*

12. The judgment of the Municipal Court in Pristina (Pl. Nr.4492/92) became final on 22 November 1996, since the District Court in Pristina rejected the appeal of the respondent by its judgment Gž. No. 902/96 as ungrounded.

13. The Applicant claims that on 8 February 1997, following the receipt of District Court judgment, he submitted two requests for execution of the Judgment Pl. No. 4492/92. The first request related to the Applicant's reinstatement to his previous workplace, and according to the Applicant was registered under No. I-2-29/97. The second request related to the compensation of his personal income was registered under No. I-2-30/97. It seems, according to the Applicant, that the Municipal Court has never issued any decision and has never approved the Applicant's requests for execution of the judgment.

14. Almost three years after and following the Applicant's request of 29 December 1999, the Students' Center in Pristina issued the Resolution No 93.2 dated 30 December 1999 allowing the Applicant "*the unpaid leave in duration of 12 months due his travel abroad... until 31 December 2000...*".It was further stated in abovementioned Resolution "*after the expiry of the time limit of the temporary stay abroad ...the abovementioned person [i.e. the Applicant] may report to this Center to resume his work within a period of 30 days*."

15. It is not clear if the Applicant returned to the workplace in the prescribed time limit.

16. On 13 October 2006, almost seven years after the Resolution on unpaid leave has been issued, the Applicant submitted a written request to the Administrator and the President of the Municipal Court in Pristina requesting execution of the Municipal Court Judgment Pl. No. 4492/92 dated 3 September 1996.

17. Less than two weeks after that, i.e. on 26 October 2006, the Applicant submitted to the Municipal Court in Pristina new Proposal for Execution of the final judgment of Pl. No. 4492/92 of 3 September 1996, requesting to the compensation of his personal income.

18. On the same date, i.e. on 26 October 2006, the Applicant submitted a claim to the Municipal Court in Pristina also requesting compensation of the personal income from the employment relationship. In his claim the Applicant requested the Court to following the financial expertise

issue a judgment and "*confirm the right of the plaintiff [i.e. The Applicant] for the compensation of personal income for the period from 3 March 1992 to 21 December 1999.*"

19. The respondent party (the Students' Centre in Pristina) objected the Applicant's claim arguing, *inter alia*, that the Applicant's request is submitted after expiration of the statutory time limit. Furthermore it was stated that the Students' Center that exists after the war is not the same one that existed before the war and consequently there is no passive legitimacy with regard to the new Students' Center in Pristina.

20. The Applicant argues that on 22 June 2007, the Municipal Court in Pristina issued the judgment Cl.no. 363/06 and rejected the Applicant's claim of 26 October 2006. On 17 January 2008, the Applicant submitted an appeal against the aforementioned judgment to the District Court in Pristina. It appears, according to the Applicant, that on 6 April 2009 the District Court in Pristina approved his appeal and returned the case to Municipal Court in Pristina. However, the above mentioned judgments were not submitted by the Applicant.

21. On 14 February 2012 the Municipal Court in Pristina issued the judgment C.nr. 1055/09, and rejected the Applicant's claim for the compensation of personal income as ungrounded. In the reasoning of that judgment it was*, inter alia*, stated "*…it is a well known that the postwar Students' Center is included as an organizational part of the University of Pristina and as such it is financed by the Ministry of Education, Science and Technology of Kosovo which was established as a part of Kosovo Interim Administration pursuant to the provisions issued by UNMIK. Based on this established factual situation after having assessed the administrated evidence the court found that the respondents lack passive legitimacy to be a party to proceedings…*"

22. On 29 February 2012, the Applicant submitted an appeal against the judgment of the Municipal Court of Pristina dated 14 February 2012 to the District Court in Pristina.

23. It seems that the appellate proceedings before the District Court has not been finalized yet.

Applicant's allegations

24. The Applicant alleges that by alleged non-execution Municipal Court in Pristina Judgment Pl. No. 4492/92 dated 3 September 1996 his rights to a fair trial guaranteed by Article 31 of the Constitution in conjunction

with Articles 6 and 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") has been violated.

25. The Applicant also alleges that there has been violation of his property rights guaranteed by Article 1 Protocol No.1 to the Convention.

26. The Applicant's argues that there has been a violation of "*the legal principle according to which no one has the right, including the Court to adjudicate again an adjudicated matter resolved with a final judgment.*"

27. The Applicants also alleges that there has been violation of "*the basic principle of the legal certainty of the citizens with regard to the execution of the final decisions of the courts, a principle that 'no one is above the law'*".

28. The Applicant requests the Constitutional Court to quash the judgment of the Municipal Court in Pristina Cl. No 1055/2099 of 14 February 2012 since he claims that above mentioned judgment is unconstitutional and finally he recommends the Constitutional Court to order to the Municipal Court in Pristina to execute judgment Pl. No. 4492/92 dated 3 September 1996.

Assessment of the Admissibility of the Referral

29. The Court notes that while the Applicant complains against alleged non-execution of the Municipal Court in Pristina Pl. No. 4492/92 dated 3 September 1996 he also requests the Court "*to quash the judgment of the Municipal Court in Pristina Cl. No 1055/2099 of 14 February 2012.* "

30. The Court further notes based on the facts of the case and the Applicant's allegations that there are two interrelated sets of proceedings that Applicant's complained of. Both proceedings were initiated by the Applicant and both are related to the compensation for unpaid salary following the unlawful dismissal.

31. While, the first set of the proceedings relate to the execution the Municipal Court in Pristina Judgment Pl. No. 4492/92 dated 3 September 1996 that was allegedly initiated on 8 February 1997.

32. The subsequent set of the proceedings relate to the proceedings pending before the District Court in Pristina following the Applicant's appeal against the judgment C.nr. 1055/09 of the Municipal Court in Pristina dated 14 February 2012.

33. With regard to the subsequnet set of proceedings the Court notes that the appellate proceedings before the District Court has not been finalized yet.

34. In that regard, 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."*

35. Moreover, Article 47 (2) of the Law also establishes that:

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

36. As it mentioned above, case the Applicant's complained of is pending before the District Court in Pristina.

37. It appears therefore, that the Applicant had failed to exhaust all legal remedies available to him.

38. Therefore, in the circumstances of a pending matter in the District Court, the Constitutional Court is unable to proceed further to assess the admissibility of the Referral. It appears that the Referral is premature.

Conclusion

39. Accordingly, the Court finds that the Referral does not fulfill the requirements of Article 113 (7) of the Constitution, Article 47(2) of the Law and Rule 36 (1) (a) of the Rules, and as such is inadmissible.

FOR THESE REASONS

The Constitutional Court pursuant to Article 113 (7) of the Constitution, Article 47 (2) of the Law and Rule 36 36 (1) (a) of the Rules of the Procedure, unanimously:

DECIDES

I. TO REJECT the Referral as Inadmissible;

II. TO NOTIFY this Decision to the Parties;

III. TO PUBLISH this decision 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**
Robert Carolan	Prof. Dr. Enver Hasani

KI 40/13, Ymer Bajrami, date 29 July 2013 - Constitutional Review of the Decision of the District Court in Prishtina, Ac. No. 389/2012, dated 23 November 2012

Case KI40/13, Resolution on Inadmissibility, of 5 July 2013

Keywords: individual referral, right to work and exercise profession, inadmissible referral, manifestly ill-founded

The Applicant alleges that the Decision of the District Court (Ac. No. 389/2012) of 23 November 2012 violated his rights guaranteed by Article 49 [Right to Work and Exercise Profession] of the Constitution of the Republic of Kosovo because, as alleged by the Applicant, the execution procedure with regards to the payment of compensation of his salary, for the period 1 December 2001 until 1 January 2006, was cancelled.

The Applicant alleges a violation of Article 49 [Right to Work and Exercise Profession] of the Constitution, whereas he already has been reinstated to his previous working place and seeks only to enjoy his right to receive his salaries,

The Court considered that the facts presented by the Applicant did not in any way justify the allegation of a violation of his constitutional rights and the Applicant did not sufficiently substantiate his claim.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI40/13
Applicant
Ymer Bajrami
Constitutional Review
of the Decision of the District Court in Prishtina Ac. No. 389/2012
dated 23 November 2012

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Enver Hasani, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Kadri Kryeziu, Judge, and
Arta Rama-Hajrizi, Judge.

The Applicant

1. The Referral is filed by Ymer Bajrami (hereinafter: the Applicant), residing in the village of Orllan, Municipality of Podujevo.

Challenged decision

2. The Applicant challenges the Decision of the District Court, Ac. No. 389/2012, dated 23 November 2012. This decision was served on the Applicant on 18 December 2012.

Subject matter

3. The Applicant alleges that the Decision of the District Court (Ac. No. 389/2012) of 23 November 2012 violated his rights guaranteed by Article 49 [Right to Work and Exercise Profession] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) because, as alleged by the Applicant, the execution procedure with regards to the payment of compensation of his salary was cancelled.

Legal basis

4. The Referral is based on Article 113.7 of the Constitution, Articles 20 and 22 of the 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 Court (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 18 March 2013, the Applicant submitted the Referral to the Constitutional Court (hereinafter: the Court).

6. On 25 March 2013, the President appointed the Deputy-President Ivan Čukalović as Judge Rapporteur.

7. On 2 April 2013, the Court notified the Applicant and the Basic Court in Prishtina of the registration of the Referral.

8. On 5 July 2013, the Review Panel composed of Judges Altay Suroy (presiding), Snezhana Botusharova and Enver Hasani reviewed the report of the Judge Rapporteur and made a recommendation to the full Court on inadmissibility of the Referral.

Summary of facts as submitted by the Applicant

9. According to the documents attached to the Referral, based on the Judgment of the Municipal Court in Prishtina, Cl. No. 72/05, of 3 July 2006, the Private Trade Company *"Ital-Kosova"* in Prishtina was obliged to reinstate the Applicant to his previous working place, or to a working position that meets his professional skills and working abilities, and to fulfill all of the obligations from the working relationship as from 1 December 2001.

10. On 11 October 2006, the Applicant submitted a claim to the Municipal Court in Prishtina stating that the defendant, namely the Private Trade Company "*Ital-Kosova"* in Prishtina, had reinstated the Applicant to his working place but it did not compensate him for the lost salaries.

11. On 23 January 2007, the Municipal Court in its Judgment, Cl. No. 336/06, approved the claim of the Applicant, and based on the financial expertise ordered by the Court, it decided to oblige the Private Trade Company *"Ital Kosova"* in Prishtina to provide compensation of the lost

salaries for the period from 1 December 2001 until 1 January 2006 in the amount of 13,143.00 EUR plus the specified interest.

12. On 14 January 2009, the Applicant filed a request with the Municipal Court in Prishtina for the Execution of the previous Municipal Court Judgment, Cl. No. 336/06, of 23 January 2007.

13. On 29 April 2011, the Municipal Court in Prishtina (E 19/09) decided on the execution of the Judgment, Cl. No. 336/06 of 23 January 2007 and obliged the Private Trade Company *"Ital Kosova"* in Prishtina to pay to the Applicant the amount of 13,143.00 EUR plus the specified interest.

14. However, on 13 April 2012, the Municipal Court in Prishtina rendered a decision to cancel the Execution procedure E. No. 19/09 of 29 April 2011.

15. The Municipal Court in Prishtina justified its Decision to cancel the execution with reference to the letter of 6 April 2012 of the Kosovo Agency for Business Registration (No. 379) informing the Court that the debtor, namely the Private Trade Company "*Ital Kosova"* in Prishtina, ceased to exercise business activities. Therefore, the Municipal Court in Prishtina, pursuant to Article 22 of the Law on Execution in conjunction with Article 277, paragraph 1 (c) of the Law on Contested Procedures, decided to cancel the Execution procedure.

16. On 20 April 2012, against the Decision of the Municipal Court in Prishtina, E. No. 19/09 of 13 April 2012, the Applicant filed an appeal with the District Court in Prishtina.

17. On 23 November 2012, the District Court in Prishtina with its Decision Ac. No. 389/2012 rejected the appeal of the Applicant and upheld the Decision of the Municipal Court, E. No. 19/09 of 13 April 2012.

18. In its Decision, the District Court also referred to a letter of the Privatization Agency of Kosovo of 24 March 2010, which confirmed that employees who have had a working relationship with the Private Trade Company *"Ital Kosova"* in Prishtina up to 18 June 2007, and were not retired, continue to enjoy the status of employees of the socially owned Enterprise IMN-Kosova. Based on the case file a part of IMN Kosova had been sold to form Private Trade Company *"Ital Kosova"* in Prishtina. Following the closure of the Private Trade Company *"Ital Kosova"* in Prishtina, its assets and liabilities were merged back into the

socially owned Enterprise IMN-Kosova, which is now administered by the Privatization Agency of Kosovo.

19. In the same decision, the District Court in Prishtina also found that [...] *"nowhere in the case files, could a proposal for Execution against the socially owned Enterprise IMN Kosova be found."* Therefore the Court concluded that it cannot act beyond the proposal for execution.

Applicant's Allegation

20. The Applicant alleges that his right to Work and Exercise Profession, guaranteed by Article 49 of the Constitution has been violated.

21. The Applicant further seeks to enjoy his right to receive salaries, as was awarded with a final Judgment of the Municipal Court (Cl. No. 336/06) dated 23 January 2007.

Assessment of the admissibility of the Referral

22. First of all, in order to be able to adjudicate the Applicant's Referral, the Constitutional Court has to examine whether the Applicant has met all the requirements of admissibility, which are foreseen by the Constitution and further specified by the Law and Rules of Procedure.

23. The Court should first examine whether the Applicant is an authorized party to submit a referral with the Court, in accordance with requirements of Article 113.7 of the Constitution.

24. Article 113, paragraph 7 of the Constitution 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."

In relation to this Referral, the Court notes that the Applicant is a natural person, and is an authorized party in accordance with Article 113.7 [Jurisdiction and Authorized Parties] of the Constitution.

25. The Court must also determine whether the Applicant, in accordance with requirements of Article 113 (7) of the Constitution, and Article 47 (2) of the Law, has exhausted all legal remedies. In the present case, the final decision on the Applicant's case is the Decision of the District Court in Prishtina Ac. No. 389/2012 of 23 November 2012. As a result, the

Applicant has shown that he has exhausted all legal remedies available under the applicable laws.

26. The Applicant must also prove that he has fulfilled the requirements of Article 49 of the Law in relation to submission of the Referral within the legal time limit. It can be seen from the case filethat the Decision of the District Court in Prishtina Ac. No. 389/2012 of 23 November 2012was served on the Applicant on 18 December 2012, while the Applicant filed the Referral to the Court on 18 March 2013, meaning that the Referral was submitted within the four months time limit, as prescribed by the Law and the Rules of Procedure.

27. In relation to the Referral, the Court also takes into account Rule 36.2 of the Rules of Procedure, which provides:

"The Court shall reject a Referral as being manifestly ill-founded when it is satisfied that:
[...], or
(b) when the presented facts do not in any way justify the allegation of a violation of the constitutional rights, or
[...], or
(d) when the Applicant does not sufficiently substantiate his claim;"

28. In this connection, the Constitutional Court reiterates that it is not its task under the Constitution to act as a court of fourth instance, in respect of the decisions taken by the regular courts. It is the role of the regular courts to interpret and apply the pertinent rules of both procedural and substantive law (See, *mutatis mutandis, García Ruiz v. Spain,* No. 30544/96, ECtHR, Judgment of 21 January 1999*, see also case No. 70/11, Applicants Faik Hima, Magbule Hima and Bestar Hima,* Resolution on Inadmissibility of 16 December 2011*).*

29. The Constitutional Court can only consider whether the evidence has been presented in such a manner and the proceedings in general, viewed in the entirety, have been conducted in such a way that the Applicants had a fair trial (See, *inter alia*, *Edwards v. United Kingdom,* No. 13071/87, Report of European Commission of Human Rights of 10 July 1991).

30. Based on the case files, the Court notes that the reasoning provided in the Decision of the District Court in Prishtina Ac. No. 389/2012 of 23 November 2012 is clear and, after reviewing the entire procedure, the

Court also found that the regular court proceedings have not been unfair or otherwise tainted by arbitrariness (See, *mutatis mutandis, Shub v. Lithuania,* No. 17064/06, ECtHR, Decision of 30 June 2009).

31. Moreover, the Applicant alleges a violation of Article 49 [Right to Work and Exercise Profession] of the Constitution, whereas he already has been reinstated to his previous working place and seeks only to enjoy his right to receive his salaries, as was awarded with the final Judgment of the Municipal Court (Cl. No. 336/06 of 23 January 2007).

32. At the end, with reference to cases adjudicated by the Court regarding suspension of the execution procedure, specifically with reference to the case No. KI 08/09, *Independent Union of Workers of IMK Steel Factory in Ferizaj, Judgment of 17 December 2010,* the Court considers that based on the documents submitted and completed proceedings, this Referral differs from the afore-mentioned case for the following reasons:

Firstly, the Municipal Court with its Decision E. No. 19/09 of 29 April 2011, decided to cancel the execution procedure, due to the fact that the Private Trade Company "*Ital Kosova"* in Prishtina had ceased to exercise its business activities. The above-mentioned decision was upheld by the District Court in Prishtina by its decision Ac. No. 389/2012 of 23 November 2012.

Secondly, the District Court in its afore-mentioned Decision clearly held that following the closure of the Private Trade Company "*Ital Kosova"* in Prishtina, whereby its assets and liabilities were merged back into the socially owned enterprise IMN-Kosova, which is now being administered by the Privatization Agency of Kosovo, the Applicant did not file a proposal for execution against the successor of the Private Trade Company "*Ital Kosova" in Prishtina,* namely the socially owned enterpriseIMN-Kosova, concluding that it cannot act beyond the proposal for execution.

33. For all of the aforementioned reasons, the Court considers that the facts presented by the Applicant did not in any way justify the allegation of a violation of his constitutional rights and the Applicant did not sufficiently substantiate his claim.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 20 of the Law and Rules 36.2 and 56.2 of the Rules of Procedure, on 5 July 2013, 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**
Prof. dr. Ivan Čukalović	Prof. dr. Enver Hasani

KI 46/13, KI 47/13, KI 48/13 and KI 68/13, Naim Morina, Bukurije Drançolli, Avdi Imeri and Genc Shala, date 30 July 2013- Constitutional Review of the Decision of the District Court in Prishtina Ac. Nr. 1421/2011 dated 4 December 2012, Decision of the District Court in Prishtina Ac. Nr.1373/2011 dated 4 December 2012, Decision of the District Court in Prishtina Ac. Nr. 1372/11 dated 6 December 2012, and Decision of the District Court in Prishtina Ac. Nr. 1371/11 dated 7 December 2012

KI46/13, KI47/13, KI48/13 and KI68/13, Resolution on Inadmissibility, of 5 July 2013

Keywords: individual referral, right to work and exercise profession, reinstatement to previous working place, manifestly ill-founded, inadmissible referral

The Applicants, in their Referrals submitted to the Court, request the reinstatement to their previous working places, including financial compensation in accordance with the Judgments of the Municipal Court and District Court, amended by Judgments of the Supreme Court of 18 December 2008.

The Applicants (KI46/13, KI47/13 and KI48/13) allege violation of Article 46 [Protection of Property], Article 49 [Right to Work and Exercise of Profession], and Article 54 [Judicial Protection of Rights] of the Constitution, without offering any further elaboration.

Applicant, Genc Shala (KI68/13) further alleges violation of Article 24 [Equality before the Law], Article 31 [Right to Fair and Impartial Trial], Article 49 [Right to Work and Exercise of Profession] of the Constitution, Article 6 [Right to a Fair Trial], and Article 14 [Prohibition of Discrimination] of the European Convention on Human Rights.

The Court concluded that the facts presented by the Applicants did not in any way justify the allegation of a violation of the constitutional rights and the Applicants did not sufficiently substantiate their claims.

RESOLUTION ON INADMISSIBILITY
in
Cases No. KI46/13, KI47/13, KI48/13 and KI68/13
Applicants
Naim Morina, Bukurije Drançolli, Avdi Imeri and Genc Shala
Constitutional Review
of the Decision of the District Court in Prishtina Ac. Nr. 1421/2011 dated 4 December 2012, Decision of the District Court in Prishtina Ac. Nr.1373/2011 dated 4 December 2012, Decision of the District Court in Prishtina Ac. Nr. 1372/11 dated 6 December 2012, and Decision of the District Court in Prishtina Ac. Nr. 1371/11 dated 7 December 2012

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:
Enver Hasani, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Kadri Kryeziu, Judge and
Arta Rama-Hajrizi, Judge.

The Applicants

1 The Referrals are submitted by Naim Morina, Bukurije Drançolli, Avdi Imeri and Genc Shala (hereinafter: the Applicants), all residing in Prishtina.

Challenged decisions

2. The Applicant, Naim Morina, KI46/13 challenges the Decision of the District Court in Prishtina Ac. Nr. 1421/2011 dated 4 December 2012, which the Applicant claims to have received on 17 January 2013.

3. The Applicant, Bukurije Drançolli, KI47/13 challenges the Decision of the District Court in Prishtina Ac. Nr.1373/2011 dated 4 December 2012. The Applicant claims that he received this Decision on 5 March 2013.

4. The Applicant, Avdi Imeri, KI48/13 challenges the Decision of the District Court in Prishtina Ac. Nr. 1372/11 dated 6 December 2012. The Applicant claims that he received this Decision on 5 March 2013.

5. The Applicant, Genc Shala, KI68/13 challenges the Decision of the District Court in Prishtina Ac. Nr. 1371/11 dated 7 December 2012. The Applicant claims that he received this Decision on 6 March 2013.

Subject matter

6. The Applicants in their Referrals submitted to the Court request the reinstatement to their previous working places, including financial compensation in accordance with the Judgments of the Municipal Court and District Court amended by Judgments of the Supreme Court of 18 December 2008.

Legal basis

7. The Referrals are based on 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: the Law), and Rules 37 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 Constitutional Court

8. On 3 April 2013, the Applicants Naim Morina (KI46/13), Bukurije Drançolli (KI47/13) and Avdi Imeri (KI48/13) individually submitted their Referrals to the Court.

9. On 16 April 2013, the President appointed Judge Snezhana Botusharova as Judge Rapporteur and the Review Panel composed of Judges: Altay Suroy (presiding), Almiro Rodrigues and Enver Hasani.

10. On 16 April 2013, in accordance with Rule 37.1 of the Rules of Procedure, the President ordered the joinder of Referrals KI47/13 and KI48/13 with Referral KI46/13. By this order, it was decided that the Judge Rapporteur and the composition of the Review Panel be the same as it was decided by the Decision of the President on appointment of the Judge Rapporteur and the Review Panel of 16 April 2013.

11. On 10 May 2013, the Court notified the Applicants and the Basic Court of the registration of the Referrals and the joinder of Referrals.

12. On 13 May 2013, the Applicant, Genc Shala (KI68/13) submitted his Referral to the Court.

13. On 14 May 2013, in accordance with Rule 37.1 of the Rules of Procedure, the President ordered the joinder of Referral KI68/13 with Referral KI46/13, KI47/13 and KI48/13. By this order, it was decided that the Judge Rapporteur and the composition of the Review Panel be the same as it was decided by the Decision of the President on appointment of the Judge Rapporteur and the Review Panel of 16 April 2013.

14. On 17 May 2013, the Court notified the Applicants and the Basic Court of the registration of the Referral KI68/13 and the joinder of Referral KI68/13 with Referrals KI46/13, KI47/13, and KI48/13.

15. On 5 July 2013, the Review Panel considered the report of Judge Rapporteur and made a recommendation to full Court on the inadmissibility of the Referral.

Summary of facts

16. The Applicants had an employment relationship for an unspecified period with the Public Housing Enterprise. The Applicants' employment relationship with the Public Housing Enterprise began in the following years: Applicant, Naim Morina (KI46/13) in 1985, Applicant, Bukurije Drançolli (KI47/13) in 1981, Applicant, Avdi Imeri (KI48/13) in 1979, and Applicant, Genc Shala (KI68/13) in 1980.

17. Based on the documents attached, starting from 11 September 2001 until 5 January 2006, and the employment contracts with the Public Housing Enterprise were signed every year.

18. On 5 January 2006, the employer, namely the Public Housing Enterprise offered the Applicants to sign contracts for a specified period of one (1) month (1 January 2006 - 31 January 2006).

19. Consequently, the Applicant, Naim Morina (KI46/13) initially signed the contract, but on 11 January 2006 requested the legal reassessment of the contract. The Applicants, Bukurije Drançolli (KI47/13) and Avdi Imeri (KI48/13) have also initially signed the offered contract, but on 11 January 2006 requested the withdrawal of their signatures as being invalid. Applicant, Genc Shala (KI68/13) refused to sign the offered contract.

20. On 20 January 2006, upon notice of the employer, the Applicants Bukurije Drançolli (KI47/13) and Avdi Imeri (KI48/13) were informed that the request to withdraw their signature was considered as refusal to sign the offered contract with the result the termination of the employment relationship between them and the Public Housing Enterprise.

21. On the same day, upon notice of the employer, the Applicant, Genc Shala (KI68/13) was informed that as a result of his refusal to sign the offered contract, the employment relationship between him and the Public Housing Company was terminated.

22. On 1 February 2006, upon notice of the employer, the Applicant, Naim Morina (KI46/13) was informed that the signed employment contract between him and the Public Housing Enterprise expired on 31 January 2006 and the contract would no longer be extended.

23. On 3 March 2006, following a complaint of the Applicants submitted to the Executive Agency of the Labour Inspectorate within the Ministry of Labour and Social Welfare, the Agency rendered a Decision, requesting the Public Housing Enterprise to consider the notice on termination of the employment relationship as being invalid.

24. On 20 March 2006, the Executive Agency of the Labour Inspectorate within the Ministry of Labour and Social Welfare also rendered a Decision requesting the Public Housing Company to suspend the execution of the notices on termination of employment relationship for employees of the Public Housing Company.

25. In the meantime, the Applicants had individually filed lawsuits with the Municipal Court in Prishtina.

26. On 14 April 2006, the Municipal Court in Prishtina by Judgment Cl. No 17/2006 decided to approve the lawsuit of Applicant, Genc Shala (KI68/13) as grounded and annul as unlawful the notice no. 01-100/1 of 20 January 2006 on the termination of employment relationship between the Applicant and the Public Housing Enterprise. The Municipal Court further obliged the Public Housing Enterprise to reinstate the Applicant to his previous working place with all the rights from the employment relationship, as of 1 January 2006 until the day of reinstatement to the employment place, including the compensation of specified procedure expenses.

27. On 10 May 2006, the Municipal Court in Prishtina by Judgment Cl. No 21/2006 decided to approve the lawsuit of Applicant, Avdi Imeri (KI48/13) as grounded and annul as unlawful the notice no. 01-99/1-50 of 20 January 2006 on the termination of employment relationship between the Applicant and the Public Housing Enterprise. The Municipal Court further obliged the Public Housing Enterprise to reinstate the Applicant to his previous working place within eight (8) days after the Judgment becomes final, including the compensation of specified procedure expenses.

28. On 17 May 2006, the Municipal Court in Prishtina by Judgment Cl. No 18/06 decided to approve the lawsuit of Applicant, Naim Morina (KI46/13) as grounded and annul as unlawful the notice no. 01-153/1 of 1 February 2006 on the termination of employment relationship between the Applicant and the Public Housing Enterprise. The Municipal Court further obliged the Public Housing Enterprise to reinstate the Applicant to his previous working place or any other position corresponding to his professional qualification, with all the rights from the employment relationship, as of 1 February 2006 until the day of reinstatement to the employment place, including the compensation of specified procedure expenses.

29. On 24 May 2006, the Municipal Court in Prishtina by Judgment Cl. No 19/06 decided to approve the lawsuit of Applicant, Bukurije Drançolli (KI47/13) as grounded and annul as unlawful the employment contract of 30 December 2005 and also annul the notice no. 01-99/3 of 20 January 2006 on the termination of employment relationship between the Applicant and the Public Housing Enterprise. The Municipal Court further obliged the Public Housing Enterprise to reinstate the Applicant to her previous working place with all the rights arising from the employment relationship, as of 11 January 2006 until the day of reinstatement to the employment place, including the compensation of specified procedure expenses.

30. Against the aforementioned Judgments of the Municipal Court in Prishtina, the Public Housing Enterprise filed appeals with the District Court in Prishtina.

31. The District Court in Prishtina in its Judgment Ac. Nr. 736/06 dated 28 February 2007 (Naim Morina, KI46/13), Judgment Ac. Nr. 691/06 dated 28 February 2007 (Bukurije Drançolli, KI47/13), Judgment Ac. Nr. 802/2006 dated 12 March 2007 (Avdi Imeri, KI48/13) and

Judgment Ac. Nr. 620/06 dated 8 February 2007 (Genc Shala, KI68/13) decided to reject the appeals of the Public Housing Enterprise as ungrounded and upheld the Judgments of the Municipal Court in Prishtina Cl. No 18/06 of 17 May 2006 (KI46/13), Cl. No 19/06 of 24 May 2006 (KI47/13), Judgment Cl. No 21/2006 of 10 May 2006 (KI48/13) and Cl. No 17/2006 of 14 April 2006 (KI68/13).

32. On an unspecified date, the Public Housing Company filed revisions with the Supreme Court of Kosovo because of an alleged essential violation of the Law on Contested Procedure and erroneous application of substantive law, proposing to quash the Judgments of the Municipal and District Court in Prishtina.

33. On 18 December 2008, the Supreme Court of Kosovo rendered the Judgments Rev.I.nr. 31/2008 (Naim Morina, KI46/13), Rev. I. nr. 29/2008 (Bukurije Drançolli, KI47/13), Rev. I. nr. 28/2008 (Avdi Imeri, KI48/13) and Rev.I.nr. 32/2008 (Genc Shala, KI68/13), whereby it decided to approve the revisions filed by the Public Housing Enterprise as grounded and to quash the Judgments rendered by Municipal Court and District Court in Prishtina and further reject the lawsuits filed by the Applicants as ungrounded.

34. The Supreme Court of Kosovo in its aforementioned Judgments found that the Municipal and District Court in Prishtina have erroneously applied the provisions of substantive law.

35. The Supreme Court further noted that the Public Housing Enterprise had notified the Applicants on the termination of the employment relationship before the expiry of the contracts, thereby acting in accordance with the Essential Labour Law of Kosovo and concluded that the will for extending the employment relationship with the Applicants was missing on the side of the Public Housing Enterprise in its capacity of employer.

36. On 30 April 2009, the Applicants, represented by their legal representative, against the Judgments of the Municipal Court individually filed proposals for repeating the procedures with the District Court in Prishtina. The Applicants filed the proposals for repeating the procedure against the Judgments of the Municipal Court due to the amendments made by the aforementioned Supreme Court judgments of 18 December 2008.

37. The District Court in Prishtina in its individual Decisions Ac. Nr. 648/2009 of 24 October 2011 (Naim Morina, KI46/13), Ac. Nr.

649/2009 of 16 September 2011 (Bukurije Drançolli, KI47/13), Ac. Nr. 651/2009 of 25 October 2010 (Avdi Imeri, KI48/13) and Ac. Nr. 650/2009 of 10 September 2011 (Genc Shala, KI68/13) rejected the proposal for repeating the procedures as being submitted out of time.

38. The District Court in Prishtina justified its Decisions to reject the proposals for repeating the procedures with reference to Article 234 of the Law on Contested Procedure, which foresees that the proposal for repeating the procedure should be submitted within thirty (30) days from the day the final decision was submitted to the party. The District Court referring to the case files found that the four above-mentioned Judgments of the Supreme Court dated 18 December 2008 were served to the legal representative of the Applicants on 26 January 2009, while the proposals for repeating the procedure were filed on 30 April 2009, meaning that the referrals were not submitted within the time limit prescribed by Law.

39. Against the Decisions of the District Court, the Applicants individually filed appeals with the District Court in Prishtina, arguing that their legal representative notified them on the Judgments of the Supreme Court on 2 April 2009.

40. The District Court in Prishtina in its Decisions Ac. nr. 1421/2011 of 4 December 2012 (Naim Morina, KI46/13), Ac. nr. 1373/2011 of 4 December 2012 (Bukurije Drançolli, KI47/13), Ac. nr. 1372/11 of 6 December 2012 (Avdi Imeri, KI48/13) and Ac. nr. 1371/2011 of 7 December 2012 (Genc Shala, KI68/13) decided to reject the appeal of the Applicant as ungrounded and upheld the Decisions of the District Court.

41. The District Court in Prishtina, in all of its aforementioned decisions referring to the provisions of the Law on Contested Procedure noted that procedural actions taken by the legal representative of the party within the bounds of his authorization are deemed to be actions of the party itself and such actions include receipt of letters and court decisions.

42. In conclusion, the District Court confirmed that the Proposals for repeating the procedure were submitted out of time.

Applicants' Allegation

43. The Applicants, Naim Morina, Bukurije Drançolli and Avdi Imeri (KI46/13, KI47/13 and KI48/13) allege violation of Article 46 [Protection of Property], Article 49 [Right to Work and Exercise of Profession], and Article 54 [Judicial Protection of Rights] of the Constitution, without offering any further elaboration.

44. The same Applicants further request the Constitutional Court their reinstatement to their previous working places, including financial compensation.

45. The Applicant, Genc Shala (KI68/13) requests the Constitutional review of the Judgment of the Supreme Court of Kosovo, Rev.I.nr.32/2008 dated 18 December 2008 and Decision of the District Court in Prishtina, Ac.no.1371/2011 dated 7 December 2012. He further requests the abovementioned Judgment and Decision [...]*" to be declared void, the matter to be returned to the Basic Court for retrial and in accordance with a Decision on merits of the Constitutional Court to decide on full execution of the Judgment of the Municipal Court, CI.no.17/2006 and Judgment of the District Court, Ac.no.620/2006".*

46. Applicant, Genc Shala (KI68/13) further alleges violation of Article 24 [Equality before the Law], Article 31 [Right to Fair and Impartial Trial], Article 49 [Right to Work and Exercise of Profession] of the Constitution, Article 6 [Right to a Fair Trial], and Article 14 [Prohibition of Discrimination] of the European Convention on Human Rights.

Assessment of the admissibility of the Referral

47. First of all, in order to be able to adjudicate the Applicant's Referral, the Court has to examine whether the Applicants have met all the requirements of admissibility, which are foreseen by the Constitution and further specified by the Law and Rules of Procedure.

48. The Court refers to Article 113, paragraphs 1 and 7 of the Constitution, which establishes that:

> *"The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties.*
>
> [...]
>
> *8. 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 considers that the Applicants are natural persons, and are authorized parties in accordance with Article 113.7 [Jurisdiction and Authorized Parties] of the Constitution.

50. The Court also determines whether the Applicants, in accordance with requirements of Article 113 (7) of the Constitution, and Article 47 (2) of the Law, have exhausted all legal remedies. In the present cases, the Court considers that the Applicants have exhausted all legal remedies available under the applicable laws.

51. The Applicants must also prove that they have fulfilled the requirements of Article 49 of the Law in relation to submission of Referrals within the legal time limit. It can be seen from the case filethat the Referrals were submitted within the four (4) month time limit, as prescribed by the Law and the Rules of Procedure.

52. In relation to the Referrals, the Court also takes into account Rule 36.2 of the Rules of Procedure, which provides:

"The Court shall reject a Referral as being manifestly ill-founded when it is satisfied that:

[...], or

(b) when the presented facts do not in any way justify the allegation of a violation of the constitutional rights, or

[...], or

(d) when the Applicant does not sufficiently substantiate his claim;"

53. In this connection, the Constitutional Court reiterates that it is not its task under the Constitution to act as a court of fourth instance, in respect of the decisions taken by the regular courts. It is the role of the latter to interpret and apply the pertinent rules of both procedural and substantive law (See, *mutatis mutandis*, *García Ruiz v. Spain*, No. 30544/96, ECtHR, Judgment of 21 January 1999, para. 28, see also case *No. KI70/11, Applicants Faik Hima, Magbule Himaand Bestar Hima,* Resolution on Inadmissibility of 16 December 2011).

54. The Constitutional Court can only consider whether the evidence has been presented in such a manner and the proceedings in general, viewed in the entirety, have been conducted in such a way that the Applicants had a fair trial (See, *inter alia*, *Edwards v. United Kingdom,* No. 13071/87, Report of European Commission of Human Rights of 10 July 1991).

55. Based on the case files, the Court notes that the reasoning provided in the last Decisions rendered by the District Court in Prishtina is clear and, after reviewing the entire procedures, the Court also found that the proceedings before the Supreme Court, have not been unfair and arbitrary (See, *mutatis mutandis, Shub v. Lithuania,* No. 17064/06, ECtHR, Decision of 30 June 2009). Furthermore, the Judgments of the Supreme Court of 18 December 2008 have been clear and well reasoned.

56. Moreover, the Applicants have not submitted any *prima facie* evidence indicating a violation of their rights under the Constitution (See *Vanek v. Slovak Republic*, No. 53363/99, ECtHR, Decision of 31 May 2005). The Applicants do not specify how Articles 24, 31, 46, 49 and 54 of the Constitution support their claim, as required by Article 113.7 of the Constitution and Article 48 of the Law.

57. For all the aforementioned reason, the Court concludes that the facts presented by the Applicants did not in any way justify the allegation of a violation of the constitutional rights and the Applicants did not sufficiently substantiate their claims.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 20 of the Law, and Rules 36.2 and 56.2 of the Rules of Procedure, on 5 July 2013, unanimously:

DECIDES

I. TO REJECT the Referral as Inadmissible;

II. TO NOTIFY this Decision to the Parties;

III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20 (4) of the Law;

IV. TO DECLARE this Decision effective immediately

Judge Rapporteur
Snezhana Botusharova

President of the Constitutional Court
Prof. Dr. Enver Hasani

KI 80/12, Sali Pepshi, date 02 August 2013- Constitutional review of non-execution of Decision of the District Court in Peja, Ac. no. 164/2011, of 5 July 2011

Case KI 80/12, Judgment of 5 July 2013

Keywords: Individual referral, admissible referral, violation of Article 31, 32 of the Constitution and Article 6 in conjunction with Article 13 of ECHR

The Applicant alleges that by non-enforcement of the court decisions by the Employing authority, the Municipality of Junik, his rights guaranteed by Constitution and international conventions have been violated: Article 31 of the Constitution [Right to Fair and Impartial Trial]; Article 6 of the European Convention for Protection of Human Rights [Right to a Fair Trial];

The Court finds that non-implementation of the judicial decisions by competent authorities of the Republic of Kosovo and the failure to ensure effective mechanisms in terms of the enforcement of decisions of the relevant authorities and courts, constitutes a violation of Article 31 of the Constitution, and as well of Article 6 in conjunction with Article 13 of the ECHR.

JUDGMENT
in
Case no. KI80/12
Applicant
Sali Pepshi
Constitutional review of non-execution of Decision
of the District Court in Peja, Ac. no. 164/2011, of 5 July 2011

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

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

Applicant

1 The Applicant is Mr. Sali Pepshi, with residence in Junik.

Challenged decision

2. The Applicant challenges the non-execution of the Decision of the District Court in Peja, Ac. no. 164/2011, of 5 July 2011, served on the Applicant on 15 July 2011, Decision of the Municipal Court in Deçan E. No. 648/2010, of 18 April 2011, and of the Decision of the Independent Oversight Board for Civil Service of Kosovo (hereinafter: the IOBCSK), no. 02 (67) 2010, of 11 May 2010, by the Municipality of Junik.

Subject matter

3. The Applicant's Referral is related to his appeal regarding the non-execution of the administrative decision of the IOBCSK, and of the court decisions in executive procedure, by the Municipality of Junik, in restoring the Applicant to his working positions, since all decisions are in favor of the same.

Legal basis

4. Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), Article 20 of the Law, and Rule 56(1) of the Rules of Procedure.

Procedure before the Court

5. On 3 September 2012, the Applicant filed his Referral before the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 5 October 2012, the President, by Decision no. GJR. KI80/12, appointed Judge Altay Suroy as Judge Rapporteur. On the same date, by Decision no. KSH. 80/12, the President appointed the Review Panel composed of Judges: Ivan Čukalović (Presiding), Kadri Kryeziu (member) and Arta Rama Hajrizi (member).

7. On 1 November 2012, the Court notified the Applicant, the Municipality of Junik, the Independent Oversight Board and the District Court in Peja of the registration of the Referral in the respective Court's register.

8. On 6 November 2012, the Court requested from the Applicant and the Municipality of Junik to submit to the Court Secretariat, within a deadline of 15 days, the Decision on dismissal of the Applicant issued by the Municipality of Junik.

9. On 13 November 2012, the Court requested from the Municipal Court in Deçan, to submit to the Court the complete case file E. No. 648/2010, within a deadline of 15 days.

10. On 19 November 2012, the Municipality of Junik submitted to the Court the decision on dismissal of the Applicant from work.

11. On 22 November 2012, the Municipality of Junik, by referring to the document of the Court of 1 November 2012, submitted to the Secretariat of the Court the response that has to do with the justification of the Municipality of Junik regarding non-execution of item 2 of the IOB Decision No. 02 (67) 2010 of 11 May 2010.

12. On 7 December 2012, the Municipal Court in Deçan submitted to the Court the incomplete case file E. No. 648/2010.

13. On 18 March 2013, the Court requested from the Basic Court in Peja and from the Municipality of Junik that within the time limit of 15 days

notify the Court about the last actions of the Basic Court for execution of the IOB Decision No. 02 (67) 2010 of 11 May 2010 and of the Decision of the District Court in Peja, Ac.no. 164/2011.

14. On 2 April 2013, the Court requested from the Applicant that within the time limit of 15 days, to inform the Court whether the monetary compensation was made to him for the period his contract was in force and whether the Applicant has undertaken any actions regarding the execution of this decision, after the Decision of the District Court in Peja Ac. No. 164/2011 was rendered.

15. On 8 April 2013, the Municipality of Junik submitted to the Court Secretariat its response to the request of the Court of 18 March 2013.

16. On 10 April 2013, the Applicant submitted to the Court the response to the request of the Court dated 2 April 2013.

Summary of facts

17. The Applicant, from 1 October 2009, had worked as a driver in the Municipality of Junik, as a civil servant, no. 22/1, of 1 October 2009 issued by the Municipality of Junik, until the termination of employment contract. The Applicant was under employment contract until 1 October 2010, with a possibility of extension.

18. Based on the document, submitted in the case file by the Applicant of 10 February 2010, the Applicant states that he was invited to the office of the Mayor of the Municipality of Junik on 5 February 2010, where he was notified that he was dismissed from work, without any reason. In this document, the Applicant requires from the Mayor of the Municipality of Junik a written explanation on the reasons of such dismissal.

19. On 8 February 2010, according to Decision no. 01/07, the Applicant was terminated his employment contract with the Municipal Assembly of Junik, with a justification that there was a lack of formal annual assessment and lack of assessment of probation period.

20. On 12 April 2010, the Applicant filed an appeal with the IOB against the decision on termination of employment relationships, demanding from the IOB to order the employment authority to review the case, and

restore the Applicant to his working relationship pursuant to his employment contract as Driver, in the Municipality of Junik.

21. On 11 May 2010, the IOB, based on the case files and legal acts in force, rendered the Decision no. 02 (67) 2010, thereby approving as grounded the appeal of the Applicant and annulling the Decision of the Municipality of Junik, no. 01/07, of 8 February 2010, on termination of employment relationship. By this Decision, the IOB ordered the employing authority to restore the Applicant to his working position as Driver, and enable the Applicant to enjoy all rights from employment relationship, in accordance with the employment contract no. 22/1 of 1 October 2009, within a deadline of 15 days.

22. On 27 May 2010, the Applicant notified the IOB that the Decision 02 (67) 10 of 11 May 2010, approved by this authority, is not being enforced by the Municipality of Junik.

23. On 8 June 2010, the IOB notified the President of Assembly of the Republic of Kosovo on the non-enforcement of decisions of this Board.

24. On 19 November 2010, the Municipal Court in Deçan rendered the Decision, E.no. 648/2010, allowing the execution based on the executive title of the Decision of the Independent Oversight Board of Kosovo, no. 02(67)2010 of 11 May 2010. With the executive title, the request of the creditor Sali Pepshi from Junik was approved, with the content: "the decision of the Municipality of Junik on termination of the work employment was annulled and the employee was obliged within 15 days upon receipt of the decision to allow the creditor to realize all his rights from the employment relation in accordance with the employment contract no. 22/1 of 1 October 2009."

25. On 10 May 2011, the IOB addressed the President of Assembly of the Republic of Kosovo, demanding from the President to extend his authorities within the competency of the President of Assembly of Assembly of the Republic of Kosovo, to compel the responsible persons in the Employing Authority to respect and enforce the decision of the IOB for restoring the Applicant, Mr. Pepshi to his working position.

26. On 5 July 2011, the District Court in Peja, acting upon the appeal filed by the debtor-Municipality of Junik, rendered the Judgment AC. No. 164/2011, whereby rejecting the appeal as ungrounded and upholding the first instance Decision E.no. 648/2010 of 18 April 2011.

27. On 12 February 2012, the Office of the Mayor of Municipality of Junik rendered the Decision no. 01/2, in reference to the decision of IOB no. 02 (67) 10 of 11 May 2010, thereby stating that the Applicant shall be compensated his personal income from the date of termination of employment relationship as per Decision no. 2/67 of 11 May 2010, until expiry of contract on 1 October 2010, and since the contract shall cease having legal effect, it shall be irrelevant, respectively it does not produce any legal effect.

28. On 10 April 2013, the Applicant responded to the issues raised by the Court and stated that he has not received any material compensation since the time when he was dismissed and after the Decision of the District Court in Peja, Ac.No. 164/2011 was rendered, he tried to do that, by requesting from the competent authorities of the Municipality of Junik, but his request was not taken into consideration.

Allegations of the Applicant

29. The Applicant alleges that by non-enforcement of the court decisions by the Employing Authority, the Municipality of Junik, his rights guaranteed by Constitution and international conventions have been violated:

    a. Article 31 of the Constitution [Right to Fair and Impartial Trial];

    b. Article 6 of the European Convention for Protection of Human Rights [Right to a Fair Trial];

Relevant legal provisions related to the procedures for execution of administrative and court decisions

Law on Executive Procedure (No. 03/L-008)

30. In the Republic of Kosovo, legal rules, the executive procedure and security of decisions are regulated by the Law on Executive Procedure (Law no. 03/L-008).

    "Article 1[Content of the law]

    1.1 By this law are determined the rules for court proceedings according to which are realised the requests in the basis of the

executive titles (executive procedure), unless if with the special law is not foreseen otherwise.

1.2 The provisions of this law are also applied for the execution of given decision in administrative and minor offences procedure, by which are foreseen obligation in money, 2 except in cases when for such execution, by the law is foreseen the jurisdiction of other body.

Article 24 [Execution title]

" Execution titles" are:

a) execution decision of the court and execution court settlement;

b) execution decision given in administrative procedure and administrative settlement, if it has to do with monetary obligation and if by the law is not foreseen something else;

c) notary execution document;

d) other document which by the law is called execution document."

Article 26 [Executability of decision]

"Given decision in administrative procedure is executable if as such is done according to the rules by which such procedure is regulated."

Article 294 [Reward of payment in case of return of worker to work]

1 Execution proposer who has submitted the proposal for return to work, has the right to request from the court the issuance of the decision by which will be assigned that, the debtor has a duty to pay to him, in behalf of salary the monthly amounts which has become requested, from the day when the decision has become final until the day of 105 return to work. By the same decision, the court assigns execution for realization of monthly amounts assigned."

Law No. 03/L-192 on IOBCSK

"Article 13 [Decision of the Board]

Decision of the Board shall represent a final administrative decision and shall be executed by the senior managing officer or the person responsible at the institution issuing the original decision against the party. Execution shall be effected within fifteen (15) days from the day of receipt of the decision.

Article 14 [The right to appeal]

The aggrieved party, alleging that a decision rendered by the Board is unlawful, may appeal the Board's decision by initiating an administrative dispute before the competent court within thirty (30) days from the day of the service of decision. Initiation of an administrative dispute shall not stay the execution of the Board's decision.

Article 15 [Procedure in case of non-implementation of the Board's decision]

a) Non-implementation of the Board's decision by the person responsible at the institution shall represent a serious breach of work related duties as provided in Law on Civil Service in the Republic of Kosovo.

b) If the person responsible at the institution does not execute the Board's decision within the deadline set out in Article 13 of this Law, the Board within fifteen (15) days from the day of expiry of execution deadline, shall notify in writing the Prime Minister and the immediate supervisor of the person responsible for execution.

c) Notification from paragraph 2 of this Article shall be considered as a requirement for initiation of disciplinary and material procedure against the person responsible for execution, which shall be conducted pursuant to provisions set out in Law on Civil Service of the Republic of Kosovo.

d) The aggrieved party may initiate, within thirty (30) days of the day of expiry of execution deadline, an execution procedure before the municipal court pursuant to Law for the execution procedure against the person and institution responsible for execution, because of the material and nonmaterial damage caused by that decision. If the competent court decides on reimbursement of the amount of salaries to the employee (person), who has disputed the

non-execution (non-execution of decision), the procedural costs and other eventual costs shall be incurred by the person responsible at the institution and he or she shall also be responsible for damage caused to the institution in accordance with Law."

Assessment of admissibility of Referral

31. In order to be able to adjudicate the Applicant's Referral, the Constitutional Court has to assess beforehand whether the Applicant has met all the requirements of admissibility, which are laid down in the Constitution, the Law and Rules of Procedure.

32. The Court should determine whether the Applicant is an authorized party, in accordance with 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."* With respect to this, the Court notes that the Referral was submitted in the Court by an individual. Therefore, the Applicant is authorized party to submit Referral before this Court, in accordance with the requirements of Article 113.7 of the Constitution.

33. The Court should also determine whether the Applicant has exhausted all legal remedies, since the District Court in Peja is considered "as the court of last instance to adjudicate the matters that are related to the execution." As a result, the Applicant has exhausted all available legal remedies, according to the law of Kosovo.

34. In addition, regarding the requirement that the Applicant had to submit his Referral within the four month time limit, after the final court decision on this case was served on him, the Court notes that the situation of non-execution of the Decision of the District Court in Peja Ac. no. 164/2011 of 5 July 2011; of the Decision of the Municipal Court in Deçan, E. No. 648/2010 of 18 April 2011; and of the IOBCSK Decision, No. 02 (67) 2010, of 11 May 2010; by the Municipality ofJunik "is continuing until to date" (*see Case KI50/12, Judgment of Constitutional Court of the applicant Viktor Marku,dated 16 July 2012).*

35. The concept of a "continuing situation" refers to a state of affairs which operates by continuous activities by or on the part of the State to render the applicants victims. *(Iordache v. Romania, Application 6817/02, Judgment dated 14.10.2008).*

36. In this regard, the Court assesses that the question that should be considered in this case, is whether the expiry of the 4 month time limit, from the day of service of the last court decision (15 July 2011) presents full obstacle to submit the Referral in the Court, or it is a continuing situation, which still exists and eventually constitutes violation of the Constitution, every day as long and the IOB decision and Decisions of the Courts are in force and remaining non-executed .

37. The Court considers that the 4 month time limit provided in Article 49 of the Law on the Constitutional Court regarding the individual Referrals should be applied with flexibility and in the cases that as a consequence have produced continuing situation and which may result in continuing constitutional violation to the detriment of the Applicant, the 4 month time limit cannot present an obstacle for reviewing the merits of such a Referral submitted in the Court.

38. Furthermore, the Court notes that the Applicant has met the requirements of Article 48 of the Law: *"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."* With respect to this, the Court notes that the Applicant alleges violation of Article 31 (Right to Fair and Impartial Trial) of the Constitution and Article 6 of the European Convention.

39. The Court considers that the Applicant has met all requirements for admissibility.

Assessment of constitutionality of Referral

40. Since the Applicant has met procedural requirements for admissibility, the Court should review the merits of the Applicant's Referral must consider grounds of the Applicant's Referral on the merits.

41. With regard to the Applicant's submission, the Court observes that the Applicant is not challenging any decision of public authorities, because all decisions are in his favor, starting from the IOBCSK decision and up to the decision of the District Court in Peja. The subject matter of the Applicant's Referral has to do with non-execution of the IOBCSK decision and the courts' decisions by the authorities of Municipality of Junik.

42. Moreover, the Court notes that on 11 May 2010, the IOBCSK approved the appeal of the Applicant No. 02 (67) 2010, annulled the decision on termination of employment relationship and requested from the Employing Authority that within time limit of 15 days from the day of service of the decision, enables the Applicant to earn all rights that derive from the employment relationship. The IOBCSK further concluded that the IOBCSK decision should be executed by the Mayor of the Municipality of Junik and by Director for Administration and Personnel of the Municipality.

43. In addition, the Court notes that on 19 November 2010, the Municipal Court in Deçan approved the Applicant's proposal on execution of the IOBCSK Decision and obliged the debtor, namely the Mayor of Municipality of Junik, to take all necessary measures to restitute the Applicant to his previous job position, with all rights that derive from the employment relationship (Decision E.no. 648/2010). This Decision was upheld by the District Court in Peja (Ac.no. 164/2011).

44. In relation to the above, the Court holds that the Applicant although has earned the right violated by the Employing Authority, by all administrative and court decisions, despite his continuing efforts he could not realize this right.

45. The failure to take concrete measures for execution of final court decisions by any municipality is not inconsistent with the requirements of the Article 124.6 of the Constitution, which clearly provides that:

> *"Municipalities are bound to respect the Constitution and laws and to apply court decisions."*

46. Constitutional Court, in terms of clarifying the IOBCSK's position and jurisdiction, considers that IOBCSK is an independent institution constituted by law, in accordance with Article 101.2 of the Constitution. Therefore, all obligations arising from this institution, regarding the matters that are under the jurisdiction of this institution produce legal effects for other relevant institutions, where the status of employees is regulated by the Law on Civil Service of the Republic of Kosovo. The decision of this institution provides final administrative decision, and as such should be executed by the competent court as proposed for execution by a creditor in terms of realization of the right earned in administrative procedure.

47. Article 6 of the ECHR is also applied to administrative phases of judicial process respectively is within the framework "for the Right to a Fair and

Impartial Trial" a right guaranteed by Article 31 of the Constitution of the Republic of Kosovo. From this it follows that the non-implementation of the IOBCSK decision as well as the non-execution of the court decisions is an element of Article 6 of the Convention, and consequently presents its violation.

48. Furthermore, the Court refers to Article 54 of the Constitution that highlights the fact 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".*

49. The Constitutional Court notes that is the right of an unsatisfied party to initiate court proceedings in case of failure of realization of the earned right as defined in Article 31 and Article 32 of the Constitution and Article 6 in conjunction with Article 13 of the European Convention on Human Rights (ECHR) and that it would be meaningless if the legal system of the Republic of Kosovo would allow that a final judicial decision, to remain ineffective in disfavor of one party. Interpretation of the above Articles exclusively deals with the access to the court. Therefore, non-effectiveness of procedures and the non-implementation of the decisions produce effects that bring to situations that are inconsistent with the principle of Rule of Law, a principle that the Kosovo authorities are obliged to respect *(see ECHR Decision in the case Romashov against Ukraine, Submission No. 67534/01. Judgment of 25 July 2004).*

50. The Court considers that, the execution of a decision rendered by any court should be considered as an integral part of the right to fair trial, a right guaranteed by the above articles *(see Hornsby v. Greece case, Judgment of 19 March 997, reports 1997-11, p. 510, par. 40).* In this specific case, the Applicant should not be deprived of the benefit of a final decision, which is in his favor. No authority can justify non-implementation intending to obtain revision and fresh review of the case *(See Sovtranstvo Holding against Ukraine, No. 48553/99, § 72, ECHR 2002-VII).* Competent authorities, therefore, have the obligation to organize a system for implementation of decisions which is effective in law and practice, and should ensure their application within reasonable time, without unnecessary delays *(See Pecevi v. former-*

Republic of Yugoslavia and Macedonia, no. 21839/03, 6 November 2008).

51. In conclusion, this Court finds that non-implementation of the judicial decisions by competent authorities of the Republic of Kosovo and the failure to ensure effective mechanisms in terms of the enforcement of decisions of the relevant authorities and courts, constitutes a violation of Article 31 of the Constitution, and as well of Article 6 in conjunction with Article 13 of the ECHR.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 20 of the Law, and Rule 56 (1) of the Rules of Procedure, in its session held on 5 July 2013, unanimously

DECIDES

I. TO DECLARE the Referral Admissible;

II. HOLDS that there has been a breach of Articles 31, 32 of the Constitution and Article 6 in conjunction with Article 13 of ECHR;

III. HOLDS that the final and executable decision of IOB, Decision No. 02 (67) 2010 of 11 May 2010, the Decision of District Court in Peja, Ac. no. 164/2011 of 5 July 2011, the Decision of the Municipal Court in Deçan, E. no. 648/2010 of 18 April 2011 must be executed by the competent authorities, in particular, the Municipality of Junik.

IV. Pursuant to Rule 63 (5) of the Rules of Procedure, the Municipality of Junik shall submit information to the Constitutional Court about the measures taken to enforce this Judgment of the Constitutional Court;

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

VI. This Judgment is effective immediately.

Judge Rapporteur
Altay Suroy

President of the Constitutional Court
Prof. Dr. Enver Hasani

KI 112/12, Adem Meta, date 02 August 2013 - Constitutional Review of the Decision of the District Court in Mitrovica, Ac. Nr. 61/12, dated 13 February 2012

Case KI 112/12, Judgment of 5 July 2013

Keywords: individual referral, right to fair and impartial trial, right to legal remedies, judicial protection of rights, independent oversight board (IOB), admissible referral

The Applicant requests the implementation of his right to return to his working place and the execution in its entirety of the Decision of the Independent Oversight Board of Kosovo, as well as the annulment of the Decisions of the Municipal Court in Skenderaj and of the District Court in Mitrovica, in the part where his request to return to his working place was not approved. The Applicant alleges that the Decision of the District Court, Ac. No. 61/12, dated 13 February 2012, violated his rights guaranteed by Article 21 [General Principles], Article 31 [Right to Fair and Impartial Trial], Article 32 [Right to Legal Remedies], Article 49 [Right to Work and Exercise Profession] and Article 54 [Judicial Protection of Rights] of the Constitution as well as his rights under Article 6 [Right to a Fair Trial] and Article 13 [Right to an effective remedy] of the European Convention on the Protection of Human Rights and Fundamental Freedoms (ECHR).

The Court considered that the execution of the Decision of the Independent Oversight Board of Kosovo, which is final and binding, must be considered as an integral part of the right to a fair trial, a right guaranteed by Article 31 of the Constitution and Article 6 of ECHR.

The Court further noted that the inexistence of legal remedies or of other effective mechanisms, which would enable the obligation of the respective bodies for the timely execution of the IOBK Decision, also raises the issue of the right to an effective legal remedy, as guaranteed by Articles 32 [Right to legal Remedies] of the Constitution, according to which, each person has the right to use legal remedies against the judicial and administrative decisions which violate his rights or interests as provided by law.

In conclusion, the Court found that the non-execution of the entirety of the IOBK Decision by the regular courts, and the failure of the competent authorities of the Republic of Kosovo to ensure effective mechanisms to ensure the enforcement of respective decisions of the relevant authorities and court

decisions, constitutes a violation of Articles 31, 32 and 54 of the Constitution, and of Articles 6 and 13 of the ECHR.

JUDGMENT
in
Case no. KI112/12
Applicant
Adem Meta
Constitutional Review of the Decision of the District Court in Mitrovica, Ac. Nr. 61/12, dated 13 February 2012

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

Composed of:

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

Applicant

1. The Referral was submitted by Adem Meta (hereinafter: the Applicant), with residence in Skenderaj.

Challenged decision

2. The Applicant challenges the Decision of the District Court in Mitrovica, Ac. No. 61/12, dated 13 February 2012, served on the Applicant on 22 February 2012.

Subject matter

3. The Applicant requests the implementation of his right to return to his working place and the execution in its entirety of the Decision of the Independent Oversight Board of Kosovo (hereinafter: IOBK), as well as the annulment of the Decisions of the Municipal Court in Skenderaj (No. 0242/2011) and of the District Court in Mitrovica (Ac. No. 61/12), in the parts where his request to return to his working place were not approved.

Legal basis

4. The Referral is based on Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), Article 22 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo, dated 15 January 2009, (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

5. On 7 November 2012, the Applicant submitted his Referral to the Court.

6. On 4 December 2012, the President appointed Deputy President Ivan Čukalović as Judge Rapporteur and the Review Panel composed of judges Almiro Rodrigues (Presiding), Snezhana Botusharova and Kadri Kryeziu.

7. On 13 December 2012, the Court notified the Applicant, the IOBK, the Municipality of Skenderaj and the District Court in Mitrovica of the registration of the Referral.

8. On 14 March 2013, the Court requested from the Applicant additional information regarding the actions taken by the Applicant and by relevant institutions regarding the execution of the IOBK Decision No. A 02/200/2011, dated 13 September 2011, and the Decision Ac. No. 61/12, dated 13 February 2012, of the District Court in Mitrovica.

9. On 19 March 2013, the Applicant additionally submitted to the Court: 1. IOBK Notification on non-execution of the IOBK Decision sent to the Prime Minister of the Republic of Kosovo dated 24 October 2011; 2. IOBK Notification regarding non-execution of IOBK Decision sent to the President of the Assembly of the Republic of Kosovo on 24 October 2011; 3. Report with Recommendation of the Ombudsperson sent to the Mayor of the Municipality of Skenderaj on 5 November 2012; and 4. Response of the Mayor of the Municipality to the Report of the Ombudsperson on 8 November 2012**.**

10. On 5 July 2013, 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 fact as submitted by the Applicant

11. On 10 May 2011, the Head of Personnel of the Office of the Mayor of the Municipality of Skenderaj rendered Decision No. 118/347 on the elimination of the job position of ProfessionalOfficer of Historical Archives in the Directorate for Culture, Youth and Sport of the Municipality of Skenderaj, which function was exercised by the Applicant. The Decision of the Head of Personnel was based, *inter alia*, on the Decision in execution of the Municipal Administration Reform, No. 02-112-333, signed by the Mayor of the Municipality of Skenderaj, on 5 May 2011, whereby the position of ProfessionalOfficer of Historical Archives was eliminated in the Directorate for Culture, Youth and Sport.

12. On 9 June 2011, the Applicant filed an appeal to the Committee for dispute resolution and appeals of the Municipality of Skenderaj (No. 118-639).

13. According to the documentation attached to the Referral, the Committee for dispute resolution and appeals of the Municipality of Skenderaj did not render any decision on the Applicant's appeal.

14. On 8 August 2011, the Applicant filed an appeal with the IOBK (No. 02/200/2011), alleging that the Decision on elimination of the job position was made in contradiction with the provisions of the administrative procedure, the provisions of the Law on Civil Service of the Republic of Kosovo, no. 03/L-149, and theRegulation on Internal Organization of the Municipality of Skenderaj, as well as it was an erroneous application of the substantive law. The Applicant requested his return to his working place and compensation of lost salary, starting from 1 May 2011 until the date of the execution of the decision.

15. On 13 September 2011, the IOBK (Decision No. A 02/200/2011) approved the appeal of the Applicant, annulled Decision No. 118-347 on elimination of the job position, rendered by the Head of Personnel of the Office of the Mayor of the Municipality of Skenderaj, and ordered the Municipal Administration of Skenderaj that, within the time limit of 15 days from the date of receipt of the decision, the Applicant's return to his working place with all rights and obligations that derive from the employment relationship, including the compensation of monthly salaries in a retroactive manner. The IOBK further stated that the IOBK Decision should be executed by the Head of the Municipal Administration in Skenderaj and the Head of Personnel.

16. On 11 October 2011, the Applicant filed with the Municipal Court in Skenderaj a request for execution of the IOBK Decision.

17. On 24 October 2011, the IOBK informed the President of the Assembly and the Prime Minister regarding the non-execution of the IOBK decision by the employment authority.

18. On 8 November 2011, the Municipal Court of Skenderaj (Decision No. 0242/2011) rejected theproposal of the Applicant on the execution of the Decision with respect to his job position and approved only the proposal on compensation of salaries. The Municipal Court reasoned that *"[...] the decision of the Independent Oversight Board for Civil Service of Kosovo for return to the working place is not an executive title"*.

19. On 24 December 2011, against the Decision of the Municipal Court of Skenderaj (No. 0242/2011) the Applicant filed an appeal with the District Court in Mitrovica.

20. On 13 February 2012, the District Court in Mitrovica (Decision Ac. No. 61/12) rejected the Appeal of the Applicant as ungrounded and upheld in its entirety the Decision No. 0242/2011 of the Municipal Court in Skenderaj. The District Court concluded that the execution of the decision on return to his working place is the obligation of the relevant institution and, in case of non-fulfillment of this obligation, the Prime Minister's Office is responsible for its execution.

21. On 5 November 2012, the Ombudsperson submitted to the Mayor of the Municipality of Skenderaj a Report with Recommendation to take measures for execution of the Decision A 02/200/2011 of the IOBK, dated 13 September 2011.The Ombudsperson Report considered that [...]*"Non-execution of the final administrative decision of IOBK by the Municipality of Skenderaj constitutes a violation of human rights and weakens the trust of citizens on the implementation of justice and rule of law." [...]* and recommended to the Municipal Assembly of Skenderaj to take immediate measures for return of the Applicant to his working place, without any further delay and in compliance with the IOBK decision.

22. On 12 November 2012, the Mayor of the Municipality of Skenderaj responded to the Ombudsperson Institution, informing it that the IOBK decision was rendered in a unilateral way, as the appeal of the Applicant and the abovementioned decision was not notified to the employment

authority, thus making impossible the presentation of facts by the other party.

Applicant's allegations

23. As it was said above, the Applicant alleges that the Decision Ac. No. 61/12 of the District Court, dated 13 February 2012, violated his rights guaranteed by Article 21 [General Principles], Article 31 [Right to Fair and Impartial Trial], Article 32 [Right to Legal Remedies], Article 49 [Right to Work and Exercise Profession] and Article 54 [Judicial Protection of Rights] of the Constitution as well as his rights under Article 6 [Right to a Fair Trial] and Article 13 [Right to an effective remedy] of the European Convention on the Protection of Human Rights and Fundamental Freedoms (ECHR).

24. The Applicant requests the Constitutional Court to annul the decisions of the Municipal Court in Skenderaj (No. 0242/2011, dated 8 November 2011) and District Court in Mitrovica .(Ac. No. 61/12, dated 13 February 2012), in the part in which his request for return to his working place was not approved.

Relevant legal provisions relating to procedures for the execution of administrative and court decisions

Law on Executive Procedure (Law no. 03/L-008)

25. Article 1 [Content of the law]

"1.1By this law are determined the rules for court proceedings according to which are realised the requests in the basis of the executive titles (executive procedure), unless if with the special law is not foreseen otherwise.

1.2 The provisions of this law are also applied for the execution of given decision in administrative and minor offences procedure, by which are foreseen obligation in money, except in cases when for such execution, by the law is foreseen the jurisdiction of other body."

26. Article 24 paragraph 1 [Execution title]

"Execution titles are:

a) execution decision of the court and execution court settlement;

b) execution decision given in administrative procedure and administrative settlement, if it has to do with monetary obligation and if by the law is not foreseen something else;

c) notary execution document;

d) other document which by the law is called execution document."

27. Article 26 paragraph 3 [Executability of decision]

"A *given decision in administrative procedure is executable if as such is done according to the rules by which such procedure is regulated."*

28. Article 294 paragraph 1 [Reward of payment in case of return of worker to work]

"Execution proposer who has submitted the proposal for return to work, has the right to request from the court the issuance of the decision by which will be assigned that, the debtor has a duty to pay to him, in behalf of salary the monthly amounts which has become requested, from the day when the decision has become final until the day of return to work. By the same decision, the court assigns execution for realization of monthly amounts assigned."

Law no. 03/L-192 on Independent Oversight Board of Kosovo Civil Service

29. Article 13 [Decision of the Board]

"Decision of the Board shall represent a final administrative decision and shall be executed by the senior managing officer or the person responsible at the institution issuing the original decision against the party. Execution shall be effected within fifteen (15) days from the day of receipt of the decision."

30. Article 14 [The right to appeal]

"The aggrieved party, alleging that a decision rendered by the Board is unlawful, may appeal the Board's decision by initiating an administrative dispute before the competent court within thirty (30) days from the date of the service of the decision. Initiation of an

administrative dispute shall not stay the execution of the Board's decision."

31. Article 15 [Procedure in case of non-implementation of the Board's decision]

"Non-implementation of the Board's decision by the person responsible at the institution shall represent a serious breach of work related duties as provided in the Law on Civil Service in the Republic of Kosovo.

1. If the person responsible at the institution does not execute the Board's decision within the deadline set out in Article 13 of this Law, the Board within fifteen (15) days from the day of expiry of execution deadline, shall notify in writing the Prime Minister and the immediate supervisor of the person responsible for execution.

2. Notification from paragraph 2 of this Article shall be considered as a requirement for initiation of disciplinary and material procedure against the person responsible for execution, which shall be conducted pursuant to provisions set out in the Law on Civil Service of the Republic of Kosovo.

3. The aggrieved party may initiate, within thirty (30) days of the date of expiry of the execution deadline, an execution procedure before the municipal court pursuant to Law for the execution procedure against the person and institution responsible for execution, because of the material and non-material damage caused by that decision. If the competent court decides on reimbursement of the amount of salaries to the employee (person), who has disputed the non-execution (non-execution of decision), the procedural costs and other eventual costs shall be incurred by the person responsible at the institution and he or she shall also be responsible for damage caused to the institution in accordance with Law.

4. *The Board shall have to notify in writing for the decisions that have not been executed even the Assembly of the Republic of Kosovo."*

Assessment of admissibility of the Referral

32. First of all, the Court examines whether the Applicant has met all the requirements of admissibility foreseen by the Constitution and further specified by the Law and Rules of Procedure.

33. The Court should first examine whether the Applicant is an authorized party to submit a referral with the Court, in accordance with requirements of Article 113.7 of the Constitution.

Article 113.7 of the Constitution 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."*

34. The Court considers that the Applicant is a natural person and is an authorized party, in compliance with Article 113.7 [Jurisdiction and Authorized Parties] of the Constitution.

35. The Court must also determine if the Applicant, in compliance with the requirements of Article 113 (7) of the Constitution, as well as Article 47 (2) of the Law, has exhausted all legal remedies. The Applicant has exhausted all legal remedies within the employment institution and with his appeal in the IOBK, which decision is final in the administrative procedure. Equally, he has used the last legal remedy in the executive procedure, which in the present case is the Decision Ac. No. 61/12 of the District Court in Mitrovica, dated 13 February 2012, against which no right of appeal is allowed. As a result, the Applicant has exhausted all available legal remedies, according to the legislation in force.

36. With regard to the requirement, according to which the Applicant should have submitted the Referral within 4 months after rendering of the final court decision regarding the case, the Court determines that the situation of the non-execution of the IOBK decision with respect to the return to the working place by the District Court in Mitrovica (Decision Ac. No. 61/12, dated 13 February 2012) continues even today. A similar situation of the non-execution of both the Court and IOBK decisions has arisen in a number of other cases before the Constitutional Court, in which cases the Court has confirmed the existence of a continuing situation and, thereby, the non-applicability of the established time limit (See *Case No. KI 08/09*, Applicant *IndependentTrade Union of the employees of the Steel Factory IMK Ferizaj*Judgment dated 17 December 2010 and *Case KI 50/12*, Applicant *Agush Lolluni*, Judgment dated 16 July 2012). Thus, the fact

that the Applicant has not submitted the Referral within four (4) months of the final court decision is rendered irrelevant by the continuing situation. That exception is well-established in the jurisprudence of the European Court of Human Rights.

37. The Court further notes that the Applicant challenges the failure of the execution of the IOBK Decision in its entirety by the competent courts. Therefore, the requirement for the submission of the Referral within the time limit of four months does not apply in the case of the non-execution of the decision by the public authority (See *mutatis mutandisIatridis v. Greece* No. 59493/00, ECtHR, Judgment of 19 October 2000). The ECtHR explicitly noted, in a similar situation arising in *Iatridis v. Greece*, that the time limit rule does not apply where there is a refusal of the executive to comply with a specific decision.

38. Regarding the fulfillment of the requirement provided by Article 48 of the Law, which states that "*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*" the Court notes that the Applicant has accurately specified what rights, guaranteed by the Constitution and other acts have been violated to him, stating that the decisions of the Municipal Court (*No. 0242/2011, dated 8 November 2011)* in Skenderaj and that of the District Court in Mitrovica (Ac. No. 61/12, dated 13 February 2012), as the acts of public authority, are the subject of his challenge.

39. Taking into consideration that the Applicant is an authorized party and has exhausted all legal remedies, that he has met the requirement to submit the Referral to the Court within the legal deadline as a result of a continuing situation, and that he has accurately clarified the alleged violation of the rights and freedoms, including the decisions, which he challenges, the Court finds that the Applicant has met all the requirements for admissibility.

Assessment of the substantive legal aspects of the Referral

40. Since the Applicant has met all procedural requirements for admissibility, the Court reviews the merits of the Applicant's Referral.

I. Regarding the Right to Fair and Impartial Trial

41. The Applicant complains that his right to fair and impartial trial as guaranteed by Article 31 of the Constitution was violated.

42. Article 31.1 of the Constitution establishes:

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

43. The Court notes that the Applicant challenges the Decision AC. No. 61/12 of the District Court in Mitrovica, dated 13 February 2012, whereby the Decision E. no. 0242/2011 of the Municipal Court in Skenderaj, dated 8 November 2011, was upheld, rejecting the proposal of the Applicant for execution of the IOBK Decision regarding the return to his working place and approving only the proposal on compensation of salaries.

44. The Court observes that, on 13 September 2011, the IOBK (Decision No. A 02/200/2011) approved the appeal of the Applicant, requesting from the Municipal Administration of Skenderaj that, within the time limit of 15 days from the date the decision was served on them, to return the Applicant to his job position with all rights and obligations that derive from the employment relationship, including the compensation of monthly salaries in a retro-active manner. The IOBK Decision states that:

> "*The Board Decision presents final administrative decision and is executed by the official senior level or by the responsible person of the institution that has rendered the original decision towards the party.*"

45. In this respect, the Court recalls that the IOBK is an independent institution established by law, in accordance with Article 101.2 of the Constitution. Therefore, all obligations arising from decision of this institution, regarding the matters that are under its jurisdiction, produce legal effects for other relevant institutions, where the status of employees is regulated by the Law on Civil Service of the Republic of Kosovo. The decision of the IOBK provides final and binding decisions, and that the appeal filed against the IOBK decision does not stay the execution of the Decisions of IOBK (See *Case KI 129/11, Applicant Viktor Marku*, Judgment of 17 July 2012).

46. On 13 February 2012, the District Court in Mitrovica (Decision AC. No. 61/12) upheld the Decision E. No. 0242/2011 of the Municipal Court of

Skenderaj, dated 8 November 2011, regarding the execution of the IOBK Decision only concerning the part of compensation of salaries. The District Court in Mitrovica added that, in compliance with Article 24 [Executive Title] of the Law No. 03/L-008 on the Executive Procedure, the part of the execution on the return of the Applicant to his working place is the obligation of the responsible persons of the respective institution and, in case of non-fulfillment of this obligation, the Office of Prime Minister is responsible for execution of the decision in respect of the return to his working place.

47. Based on the facts above, the Court notes that, regarding the IOBK Decision, the Applicant made efforts for exhausting all available remedies, in compliance with the legislation in force, but despite his efforts, the IOBK Decision was not executed by the competent bodies of the Municipality of Skenderaj, nor by the competent courts regarding the execution of the part of the decision on his return to his working place.

48. The Court observes that Article 6 of the ECHR, also applies for administrative proceedings, as they are within the framework "*of the right to fair and impartial trial*", a right also guaranteed by Article 31 of the Constitution.

49. The Court considers that the execution of a final and binding decision must be considered as an integral part of the right to a fair trial, a right guaranteed by Article 31 of the Constitution and Article 6 of ECHR. The above-mentioned principle is of greater importance within the administrative procedure regarding a dispute, which result is of special importance for the civil rights of the party in dispute (See *mutatis mutandis, Hornsby v. Greece*, No. 18357/91, Judgment of 19 March 1997, paras. 40-41).

II. Regarding the Right to Effective Legal Remedies

50. The Applicant also complains that the right to an effective legal remedy, guaranteed by Articles 32 and 54 of the Constitution is violated.

51. Article 32 [Right to Legal Remedies] establishes that:

> *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.*

52. Also Article 54 [Judicial Protection of Rights] establishes 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.*

53. In addition, Article 13 of the ECHR states that:

> *Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.*

54. The Court notes that the inexistence of legal remedies or of other effective mechanisms, which would enable the obligation of the respective bodies for the timely execution of the IOBK Decision, raises issues of the right to an effective legal remedy, as guaranteed by Articles 32 [Right to Legal Remedies], 54 [Judicial Protection of Rights] of the Constitution, in conjunction with Article 13 of the ECHR. According to these provisions, each person has the right to use legal remedies against the judicial and administrative decisions, which violate his rights or interests as provided by law (See *mutatis mutandis, Voytenko v. Ukraine*, No. 18966/02, Judgment dated 29 June 2004, paragraphs 46-48).

55. Furthermore, the competent authorities have the obligation to organize an efficient system for the implementation of decisions which are effective in law and practice, and should ensure their application within a reasonable time, without unnecessary delays (See *Case KI 50/12*, Applicant *Agush Lolluni*, Judgment of 16 July 2012 and also see *Pecevi v. Former Yugoslavian Republic of Macedonia,* no. 21839/03, ECtHR, Judgment of 6 November 20*08).*

56. The Court again refers to Article 54 of the Constitution. In this connection, the Constitutional Court notes that it would be meaningless if the legal system of the Republic of Kosovo would allow that a final judicial decision remains ineffective to the detriment of one party. Interpretation of the above Articles exclusively deals with access to, and protection by, courts. Therefore, non-effectiveness of procedures and the non-implementation of the decisions produce effects that result in situations that are inconsistent with the principle of the Rule of Law, a principle clearly affirmed in the ECtHR jurisprudence and that the

Kosovo authorities are obliged to respect *(*See *mutatis mutandis, Romashov v. Ukraine*, No. 67534/01*,* Judgment of 27 July 2004*).*

III. Regarding Articles 21 and 49 of the Constitution

57. The Applicant also alleges a violation of Articles 21 and 49 of the Constitution.

58. Article 21 of the Constitution lays down the general principles that apply to the fundamental rights and freedoms guaranteed in Chapter II of the Constitution. It establishes that:

> *1. Human rights and fundamental freedoms are indivisible, inalienable and inviolable and are the basis of the legal order of the Republic of Kosovo.*
> *2. The Republic of Kosovo protects and guarantees human rights and fundamental freedoms as provided by this Constitution.*
> *3. Everyone must respect the human rights and fundamental freedoms of others.*
> *4. Fundamental rights and freedoms set forth in the Constitution are also valid for legal persons to the extent applicable.*

59. Article 49 of the Constitution establishes that:

> *1. The right to work is guaranteed.*
>
> *2. Every person is free to choose his/her profession and occupation.*

60. The Court considers that an alleged violation of the right to workis not relevant in this case, as the non-execution in its entirety of the IOBK decision is a matter that falls within the ambits of the rights guaranteed by Articles 31, 32 and 54 of the Constitution, in conjunction with Articles 6 and 13 of the ECHR.

61. Ultimately, the Court does not consider it necessary to deal further with the allegations of a violation of Articles 21 and 49 of the Constitution, in particular as it has found violations of relevant Articles 31, 32 and 54 of the Constitution and Articles 6 and 13 of the ECHR.

IV. Conclusion

62. In conclusion, the Court finds that the non-execution of the entirety of the IOBK decision by the regular courts, and the failure of the competent authorities of the Republic of Kosovo to ensure effective mechanisms to ensure the enforcement of respective decisions of the relevant authorities and court decisions, constitutes a violation of Articles 31, 32 and 54 of the Constitution, and of Articles 6 and 13 of the ECHR. Consequently, the right to a fair trial and to an effective legal remedy, guaranteed by the above-mentioned Articles, was violated and the final IOBK Decision should be executed in its entirety, whereas, for reasons set out in paragraphs 60 and 61 of this Judgment, the Court considers unnecessary to deal with the allegation of a violation of Articles 21 and 49 of the Constitution.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 20 of the Law, and Rule 56 (1) of the Rules of Procedure, unanimously, at its session held on 5 July 2013,

DECIDES

I. TO DECLARE the Referral admissible;

II. TO HOLD that there has been violation of Articles 31, 32 and 54 of the Constitution and Articles 6 and 13 of ECHR;

III. TO HOLD that it is unnecessary to deal with the allegation of a violation of Articles 21 and 49 of the Constitution;

IV. TO REMAND the Decision Ac. Nr. 06/12 of 13 February 2012 of the District Court in Mitrovica – Branch in Skenderaj for reconsideration to the Basic Court in Mitrovica in conformity with this Judgment;

V. TO ORDER the Basic Court in Mitrovica – Branch in Skenderaj pursuant to Rule 63 (5) of the Rules of Procedure to submit information to the Constitutional Court about the measures taken to enforce this Judgment of the Constitutional Court;

VI. TO NOTIFY this Decision to the Parties;

VII. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20 (4) of the Law;

VIII. TO DECLARE this Decision effective immediately.

Judge Rapporteur
Ivan Čukalović

President of the Constitutional Court
Prof. Dr. Enver Hasani

KI 16/13, Armand Morina, Director of "Morina films", date 07 August 2013- Constitutional review of the Judgment of the District Commercial Court in Prishtina II C. no. 13/2011, dated of 28 February 2012

Case 16/13, Decision to strike out the Referral of 14 June 2013

Keywords: individual referral, constitutional review of the judgment of the district court

The Applicant filed 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 15 January 2009.

The Applicant filed the Referral with the Constitutional Court of the Republic of Kosovo on 28 September 2012, requesting constitutional review of the Judgment of the District Commercial Court in Prishtina.

The Applicant did not specify which articles of the Constitution were breached by this judgment.

On 16 April 2013, the Applicant requested the Court that "the Case KI16-13 to be temporarily withdrawn until a final decision of the Appellate Court."
With the Decision of the President (No.GJR. KI16/13, of 14 February 2013), Judge Rapporteur is appointed Judge Altay Suroy. On the same day, with the Decision of the President KSH 16/13, is also appointed the Review Panel composed of judges Robert Carolan (Presiding), Ivan Čukalović and Enver Hasani.

In reviewing the case, the Court concluded that there are no extraordinary circumstances with respect to human rights that would require further review of the case and therefore decided that the case be struck out of the list.

Taking into account all circumstances of the case, in the session of 14 June 2013, the Court did not find any reason to decide on the Referral. Therefore, the Referral is struck out of the list.

DECISION ON STRIKING OUT THE REFERRAL
in
Case no. KI16/13
Applicant
Armand Morina, Director of "Morina films" from Prishtina
Constitutional review of the Judgment of the District Commercial Court in Prishtina
II C. no. 13/2011, dated of 28 February 2012

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Enver Hasani, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Kadri Kryeziu, Judge and
Arta Rama-Hajrizi, Judge.

Applicant

1. The Applicant is Armand Morina from Prishtina, Director of "Morina Films" from Prishtina.

Subject matter

2. On 28 September 2012, the Applicant challenges the constitutionality of the Judgment of the District Commercial Court in Prishtina, II C. 13/2011, of 28 February 2012. However, the Applicant did not specify which articles of the Constitution were allegedly breached by this judgment.

Legal basis

3. 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 15 January 2009(hereinafter: the Law), and Rules 32 and 56.2 of the Rules of Procedure.

Proceedings before the Court

4. On 20 September 2012, the Applicant filed a Referral with the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).

5. On 25 March 2013, the Constitutional Court requested the Applicant to present the status of his case before the regular Courts, and to specify which concrete articles of the Constitution were violated in his case.

6. On 16 April 2013, the Applicant requested the Court that *"the case KI 16-13 of 20 September 2012 to be temporarily withdrawn until a final decision of the Appellate Court."*

7. On 14 June 2013, following the review of the report of Judge Rapporteur Altay Suroy, the Review Panel, composed of judges Robert Carolan (Presiding), Ivan Čukalović and Enver Hasani, recommended to the Court the inadmissibility of the Referral.

Summary of facts

8. The Applicant, as the author of the film project entitled "*Mysafir në sofër*", was in discussion with the Ministry of Culture, Youth and Sports (hereinafter, MCYS) about possible funding this project by the Ministry.

9. In the sessions held on 27 September and 04 October 2006, the MCYS endorsed the Applicant's film project in principle.

10. On 09 October 2006, the MCYS informed the Applicant that it shall support the film project *"Mysafir në sofër"*.

11. On 30 January 2007, the MCYS entered into a contract with the Applicant, thereby determining the obligations of both parties in the implementation of the project, and defining the amount of subsidy of the MCYS.

12. On 19 September 2008, the MCYS signed an annex to the contract with the Applicant, by which it confirmed the Ministry's readiness to fulfill the responsibilities as agreed between the MCYS and the Applicant for the implementation of the first stage of the Film Project *"Mysafir në sofër"*.

13. On 20 October 2008, the MCYS transferred the funds allocated for the implementation of the first stage of the Film Project *"Mysafir në sofër"*.

14. On 15 April 2010, the Permanent Secretary of the MCYS established a four-member commission to monitor the works in implementing the project *"Mysafir në sofër"*.

15. On 30 June 2010, the Division of Internal Audit in the MCYS audited the documentation relative to the film project *"Mysafir në sofër"*.

16. On 27 August 2010, the MCYS informed the Applicant that, based on the findings of the MCYS Audit, and the report of the MCYS Commission, a decision had been rendered to discontinue the Ministry's support to the project *"Mysafir në sofër",* thereby ordering the Applicant to return the funds allocated for the first stage of the project.

17. Meanwhile, the MCYS filed a lawsuit with the District Commercial Court, thereby demanding that the Applicant (Morina Films) *"return the subsidized amount for the realization of the film project"*.

18. On 28 February 2012, the District Commercial Court in Prishtina (II.C.no.13/2011) approved as grounded the lawsuit of the MCYS, and ordered the Applicant to return to MCYS the subsidy, including the legal interests and contested procedure costs.

19. On 21 May 2012, the Applicant lodged an appeal against the District Commercial Court judgment.

20. On 22 August 2012, the District Commercial Court in Prishtina rejected the Applicant's appeal as out of time.

21. The Applicant filed an appeal with the Supreme Court of Kosovo against that decision of the District Commercial Court in Prishtina, claiming that he had lodged the appeal within the legal deadline and requesting the Supreme Court of Kosovo to quash the challenged decision.

22. The Applicant informed that the proceedings before the Supreme Court are still pending.

Admissibility of the Referral

23. The admissibility requirements are established by the Constitution and further specified in the Law and the Rules of Procedure.

24. In this respect, the Court refers to Article 113.7 of the Constitution, which 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".

25. As stated above, the proceedings before the Supreme Court are still ongoing. Thus the Applicant has not exhausted yet all available legal remedies and the Referral is premature. Therefore, the Applicant is still entitled to submit a new Referral with the Constitutional Court, for constitutional review of the final decision of the Supreme Court, within the deadlines provided by the Law.

26. Furthermore, in order to be able to decide upon the request of the Applicant to withdraw the Referral, the Court must initially examine whether the Applicant has fulfilled the requirements as provided by Rule 32 of the Rules of Procedure.

27. Rule 32 of the Rules of Procedure of the Constitutional Court, in the part related to such examination, provides that:

(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. […]"

28. The Court, taking into account the above-mentioned set of circumstances, does not find any reason to decide on the Referral. Therefore, the Referral shall be struck out of the list.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 23 of the Law and Rule 32 of the Rules of Procedure, on 14 June 2013, unanimously:

DECIDES

I. TO STRIKE OUT of the list the filed Referral;

II. TO NOTIFY this Decision to the Parties;

III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20 paragraph of the Law on Constitutional Court;

IV. TO DECLARE this Decision effective immediately.

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

KI 58/12, KI 66/12 and KI 94/12, Selatin Gashi, Halit Azemi and group of Municipal Assembly Members of Viti , date 28 August 2013 -Referral for constitutional review of the Decision of the Municipality of Mitrovica, Gjilan and Viti for conditioning the access of citizens to public services with payment of obligations towards publicly owned enterprises

KI58, KI66 and KI94/12, Decision to strike out the Referral of 2 August 2013.

Keywords: Individual referral, Decision to strike out the Referral

Applicants alleged that by the decisions of the Municipal Assemblies were violated their human rights as follows: Article 21.1, Article 24(1) and 124 (6) of the Constitution, two of the Applicants have not specified any constitutional provisions, but they stated that their rights in obtaining their personal documents have been violated.

On 3 December 2012, the Court held public hearing, where the Applicants participated and were heard.

On 30 April 2013, the Municipality of Gjilan notified officially the Constitutional Court that in the session held on 23 April 2013, it rendered the Decision on Abrogation of the decision on restriction of providing services with payment of bills for waste and water" by sending through the official electronic mail the copy of the Decision 01 no. 16-35734 of 23.04.2013.

The Court considers that rendering of decisions by the municipal assemblies on abrogation of previous decisions on restriction of providing certain administrative services in the respective municipalities, where the Applicants come from and by which the violations of human rights are alleged during the time these referrals were in review by the Court, but certainly before the Court renders final decision, shows that the Applicants' position has significantly changed and that the Referral is without rationale and that the aim sought was completely attained. In light of this, the Court considers that there is no merit to further pursuing the matter and it was decided to strike out the Referral pursuant to Rule 32.4 of the Rules of Procedure.

DECISION TO STRIKE OUT THE REFERRAL
in
Cases KI 58, 66 and 94/12
Selatin Gashi, Halit Azemi and group of Municipal Assembly Members of Viti
Referral for constitutional review of the Decision of the Municipality of Mitrovica, Gjilan and Viti for conditioning the access of citizens to public services with payment of obligations towards publicly owned enterprises

THE CONSTITUTIONAL COURT OF HE REPUBLIC OF KOSOVO

composed of:

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

Applicants

1. The Applicants are Selatin Gashi from village Busi of the Municipality of Mitrovica, Halit Azemi resident in the square 'Sheshi i Pavarësisë" of Gjilan and group of the Municipal Assembly members of Viti.

Challenged decisions

2. The challenged decisions of the public authorities are:

    1) Decisions of the Municipal Assembly of Mitrovica No.02/06-22557/8 of 26.04.2012 and Decision No.02/06-3401/5 of 07.07.2011 on conditioning the access of citizens and businesses, with office in MA – Mitrovica, to the municipal services with proof of payment of the obligations towards Regional Water Supply Company "Mitrovica" and Regional Waste Company "Uniteti."

    2) Decision of MA -Gjilan 01 No.16/10608 of 24.06.2011 on Restriction of Municipal Services with Payment of Bills for Waste and Water,

which is dedicated to all legal and natural persons of the Municipality of Gjilan, and

3) Decision 01/013/1355 of 29.07.2011 of MA-Viti on Conditioning of Provision of Certain Municipal Services with Payment of Bills for Waste and Water, which applies to all natural and legal persons of the Municipality of Viti.

Subject matter

3. The subject matter of the Referral submitted to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) on 15.06.2012 (KI 58/12), on 09.07.2012 (KI 66/12) and on 24.12.2012 KI 94/12) is the constitutional review of the Decisions of the Municipal Assemblies of Mitrovica, Gjilan and Viti by which are conditioned legal and natural persons of these municipalities that they cannot enjoy certain municipal services by respective municipal administration, mentioned in the decisions, if they do not present beforehand the proof on the paid bills for fulfillment of obligations towards Publicly Owned Enterprises, mentioned in the decisions: KRU ”Mitrovica” and KRM ”Uniteti”, in MA-Mitrovica, towards competent publicly owned enterprises for Water and Waste in MA –Gjilan (without mentioning the names in the decisions) and KRM ”Higjena ”JSC-Gjilan and KRU ‘Hidromorava” JSC-Gjilan (MA-Viti).

Alleged violations of guaranteed constitutional rights

4. Applicants alleged that by the decisions of the Municipal Assemblies, mentioned in the second paragraph of this decision, were violated their human rights as follows:

a) Article 21.1, Article 24(1) and 124 (6) of the Constitution (Mr. Selatin Gashi, Referral KI 58/12).

b) Mr. Halit Azemi (Referral KI 66/12) did not specify any constitutional provision but he stated that his human rights in obtaining personal documents were violated. and

c) the Municipal Assembly Members of Viti attached the challenged decision by requesting its constitutional review, without specifying further details.

Legal basis

5. Article 113.7 in conjunction with Article 21.4 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, and Rules 53 and 56 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo.

Proceedings before the Constitutional Court in chronological order by cases

Case KI 58/12

6. On 1 June 2012, the Court received through mail the Referral from Mr. Selatin Gashi, by which he requested from the Court to: ”assess the constitutionality of a memorandum concluded on 24 April 2012 between MA of Mitrovica on one side and of the Regional Water Supply Company and the Waste Management Company “Uniteti” on the other side.”

7. On 4 June 2012, the Court notified the first Applicant Mr. Selatin Gashi on the procedure of registration of the Referral, by requesting from him additional documents, while on 15.06.2012, the first Applicant Mr. Selatin Gashi submitted the filled Referral in the Constitutional Court by attaching the challenged decisions of the Municipality of Mitrovica. The Referral was registered in the Court with No. KI 58/12.

8. On 21 August 2012, the Court notified the Municipal Assembly of Mitrovica and the Ministry of Local Government Administration on the registration of Referral and requested from the latter to present their comments on this matter, but the Municipality of Mitrovica did not respond to the Court’s request.

9. On 16 October 2012, Mr. Selatin Gashi submitted to the Court the additional material, by which he alleged to determine the status of a “victim” in the case he filed in the Constitutional Court as a consequence of the municipal decisions, which he challenges.

Case KI 66/12

10. On 3 July 2012, the Court received through mail a Referral from the lawyer Mr. Halit Azemi, by which he requested from the Court that ”the Constitutional Court declares the decision of the Municipality of Gjilan of 24.06.2011 as inadmissible and unlawful.”

11. On 4 July 2012, the Court notified the Applicant that he should fill in the standard Referral form of the Court for the individual referrals in the Court, while on 13 July 2012, Mr. Halit Azemi from Gjilan submitted the Referral to the Constitutional Court and the same was registered under the number KI 66/12.

12. On 29 October 2012, the Court received through mail a written response from the Municipality of Gjilan, where the reasons of rendering the decision, which is challenged by the Applicant are explained and to this response the relevant documentation, which was the ground for rendering the decision of the Municipal Assembly on conditioning of the access to some services of the municipal administration, was attached.

Case KI 94/12

13. On 24 September 2012, the Court received through mail a Referral from the third Applicant–the group of the LDK Municipal Assembly Members of Viti, whereby requesting: "We address the Constitutional Court through this letter for review of legality of the Decision No. 01-013/1395 rendered in the session held on 21.04.2011."

14. On 15 October 2012, the Constitutional Court notified the Municipality of Viti and the Applicant "The LDK Municipal Assembly Members of Viti" on registration of the Referral and at the same time requested from both parties to submit to the Court all necessary documentation for reviewing the Referral including the challenged decision and the communication with the Ministry of Public Administration on this matter, but the Court has not received any response by the parties within requested time limit.

15. On 31 August 2012, the Ministry of Local Government Administration replied, by stating that it was aware of the conditioning of citizens in some municipalities of Kosovo and attached to this response the explanatory letter for the presidents of the municipalities, qualifying these conditionings as unlawful and adding that the municipalities do not have legal competence to condition citizens with fulfillment of their obligations towards Publicly Owned Enterprises.

16. On 11 October 2012, the President of the Court rendered the decision on joining the cases KI 58/12, Ki 66/12 and KI 94/12 in a single case, since they have the same subject of review and decided that the Judge Arta Rama is appointed as the Judge Rapporteur, while the Review Panel to be composed of: Almiro Rodrigues, Presiding, Altay Suroy, and Deputy President of the Court Ivan Čukalović.

17. On 18 October 2012, the Review Panel after the review of the report, recommended to the full Court, that by taking into consideration the need for further clarifications on the matter from the parties in the procedure, the clarification of the legal stance of MLGA and the interest of public, to schedule a public hearingon the matter which is the subject of review in the Court and this recommendation was unanimously voted. At the same time, it was scheduled that the public hearing to be held on 3 December 2012.

Summary of facts

18. On26.04.2012, the Municipal Assembly of Mitrovica rendered the Decision No.02/06-22557/8 and on 07.07.2011 the Decision No. 02/06-3401/5 on the conditioning of the access of citizens and businesses with the office in MA Mitrovica to the municipal services and the proof of the payment of obligations towards KRU "Mitrovica" and KRM "Uniteti."

19. The decisions had this content:

    1. By this decision all businesses are CONDITIONED that when applying for their registration and business permits they must provide proof (certificate) that they have fulfilled their obligations (debts) towards KRU "MITROVICA" j.s.c."

    2. Households are CONDITIONED that when registering their vehicles, construction permits and transfer of real estate they must show proof (certificate) that they have fulfilled their obligations (debts) towards KRU "MITROVICA" j.s.c."

20. The second decision had the first two items completely identical, only instead of KRU"MITROVICA" the obligations had to be fulfilled to KRM"UNITETI"

21. On 24.06.2011, the Municipal Assembly of Gjilan rendered the Decision no. 01 No.16/10608 of 24.06.2011 on Restriction of access to services of the municipality with the payment of bills for waste and water.

22. This decision was voted again in the same form and content also in December 2012.

23. With respect to the challenged matter, the Decision had this content:

Article 1

"This decision determines the types of municipal services, which are restricted by the municipal administration authorities of Gjilan due to non-payment of bills for waste and water."

Article 2

"2 Limitation of providing the municipality services means non-delivery (failure) of a certain services by the directorates of the municipality administration to the natural and legal entity, until the fulfillment of its obligation"
'……."

Article 4

Item 4." The tax on motor vehicle

24. The Applicant Mr. Halit Azemi addressed the Ministry of the Local Government Administration (hereinafter: MGLA) on 01.12.2011, but according to his claim, he has not received any response.

25. On 29.07.2011, the Municipal Assembly of Viti rendered the Decision 01/013/1355 on Conditioning of Certain Municipal Services with Payment of Bills for Waste and Water, which applies to all natural and legal persons of the Municipality of Viti.

26. The Decision had this content regarding the part, which is challenged:

II

"Restriction of providing of certain municipality services, means non-delivery (failure) of a service by the directorates of the municipality administration to the entities of the right (natural and legal persons), until the fulfillment, respectively, partial payment of debts owed to the KRM, HIGIENA"JSC Gjilan and KRU" HIDROMORAVA "JSC Gjilan for the services carried out by these companies.
"……."

V.

Paragraph (1)

"The restricted services for natural persons and legal entities, the users of the services under the requirements from item 4 of this decision, will be applied and it shall include:

Item 4."Tax on motor vehicle"

27. On 20.06.2012, MLGA submitted the explanatory letter to all presidents of the municipalities of Kosovo and in the last item of this explanatory letter had decisively determined that the conditionings of the municipalities on the access to municipal services with fulfillment of obligations towards publicly owned enterprises do not have legal ground and as such should not be applied".

28. The MLGA further explains in this letter that pursuant to Article 128 of the Law 02/L123 on Business Organizations as well as the Law 03/L 087 on Joint Stock Companies, which has foreseen that the joint stock companies are liable for their debts and other obligations, with all their assets and property and nobody else is not liable for the debts of the joint stock companies".

29. On 08.08.2012, by the request for review of legality of the decision of the Municipality of Viti No.01-013/1395 (the decision on the conditioning of the citizens and legal entities), the MGLA requested from the Municipality of Viti that the abovementioned decision to be harmonized with the legislation in force within the time limit of 30 days, because it is unlawful in the existing form.

30. On 21 August 2012, the Council for Defense of Human Rights and Freedoms (hereinafter: CDHRF), the conditionings made by some municipalities of Kosovo for receiving some municipal services with payment of obligations towards the publicly owned enterprises and of joint stock companies, had qualified as violation of human rights and violation of Article 29 of the Universal Declaration on Human Rights, by stating that " Article 29 of the Universal Declaration on Human Rights, respectively, item 2 explicitly provides that: "In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law..."

Public hearing

31. On 3 December 2012, the Court held public hearing, where the following parties participated and were heard:

a) The Applicants Mr.Selatin Gashi, Mr.Halit Azemi but the Applicant of the Referral KI 94/12 (the LDK Municipal Assembly Members of Viti) although duly invited, was absent.

b) The opposing parties: the Municipality of Mitrovica, represented according to power of attorney by Mr. Rrustem Musa, unicipality of Gjilan, represented according to power of attorney by Mr. Bardhosh Dalipi and Municipality of Viti, according to power of attorney by Mr.Agim Sylejmani.

c) Ministry of Local Government Administration, in capacity of the interested party by Mr. Besim Murtezani.

d) The Ombudsperson Institution, in capacity of the interested party, represented by Mr. Isa Hasani.

e) The Council for Defense of Human Rights and Freedoms, in capacity of the interested party, represented by Mr. Behxhet Shala.

Statements of parties in the hearing

32. Mr. Selatin Gashi in the public hearing stated among the other that ”the decision of the Assembly violates his and other citizens' fundamental rights and especially of those who have motor vehicles and as a consequence of this decision, he had to register his vehicle in the name of his friend, with residence in the village, who does not have obligations towards the water supply company and to the public company of waste and that he drives his personal vehicle under the authorization by the person on whose name the vehicle is registered.”

33. Mr. Halit Azemi stated that ”By the decision of the Municipality of Gjilan the fundamental rights of citizens of the Municipality of Gjilan and especially Article 55 of the Constitution were violated. He also stressed that since July of this year, the enterprise Higjena has been privatized.”

34. The representative of MA Mitrovica Mr. Musa ”stated that as soon as they received the explanatory letter from MLGA about unlawfulness of the decisions of the municipal assemblies regarding the conditioning, he insisted on their annulment and finally the Municipal Assembly rendered the Decision No. 02/06-4896/11 of 30.10 2012, by which the decision on the conditioning of citizens has been repealed” which is the

subject of review in this public hearing, by presenting before the Court the copy of the decision. He also stated that he agrees with the conclusion of the parties that the decision of the municipality was unlawful and that he voted against it."

35. The representative of the Municipality of Gjilan stated that he remains in entirety behind the written response, which the municipality of Gjilan sent to the Constitutional Court on 29 October 2012. On the question of the Applicant Mr. Azemi why the municipality has not repealed its decision after the MLGA letter, he responded that "this is certainly the matter of time when this decision will be abrogated."

36. The representative of the Municipality of Viti stated that "at the time when the decision on conditioning was rendered, another law was in force and now there is another law on publicly owned enterprises and after the MLGA letter, they have repealed the decision."

37. The MLGA representative stated that "the legal position of MLGA regarding the decision on conditioning of citizens with payment of bills to publicly owned enterprises was made public to the presidents of the municipalities through explanatory letter, where it was clearly stated that these decisions do not have legal ground" and furthermore "we think that they are not even democratic and that they affect the area of human rights."

38. The Ombudsperson representative stated that "the conditioning of citizens on restriction of services only in some municipalities, puts in unequal position these citizens in relation to citizens of other municipalities, where these restrictions have not been applied and that it puts them in unequal positions before the law. The representative of OI stated that: "the restrictions of citizens in some municipalities the way it was done, is inadmissible and it violates and it diminishes human rights.

39. The CDHRF representative in the public hearing stated that "these decisions present flagrant violations of human rights, that our public reaction on this issue gave the necessary effect and that the MLGA reaction was quite quick, when it sent the explanatory letter to the presidents of the municipalities."

Summary of facts after the public hearing

40. On 30 April 2013, the Municipality of Gjilan notified officially the Constitutional Court that in the session held on 23 April 2013, it rendered the Decision on Abrogation of the decision on restriction of providing services with payment of bills for waste and water" by sending through the official electronic mail the copy of the Decision 01 no. 16-35734 of 23.04.2013.

Assessment of admissibility of Referral and Merits

41. In order to be able to adjudicate the Applicant's Referral, the Constitutional Court has to assess beforehand whether the Applicant has met all admissibility requirements laid down in the Constitution as further specified in the Law and the Rules of Procedure.

42. In this respect, the Court always takes into account the Article 112.1 of the Constitution, where it is provided:

    1. *"The Constitutional Court is the final authority for the interpretation of the Constitution and the compliance of laws with the Constitution*."

    and,

    Article 113.7 of the Constitution, when assessing the individual referrals where it is provided 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.

43. The Court takes also into consideration Rule 32 of the Rules of Procedure, where it was determined that

    (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.

44. Being aware of the decision of MA Viti of 3 October 2012 "On Abrogation of the Decision No. 01-13/1395 of 09.08.2011", the decision of MA-Mitrovica No. 02/06-4896/11 of 30.10.2012, by which it abrogated the decision on conditioning of citizens and the decision of MA of Gjilan 01 no. 16-35734 of 23 .04,2013, by which the decision of this municipality on restrictions of certain administrative services to the citizens of the Municipality of Gjilan was also abrogated and being

aware of the consequences of these decisions in the final status of the requests filed for review before it, by reminding its case laws in the previous identical cases (see among the other, case KI 11/09 of the Constitutional Court of the Applicant Tomë Krasniqi of 07.06.2011), the Court does not find it reasonable to assess the fulfillment of full formal requirements of admissibility regarding the cases KI 58, Ki 66 and KI 94/12.

45. The Court considers that rendering of decisions by the municipal assemblies on abrogation of previous decisions on restriction of providing certain administrative services in the respective municipalities, where the Applicants come from and by which the violations of human rights are alleged during the time these referrals were in review by the Court, but certainly before the Court renders final decision, shows that the Applicants' position has significantly changed and that the Referral is without rationale and that the aim sought was completely attained. In light of this, the Court considers that there is no merit to further pursuing the matter and such a justification was clearly expressed by the Court also in the Decision KI 63/12 of 10 December 2012 (see decision on striking out the Referral of the Constitutional Court KI 63/of the Applicant MP Ms. Alma Lama and 10 other Members of the Assembly 10.12.2012)

46. However, the Court has the power and the duty to address this question particularly in view of the Court's own Rules of Procedure.

47. In fact, Rule 32 (4) of the Rules of Procedure of the Constitutional Court states that the Court may dismiss a Referral when it determines that a claim is moot or when it does not otherwise present a case or a controversy anymore. The Rule, to the extent relevant, provides as follows:

Rule 32

Withdrawal of Referrals and Replies

(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.

(5) The Secretariat shall inform all parties in writing of any withdrawal, of any decision by the Court to decide the referral

despite the withdrawal, and of any decision to dismiss the referral before final decision. .

48. Also, the European Convention on Human Rights, which pursuant to Article 22 para.1 of the Constitution of Kosovo is directly applied in the Republic of Kosovo provides, to the extent relevant, the following:

Article 37. Striking out applications

1. The Court may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that

   a) the applicant does not intend to pursue his application; or

   b) the matter has been resolved; or

   c) for any other reason established by the Court, it is no longer justified to continue the examination of the application.

49. Asa general procedural principle, the Court should not make decisions on cases where the issue is no longer a live one and the case becomes moot. Courts do not deal with hypothetical or academic cases. This is a generally accepted principle of behavior of courts and it is analogous to the principle of judicial restraint.

50. Furthermore, the Court has already established (in Case 11/09, Decision of 30 May 2011, paragraph 46 of the Applicant Tomë Krasniqi), which states that "The concept of mootness is a well recognized legal concept. It can arise where a case, in an abstract or hypothetical issue, presents itself for decision by a Court. There are good grounds for a Court not dealing with hypothetical situations. Without a real, immediate or concrete issue to be decided upon, any decision that the Court would now make in relation to this Referral would have no practical effect".

51. Taking into account the decisions of the municipal assemblies on abrogation of decisions by which the citizens of the municipalities of Mitrovica, Gjilan and Viti would be restricted in enjoying certain administrative decisions in these municipalities, the Court concludes that the Applicants now have no case or controversy pending in relation to the constitutionality of these decisions and the issue is effectively moot, therefore

FOR THESE REASONS

The Constitutional Court, pursuant to Article 20 of the Law and Rule 32 (4) of the Rules of Procedure, unanimously on 5 July 2013:

DECIDES

I. TO STRIKE OUT the Referral, pursuant to Rule 32.4 of the Rules of Procedure.

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

III. This Decision is effective immediately.

Judge Rapporteur
Arta Rama- Hajrizi

President of the Constitutional Court
Prof. dr. Enver Hasani

KO 95/13, Visar Ymeri and 11 other deputies of the Assembly of the Republic of Kosovo, date 09 Semtember 2013- Constitutional review of the Law, No. 04/L-199, on Ratification of the First International Agreement of Principles Governing the Normalization of Relations between the Republic of Kosovo and the Republic of Serbia and the Implementation Plan of this agreement

Case KO 95/13, Judgment, of 2 September 2013.

Keywords: Referral by Deputies of the Assembly of the Republic of Kosovo

The Applicants also submit the Referral to the Court for the constitutional review of the contested Law on Ratification itself, because the First International Agreement annexed to the Law on Ratification contains 15 Items concerning the establishment of the Association/Community of the Municipalities in the North, which allegedly violate the Constitution as follows:

- Items 1 to 6 violate Article 1.1 of the Constitution, because they violate the indivisibility and uniqueness of the state of Kosovo;

- Item 1 violates Article 3.1 of the Constitution, pursuant to which the Republic of Kosovo is a multi-ethnic society, as well as the principles expressed in Article 123.3 of the Constitution in relation to the principles of Local Self-Governance;

- Item 3 violates Article 1.1 of the Constitution regarding the qualification of Kosovo as a unique state;

- Item 4 violates the constitutional principles provided in Article 123 and 124 of the Constitution and also exceeds the principles of Article 2 of the European Charter on Local Self-Governance (hereinafter: the "ECLSG");

- Item 6 violates Article 1.1 of the Constitution in relation to the qualification of the Republic of Kosovo as a unique state;

- Item 7 violates the general constitutional principles in relation to the security sector, as laid down in Article 125.2 of the Constitution;

- Item 9 violates Article 3.1 (multi-ethnic qualification of the Republic of Kosovo) and Articles 125.2 and 24.2 of the Constitution;

- Item 10 violates Articles 102.2 and 24.1 of the Constitution and Article 6 ECHR in conjunction with Articles 13 and 14 ECHR;

- Item 11 violates Article 139.1 of the Constitution;

- Item 14 violates Article 2.2 in conjunction with Article 20.1 of the Constitution.

The Court concludes that it is not within its jurisdiction *ratione materiae* to review the constitutionality of the First International Agreement. Consequently, it rejects the Applicants request to review the constitutionality of the First International Agreement.

The Constitutional Court declares the Referral admissible, unanimously declares that the procedure followed for the adoption of the Law, No. 04/L-99, on Ratification of the First International Agreement of Principles Governing the Normalization of Relations Between the Republic of Kosovo and the Republic of Serbia and the Implementation Plan of this agreement is compatible with the Constitution of the Republic of Kosovo, and by majority rejects the Applicants' request to review the First International Agreement of Principles Governing the Normalization of Relations between the Republic of Kosovo and the Republic of Serbia and the Implementation Plan to this agreement as being outside of the scope of the Court's jurisdiction *ratione materiae*.

JUDGMENT
in
Case No. KO 95/13
Applicants
Visar Ymeri and 11 other deputies of the Assembly of the Republic of Kosovo
Constitutional review of the Law, No. 04/L-199, on Ratification of the First International Agreement of Principles Governing the Normalization of Relations between the Republic of Kosovo and the Republic of Serbia and the Implementation Plan of this agreement

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Enver Hasani, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Kadri Kryeziu, Judge and
Arta Rama-Hajrizi, Judge.

Applicants

1. The Applicants are Visar Ymeri, Albin Kurti, Glauk Konjufca, Rexhep Selimi, Afrim Kasolli, Liburn Aliu, Albulena Haxhiu, Albana Gashi, Florin Krasniqi, Emin Gërbeshi, Albana Fetoshi and Agim Kuleta, all of them deputies of the Assembly of the Republic of Kosovo. Before the Constitutional Court of the Republic of Kosovo (hereinafter: the "Court"), the Applicants have authorized Mr. Visar Ymeri to represent them.

Challenged law

2. The Applicants challenge Law, No. 04/L-199, on Ratification of the First International Agreement of Principles Governing the Normalization of Relations between the Republic of Kosovo and the Republic of Serbia and the Implementation Plan of this agreement (hereinafter: the "Law on Ratification"), which was adopted by the Assembly of the Republic of Kosovo (hereinafter: the "Assembly") on 27 June 2013.

Subject Matter

3. The Applicants request the review of the constitutionality and the legality of the Law on Ratification, which was adopted by the Assembly by Decision No. 04-V-638 of 27 June 2013.

Legal Basis

4. Article 113.5 of the Constitution of the Republic of Kosovo (hereinafter: the "Constitution"), Articles 42 and 43 of the Law, No. 03/L-121, on the Constitutional Court of the Republic of Kosovo of 15 January 2009, (hereinafter: the "Law"), and Rule 36 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 4 July 2013, the Applicants submitted their Referral to the Court.

6. On 4 July 2013, the President of the Constitutional Court, by Decision No.GJR.KO.95/13, appointed Judge Snezhana Botusharova as Judge Rapporteur. On the same date, the President of the Constitutional Court, by Decision No.KSH.KO.95/13, appointed the Review Panel composed of Judges Robert Carolan (Presiding), Kadri Kryeziu and Arta Rama-Hajrizi.

7. On 5 July 2013, the Applicants submitted a correction of the Referral in accordance with Rule 31.1 of the Rules of Procedure which provides: *"At any time before the Judge Rapporteur has submitted the report, a party that has filed a referral or a reply, or the Court acting ex officio, may submit to the Secretariat a correction of clerical or numerical errors contained in the materials filed."* The Applicants corrected page 17 of the Referral under Roman numeral VI (Statement of the Relief Sought), deleting Article 113.2, Rule 54 and Rule 55 of the Rules of Procedure. The Applicants also submitted the following additional documents to the Court: Authorization, the signatures and photocopy of the ID cards of the Deputies participating in the Referral.

8. On 9 July 2013, the Court notified the President of the Assembly and the Government of the Republic of Kosovo (hereinafter: the "Government") of the submission of the Referral by the Applicants to

the Court and asked them to submit their comments and any documents that they deem necessary in respect to the Referral.

9. On 9 July 2013, the President of the Republic of Kosovo was informed about the Referral submitted to the Court by the Applicants.

10. On 18 July 2013, the Court received the following documents from the President of the Assembly:

    a. The final report of the Committee for Legislation of 17 June 2013 on the Draft Law on Ratification;

    b. The transcript of the plenary sessions of the Assembly of 27 June 2013 and 4 July 2013;

    c. The minutes of the plenary sessions of the Assembly of 27 June 2013 and 4 July 2013;

    d. The electronic voting register;

    e. The Decision of the Assembly of 27 June 2013 on Adopting Law, No. 04/L-199, on Ratification. (Decision No. 04-V-638);

    f. The Decision (No. 01/132) of the Government *"Approving the Draft Law on Ratification of the First International Agreement of Principles Governing the Normalization of Relations between the Republic of Kosovo and the Republic of Serbia and the Implementation Plan of this agreement.";*

    g. The Law on Ratification;

    h. The First International Agreement of Principles Governing the Normalization of Relations between the Republic of Kosovo and the Republic of Serbia (hereinafter: the "First International Agreement");

    i. The Implementation Plan of the agreement (hereinafter: the "Implementation Plan").

11. The Court has not received any comments either from the Assembly or from the Government.

12. The Review Panel considered the Report prepared by the Judge Rapporteur, Judge Snezhana Botusharova, and made a recommendation to the full Court.

13. On 2 September 2013, the Court deliberated and voted on the Referral.

Summary of facts

14. On 18 October 2012, the Assembly, upon the proposal of the Parliamentary Groups: Democratic Party of Kosovo (PDK), Alliance for the future of Kosovo (AAK), Coalition for New Kosovo (AKR), Independent Liberal Party (SLS) and Group 6+, approved Resolution no. 04-R-08, On the Normalization of Relations Between the Republic of Kosovo and the Republic of Serbia (published on the Webpage of the Assembly). According to this Resolution:

    a. *"the Assembly of the Republic of Kosovo supports the process of the solution of problems between two sovereign states, Kosovo and Serbia, in the interest of the normalization of problems between them, the improvement of citizens' life and advancing the European agenda for the two states and the region."*

    b. *"[…] the dialogue and its results should be in compliance with Kosovo's sovereignty, international subjectivity, territorial integrity and inner regulation – unique constitutional order of Kosovo."*

    c. *"[…] the Assembly of the Republic of Kosovo authorizes the Government of the Republic of Kosovo to direct this process, with participation of necessary Committees of the Assembly of Kosovo […]".*

    d. *"[…] the agreements reached as a result of the dialogue shall be ratified by the Assembly of the Republic of Kosovo."*

15. On 22 April 2013, during an extra-ordinary session requested by the Prime Minister, the Assembly approved Resolution no. 04-R-10, on Giving Consent to the Signing of the First Agreement of Principles Governing the Normalization of Relations between the Republic of Kosovo and the Republic of Serbia. (Published on the Webpage of the Assembly). According to this Resolution:

a. *"the Assembly of Kosovo grants consent and supports signing of the first agreement for normalization of relations between the Republic of Kosovo and the Republic of Serbia […]";*

b. *"[…] the Assembly of Kosovo supports the promises contained in this agreement […]"*

16. On 28 May 2013, the Government adopted Decision No. 01/132, *"Approving the Draft Law on Ratification of the First International Agreement of Principles Governing the Normalization of Relations between the Republic of Kosovo and the Republic of Serbia and the Implementation Plan of this agreement."* Furthermore, in accordance with this Decision, the General Secretary of the Office of the Prime Minister proceeded with the Draft Law for review and adoption by the Assembly.

17. On the same date, the President of the Assembly sent to all Deputies of the Assembly the Draft Law on Ratification. Furthermore, the Committee on Legislation was assigned to review this Draft Law and to present to the Assembly a report with recommendations.

18. On 24 June 2013, the Committee for Legislation sent to the Deputies of the Assembly the Recommendation that the Draft Law on Ratification should be reviewed and adopted by the Assembly. This Committee proposed three amendments to this Law:

a. Amendment 1: *"Remove from the title of the draft law the words "AND IMPLEMENTATION PLAN FOR THIS AGREEMENT"*;

b. Amendment 2: Article 1 of the Draft Law rephrased as follows *"Article 1 – Purpose, This law ratifies the First International Agreement of Principles Governing the Normalization of Relations between the Republic of Kosovo and Republic of Serbia, initialed on 19 April 2013 by the Prime Minister of the Republic of Kosovo and Prime Minister of Serbia, adopted by the Government of the Republic of Kosovo on 22 April 2013, Decision No.01/126, and by the Assembly of the Republic of Kosovo on 22 April 2013, Resolution No.04-R-10."*;

c. Amendment 3: Article 2 of the Draft Law is rephrased as follows *"Article 2 - Scope of work, The scope of work of this law is the First International Agreement of Principles Governing the Normalization of Relations between the Republic of Kosovo and*

Republic of Serbia and is an integral part of this Law. This law will be implemented by the Republic of Kosovo with the assistance of the European Union (EU), the Forces of the North Atlantic Treaty Organization in Kosovo (KFOR) and the Organization for Security and Co-operation in Europe (OSCE)."

19. On 27 June 2013, the Assembly held a plenary session where Law, No. 04/L-199, on Ratification was voted upon and adopted. The proposed amendments by the Committee for Legislation were not approved. According to the electronic voting register and the transcript of the Assembly, of the Deputies present, 84 voted in favour, 3 were against and 1 Deputy abstained.

20. On the same day, the President of the Assembly (Decision No. 04-V-638), pursuant to Article 65.1 [Competencies of the Assembly] of the Constitution, which provides that *"The Assembly of the Republic of Kosovo; (1) adopts laws, resolutions and other general acts;"* and Article 18 [Ratification of International Agreements] of the Constitution and Rule 60 [Ratification of International Agreements] of the Rules of Procedure of the Assembly *"Adopted Law no. 04/L-199 on the Ratification of the First International Agreement on the Principles Governing the Normalization of Relations between the Republic of Kosovo and Republic of Serbia."* Furthermore, pursuant to point 2 of this decision, *"The law is sent for promulgation to the President of the Republic of Kosovo."*

Arguments presented by the Applicants

As to the procedural aspect of the Referral

21. The Applicants submit the Referral to the Court for the constitutional review of the contested Law, as they consider that the Law on Ratification and the First International Agreement annexed to the Law have not been adopted in accordance with legislative procedures, both within the Government, and when being dealt with by the Assembly. The Applicants allege the following three procedural violations:

    a) The procedure followed in adopting the draft Law on Ratification by the Government violated Articles 5 and 11.1 of the Law on International Agreements as the draft Law was not submitted to other relevant agencies and ministries for review;

b) The procedure followed for submission by the Government of the draft Law to the Assembly violated Articles 54.1.b and 60.2 of the Rules of Procedure of the Assembly, as the draft Law was not accompanied, *inter alia*, by a Declaration on budgetary implications; and

c) The procedure followed for adoption of the draft Law by the Assembly violated Articles 60.3 and 54.1 of the Rules of Procedure of the Assembly, as well as specific rules contained in Annex 2 of the Rules of Procedure, as the draft Law was never submitted to various Assembly Committees for review.

22. The Applicants allege that the procedure followed in adopting the draft Law on Ratification by the Government violated Articles 5 and 11.1 of the Law on International Agreements (Law no. 04/L-52). The Applicants first explain the concept of reservations in international law and, in this connection, refer to Article 3.1.9 of the Law on International Agreements, providing that, *"Reservations – a unilateral declaration made by the competent state body at the time of conclusion, ratification, adhesion or approval of an agreement which aims at excluding or modifying the legal impacts of certain provisions."* Considering that the Kosovo legislation in force envisages the instrument of reservation, they hold that every agreement between the Republic of Kosovo and any international subject must take into consideration Article 11 of this Law, according to which, in each case where there is a question of international agreements having implications for the internal legislation, the responsible institution must prepare a document that explains those implications.

23. The Applicants further refer to Article 11.1 of the Law, which reads as follows: *"If any reservations and/or declarations are made regarding the International Agreement, the responsible ministry or state agency shall report these to the relevant ministries and Government agencies during the review procedure under Article 5 of this Law,"* while its paragraph 2 stipulates that: *"The responsible ministry or state agency shall include the text of these reservations and/or statements into the draft law of the Republic of Kosovo on the ratification of the International Agreement or the draft decree of the President of the Republic on the ratification of the International Agreement, respectively, and shall arrange for the translation of these reservations and/or statements into the foreign language concerned."*

24. In the Applicants' view, the text of the draft First International Agreement should have been sent to the agencies or ministries in the relevant fields for review, pursuant to Article 5 of the Law.

25. The Applicants further allege that the procedure followed for submission by the Government of the draft Law to the Assembly violated Articles 54.1.b and 60.2 of the Rules of Procedure of the Assembly. The Applicants also refer to Article 54 [Conditions for presenting a Draft Law], paragraph 1, of the Rules of Procedure of the Assembly, according to which the Draft Law presented to the Assembly shall contain:

    a. Explanatory note on the objectives that are aimed to be achieved by the Law, its harmonization with the applicable legislation and reasoning of the provisions of the Law.

    b. Declaration on budgetary implications in the first year and subsequent years.

    c. Declaration on approximation and harmonization with EU legislation and with the comparative table of acts it refers to.

26. The Applicants argue that the Government has processed the Draft Law on Ratification, while it only contains the explanatory memorandum, but not the important Declaration on budgetary implications as provided by Article 54.1.b and a financial statement as required by 60.2 of the Rules of Procedure of the Assembly. In their opinion, since Items 7 and 10 of the Agreement envisage the integration of parallel security and judicial structures, there is no doubt that the Agreement has budgetary implications.

27. The Applicants further allege that the procedure followed for adoption of the draft Law on Ratification by the Assembly violates Articles 60.3 and 54.1 of the Rules of Procedure of the Assembly. They quote Article 60.3 of the Rules of Procedure of the Assembly, providing that *"Proceeding a Draft Law on ratification of international agreements is special and shall be subject to only one review"*. It implies that, since it is a special procedure and excludes a second review of the draft law, accordingly, the procedure at the permanent and functional committees must be developed, prior to the vote in the plenary session of the Assembly where the draft Law on Ratification should be adopted.

28. The Applicants also allege that the draft Law on Ratification did not go through the review procedures at the permanent committees for Budget and Finances and for Foreign Affairs and, by virtue of Article 54.1 of the Rules, should also have been reviewed by the Functional Committee as the lead committee, as well as the Committees for Legislation and Judiciary, Budget and Finance, European Integration, Human Rights, Gender Equality, Missing Persons and Petitions, Rights and Interests of Communities and Returns, as main committees.

29. They further submit that the Legislation Committee of the Assembly, when reviewing the draft Law on Ratification, never reviewed the constitutionality and legality of what is now the ratified law. Moreover, taking into account its responsibilities laid down in Annex 2, Item 3 of the Rules of Procedure of the Assembly, reading: *"Analyses and evaluates the conformity of acts adopted by the Assembly with the Constitution",* and *"Reviews the legality and constitutionality of draft laws",* the Committee has rejected such a review, despite the fact that this matter is part of its main responsibilities.

30. The Applicants add that in Annex 2, Item 5 [Committee on Foreign Relations] of the Rules of Procedure of the Assembly, two items, in particular, define the duties of this Committee, namely: *"Ratifying existing treaties en bloc or separately, which Kosovo wants to sign",*and*"Following the ongoing negotiations for participation in new treaties led by the Government and initiating the debate on ratification of these new treaties."*

31. As to the first Item, they maintain that it emphasizes the ratification of agreements of existing treaties that Kosovo is willing to sign and, therefore, alludes to the review by the Committee prior to any of the state bodies undertaking the initiative to conclude an international agreement. The aim of the first paragraph is to always obtain the opinion of the Committee on Foreign Relations prior to the conclusion of an agreement by Kosovo.

32. As to the second Item mentioned above, the Applicants consider that the Committee on Foreign Relations is entitled to initiate debates by the Assembly on the pre-ratification procedure which, in their view, is similar to the Anglo-Saxon system of checks and balances, whereby the legislative and executive powers in the decision-making process are balanced against the state actions in international relations. They emphasize that the Rules of Procedure of the Assembly are rules with a special legal classification in the legal hierarchy, since they are a formal source of the Constitution and, as such, obligatory, superseding the law.

33. The Applicants conclude that the Government has ignored the Committee on Foreign Relations contrary to the Rules of Procedure of the Assembly.

As to the substantial aspect of the Referral:

34. The Applicants also submit the Referral to the Court for the constitutional review of the contested Law on Ratification itself, because the First International Agreement annexed to the Law on Ratification contains 15 Items concerning the establishment of the Association/Community of the Municipalities in the North, which allegedly violate the Constitution as follows:

    a. Items 1 to 6 violate Article 1.1 of the Constitution, because they violate the indivisibility and uniqueness of the state of Kosovo;

    b. Item 1 violates Article 3.1 of the Constitution, pursuant to which the Republic of Kosovo is a multi-ethnic society, as well as the principles expressed in Article 123.3 of the Constitution in relation to the principles of Local Self-Governance;

    c. Item 3 violates Article 1.1 of the Constitution regarding the qualification of Kosovo as a unique state;

    d. Item 4 violates the constitutional principles provided in Article 123 and 124 of the Constitution and also exceeds the principles of Article 2 of the European Charter on Local Self-Governance (hereinafter: the "ECLSG");

    e. Item 6 violates Article 1.1 of the Constitution in relation to the qualification of the Republic of Kosovo as a unique state;

    f. Item 7 violates the general constitutional principles in relation to the security sector, as laid down in Article 125.2 of the Constitution;

    g. Item 9 violates Article 3.1 (multi-ethnic qualification of the Republic of Kosovo) and Articles 125.2 and 24.2 of the Constitution;

h. Item 10 violates Articles 102.2 and 24.1 of the Constitution and Article 6 ECHR in conjunction with Articles 13 and 14 ECHR;

i. Item 11 violates Article 139.1 of the Constitution;

j. Item 14 violates Article 2.2 in conjunction with Article 20.1 of the Constitution.

Relief sought by the Applicants:

35. The Applicants request the Court to declare that, in the adoption of the Law on Ratification and the ratification of the First International Agreement:

A. The Government violated the procedural rules contained in Article 11 [Reservations and declarations] in conjunction with Article 5 [The Procedural Review of the draft International Agreements] of Law No. 04/L-052 on International Agreements;

B. The Government and the Assembly violated the procedural rules contained in Chapter XIII [Law-Making Procedure] of the Rules of Procedure of the Assembly:

(1) Article 54 [Conditions for presenting a Draft-Law], para.1;

(2) Article 57 [Review of a Draft-Law by Committees], para. 1; and

(3) Article 60 [Ratification of international agreements], para.2; as well as

Annex Nr. 2 [Scope of Activities and Responsibilities of the Parliamentary Committees] of the Rules of Procedure of the Assembly:
(1) item 3 [Committee on Legislation and Judicial Affairs]; and
(2) item 5 [Committee on Foreign Relations] of the Rules of Procedure of the Assembly; and

C. The contested Law and Annex 1 to this Law violate the following Articles of the Constitution:

Chapter I [Basic Provisions]:

(1) Article 1 [Definition of State], para. 1;

(2) Article 2 [Sovereignty], para. 2;

(3) Article 3 [Equality before the Law], para.1;

(4) Article 20 [Delegation of Sovereignty], para. 1;

Chapter VII [Justice System]:

(1) Article 102 [General Principles of the Justice System], para. 2;

Chapter X [Local Government and Territorial Organization]:

(1) Article 123 [General Principles], para. 3;

(2) Article 124 [Local Self-Government Organization and Operation];

Chapter XI [Security Sector]:

(1) Article 125 [General Principles], para. 2;

Chapter XII [Independent Institutions]:

(1) Article 139 [Central Election Commission], para. 1.

36. The Applicants finally ask the Court to decide that the contested Law is invalid.

Admissibility of the Referral

37. In order for the Court to be able to adjudicate the Applicants' Referral, it is necessary to first examine whether they have fulfilled the admissibility requirements laid down in the Constitution, and as further specified in the Law and the Rules of Procedure.

38. In this respect, the Court refers to Article 113.1 of the Constitution, which establishes that *"The Constitutional Court decides only on matters referred to the Court in a legal manner by authorized parties."*

39. As to these requirements, the Court notes that the Applicants made their Referral pursuant to Article 113.5 of the Constitution which provides as follows:

"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." [**the Serbian version differs from the English and Albanian versions**]

40. In this connection, the Court observes that, when a law or an act of the Assembly is under review under Article 113.5 of the Constitution, the review procedure will be of a suspensive nature, meaningthat the law will be barred from being promulgated until the Court has taken a final decision on the case. In accordance with Article 43 (2) of the Law, in the event that a law adopted by the Assembly is contested under Article 113.5 of the Constitution*"such a law [...] shall be sent to the President of the Republic of Kosovo for promulgation in accordance with the modalities determined in the final decision of the Constitutional Court on this contest.",* meaning that the adopted Law should not be returned to the Assembly but should be forwarded to the President of the Republic of Kosovo for promulgation of the Law without the Articles which have been declared incompatible with the Constitution by the Court in its Judgment.

41. In the present case, the Court notes that the Referral was submitted by 12 Deputies of the Assembly of Kosovo, which is more than the minimum required by Article 113.5 of the Constitution, and therefore the requirement for an authorised party is satisfied.

42. In addition, the Court takes into account Article 42 of the Law which governs the submission of a Referral under Article 113.5 of the Constitution and reads as follows:

Article 42 - Accuracy of the Referral

*1. In a referral made pursuant to Article 113, Paragraph 5 of the Constitution the following information shall, inter alia, be submitted:***[the Albanian and Serbian versions differ from the English version]**

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; and

1.3. presentation of evidence that supports the contest.

43. Apart from the names and signatures of the Deputies who submitted the Referral, the contested Law and the relevant provisions of the Constitution as well as the evidence in support of the Referral are mentioned.

44. As to the challenged law, the Court notes that the Applicants contest the Law no. 04/L-199 on Ratification.

45. The requirements of Article 42 of the Law are, therefore, satisfied.

46. As to the time limit, the Court notes that the Law, No. 04/L-199, on Ratification was adopted by the Assembly on 27 June 2013 (Decision No. 04-V-638) and that the Referral was submitted to the Court on 4 July 2013. Therefore, the Referral has been submitted within the constitutionally prescribed period of eight days.

47. Thus, the Court considers that there are no grounds to declare the Referral, which raises important constitutional questions, inadmissible.

Comparative analysis

48. Before entering into the question whether or not the contested law is in violation of the Constitution, the Court will conduct a comparative analysis as to the relationship between international treaties and the domestic legal order of a state. In general, in all constitutional states, an international agreement is first signed by a high representative of the state. The signature indicates only 'the intention to be bound by the agreement'. In order for the rights and obligations contained in the agreement to enter into force and become binding on the state, the agreement must be constitutionally ratified by the highest legislative organ of the state, which is the state parliament, congress or assembly, as the holder of 'state sovereignty'.

49. The Constitutions of different European countries approach the issue of constitutional review of the ratification of international agreements in

various ways. These differences are a result of the various ways in which the relationship between an international agreement and the domestic legal order are defined. This definition can be understood as falling along a scale of constitutional approaches.

50. At one end of the scale is the approach taken by the United Kingdom where international agreements are concluded by the Queen through her Minister for Foreign and Commonwealth Affairs and do not have to be ratified by the British Parliament before becoming binding on the state. Once concluded, they bind the state only in its relations with other countries, and have no effect on the internal legal order of the United Kingdom. In order for the provisions of an international agreement to become effective within the domestic legal order, specific legislation must be adopted containing those provisions and defining their operation within domestic law. Once incorporated through specific legislation, these provisions remain of an inferior legal order than the Constitution of the state.

51. At the opposite end of the scale is the approach taken by the Netherlands. Here, following ratification by Parliament, the international agreement becomes binding on the state in its relations with other countries, and any self-executing provisions of the agreement become binding within the internal legal order. What is more, the provisions of ratified international agreements are of superior legal order even than the Constitution of the state, and domestic legislation may be reviewed by all courts for compliance with obligations deriving from such international agreements.

52. The Constitutional system of Kosovo falls in between these two examples. Following ratification by the Assembly, an international agreement becomes binding on the state in its relations with other states, and such agreements become part of the internal legal system. However, those provisions of an international agreement which are self-executable are of superior legal order to the legislation of Kosovo, while remaining of inferior legal order to the Constitution of Kosovo, as defined in Article 19 of the Constitution. Self-executing provisions of international agreements may be applied directly within the internal legal order of Kosovo, but their application remains subject to the Constitution.

Albania

53. In respect of Albania, the Court notes that the Constitution of Albania in its Article 91, point “ë”, amongst other competencies, authorizes the

President to enter into international agreements according to the law. Furthermore, Article 121 of the Constitution specifies the types of international agreements which must be ratified by the Assembly. Following the ratification by the Assembly and the publication of the international agreement in the Official Journal, the ratified international agreement becomes part of the internal legal order pursuant to Article 122 of the Constitution.

54. As to the role of the Constitutional Court of Albania concerning ratification of international agreements, Article 131 of the Constitution provides that the Constitutional Court *inter alia* decides on *"the compatibility of international agreements with the Constitution, prior to their ratification."*

55. In this respect, the Court refers to Decision No. 15, of 15 April 2010 of the Constitutional Court of Albania where it reviewed the compatibility with the Constitution of Albania of the Agreement signed between the Republic of Albania and the Republic of Greece on the delimitation of their respective zones of the continental shelf and other areas of the sea which belong to the respective countries according to International Law. The Constitutional Court of Albania found the Agreement incompatible with Articles 3, 4, 7 and 92 of the Constitution of Albania.

Bosnia and Herzegovina

56. In respect of Bosnia and Herzegovina, the Court notes that its Constitution in Article IV regulates the powers of the Parliamentary Assembly and reads as follows: *"The Parliamentary Assembly shall have responsibility for: [...] (d) Deciding whether to consent to the ratification of treaties."*

57. Article V of the Constitution of Bosnia and Herzegovina provides that: *"The Presidency shall have responsibility for: (d) Negotiating, denouncing, and, with the consent of the Parliamentary Assembly, ratifying treaties of Bosnia and Herzegovina."*

58. As to the competences of the Constitutional Court of Bosnia and Herzegovina, the Court notes that the Constitution does not give that Court any jurisdiction in respect of reviewing international agreements.

Bulgaria

59. In respect of Bulgaria, the Court notes that its Constitution grants competencies to both the President and the Government to conclude international treaties in the circumstances established by law. Article 98 of the Constitution reads as follows: *"The President of the Republic shall: […] 3. conclude international treaties in the circumstances established by the law;."* Article 106 of the Constitution reads as follows: *"The Council of Ministers […] conclude, confirm or denounce international treaties when authorized to do so by law."*

60. As to the Assembly, the Court notes that its competencies are prescribed by Article 85 of the Constitution of Bulgaria, reading as follows: *"The National Assembly shall ratify or denounce by law all international treaties which: 1. are of a political or military nature; 2. concern the Republic of Bulgaria's participation in international organizations; 3. envisage corrections to the borders of the Republic of Bulgaria; 4. contain obligations for the treasury; 5. envisage the State's participation in international arbitration or legal proceedings; 6. concern fundamental human rights; 7. affect the action of the Law or require new legislation in order to be enforced; 8. expressly require ratification."*

61. The role of the Constitutional Court of Bulgaria is determined by Article 149.4 of the Constitution, which stipulates that: *"The Constitutional Court shall: […] 4. rule on the compatibility between the Constitution and the international treaties concluded by the Republic of Bulgaria prior to their ratification, and on the compatibility of domestic laws with the universally recognized norms of international law and the international treaties to which Bulgaria is a party; […]"*.

Croatia

62. The Constitution of Croatia provides as follows in respect to the incorporation of International Agreements into the domestic legal order:

"[…]

Chapter VII [International Relations]

Part 1 [International Agreements]

Article 138 [Concurrent Power]

International agreements shall be concluded, in conformity with the Constitution, law and the rules of international law, depending on the nature and contents of the international agreement, within the authority of the Croatian Parliament, the President of the Republic and the Government of the Republic of Croatia.

Article 139 [Ratification, Qualified Ratification]

(1) International agreements which entail the passage of amendment of laws, international agreements of military and political nature, and international agreements which financially commit the Republic of Croatia shall be subject to ratification by the Croatian Parliament.

(2) International agreements which grant international organizations or alliances powers derived from the Constitution of the Republic of Croatia, shall be subject to ratification by the Croatian Parliament by two-thirds majority vote of all representatives.

(3) The President of the Republic shall sign the documents of ratification, admittance, approval or acceptance of international agreements ratified by the Croatian Parliament in conformity with sections 1 and 2 of this Article.

(4) International agreements which are not subject of ratification by the Croatian Parliament are concluded by the President of the Republic at the proposal of the Government, or by the Government of the Republic of Croatia.

Article 140 [Priority Over Law]

International agreements concluded and ratified in accordance with the Constitution and made public, and which are in force, shall be part of the internal legal order of the Republic of Croatia and shall be above law in terms of legal effects. Their provisions may be changed or repealed only under conditions and in the way specified in them or in accordance with the general rules of international law.

[...]"

63. However, as to the role of the Constitutional Court of Croatia in respect of the ratification of international agreements, the Court notes that the Constitution does not grant any power to the Court to review international agreements as such. This was reaffirmed by Decision U-I/1583/2000 whereby the Constitutional Court of Croatia rejected the claim for constitutional review of a ratification law enacted by the legislative body. The Constitutional Court of Croatia held that it is competent to review the constitutionality of the act on the ratification of an international agreement, but not the international agreement itself (i.e. its substantive content) which is part of the ratification act.

Macedonia

64. In the Republic of Macedonia the relation between national and international law is regulated by two related articles of the Constitution. According to Article 118 of the Macedonian Constitution, international agreements ratified in accordance with the Constitution are part of the internal legal order and cannot be changed by law. According to Article 68 of the Constitution, the Parliament ratifies international agreements.

65. As to the Constitutional Court of Macedonia, the Court notes that Article 110 of the Macedonian Constitution does not expressly provide for the competence of the Constitutional Court to review the constitutionality of international treaties, nor is there any competence to review the conformity of laws which ratified international treaties. Notwithstanding this, in 2002, the Macedonian Constitutional Court repealed the law on ratification of a bilateral agreement because the agreement contained provisions breaching the Constitution, but it did not repeal the said provisions of the agreement finding that, to do so, it would have been in breach of international law. The Macedonian Constitutional Court argued that, since the Constitution incorporates ratified treaties into the body of the internal legal order in a rank below the Constitution, the Court builds its competence on the theory that since a ratified international treaty becomes part of the domestic legal order, it must, as any other regulation, be in accordance with the Constitution, and therefore reviewable by the Court. However, this attitude has changed and the majority of judges of the Macedonian Constitutional Court have taken the stance that control of constitutionality in case of international agreements is carried out by the Parliament in the process of their ratification, after which they become part of the domestic legal order and are self-executing. Thus, the Macedonian Constitutional Court will not review international treaties.

Slovenia

66. The Constitution of the Republic of Slovenia, in its Article 8, provides that, *"Laws and regulations must comply with generally accepted principles of international law and with treaties that are binding on Slovenia. Ratified and published treaties shall be applied directly."*

67. As to international treaties, pursuant to Article 153, *"Laws, regulations and other general legal acts must be in conformity with the Constitution. Laws must be in conformity with generally accepted principles of international law and with valid treaties ratified by the National Assembly, whereas regulations and other general legal acts must also be in conformity with other ratified treaties."*

68. As to the Constitutional Court of Slovenia, the Court notes that Article 160 [Powers of the Constitutional Court] contains relevant provisions in relation to international agreements. Namely, paragraph 1 provides that the Constitutional Court, *inter alia,* decides *"[...] on the conformity of laws and other regulations with ratified treaties and with the general principles of international law [...]".* In addition, paragraph 2 of the same Article reads that *"In the process of ratifying a treaty, the Constitutional Court, on the proposal of the President of the Republic, the Government or a third of the deputies of the National Assembly, issues an opinion on the conformity of such treaty with the Constitution. The National Assembly is bound by the opinion of the Constitutional Court."*

69. In this respect, the Court refers to Decision U-I-128/98 of the Constitutional Court of Slovenia, where it held: *"*[...] *The Constitutional Court is always empowered to review a statute even if this is, concerning its contents, an individual legal act. By assuming the provisions of an international agreement into the act on ratification, they are not given the legal nature of statutory provisions. Similarly, only because the act on ratification assumes an international agreement, the provisions of this act are not given the legal nature of an international agreement. Thus, the act on ratification and the international agreement, which adoption is confirmed by the former, are not the same legal act. Also concerning their legal nature, these two legal acts are not identical. Therefore, the Constitutional Court has jurisdiction to review the constitutionality of the act on the ratification of an international agreement, pursuant to that provision of the*

Constitution which confers on the Court the jurisdiction to decide on the consistency of statutes with the Constitution. [...]*"*

Merits

70. The Court notes that the Applicants allege that Law No. 04/L-199 on Ratification of the First International Agreement of Principles Governing the Normalization of the Relations between the Republic of Kosovo and the Republic of Serbia and the Implementation Plan of this agreement is in violation of the Constitution as regards the procedure followed for its adoption and its substance.

As to the procedure followed for adopting the contested Law

71. The Applicants complain that the procedure for adopting the contested law is in violation of:

a. Article 11, paragraphs 1 and 2, of Law No. 04/L-052 on International Agreements, because *"[...] no declaration and no reservation is attached to the draft law"*;

b. Article 54, paragraph 1, and Article 60, paragraph 1, of the Rules of Procedure of the Assembly, because *"[...] the financial statement is missing."*

c. Article 57, paragraph 1, and point 2 of Annex 2 of the Rules of Procedure of the Assembly, because *"[...] the Committee for Legislation and the Committee for Budget and Finance have not reviewed and have not given an opinion in respect to whether the agreement is in compliance with the Constitution or not."*

d. Point 5 of Annex 2 of the Rules of Procedure of the Assembly, because *"[...] the Committee for Foreign Relations has not reviewed it."*

72. However, the Court reiterates that it can only analyze the steps undertaken by the Government and the Assembly for the adoption of the contested law, on the basis of the relevant constitutional provisions.

73. In this connection, the Court notes that the competencies of the Assembly are determined in Article 65 of the Constitution, of which, for the present case, only its paragraphs 1 and 4 are relevant, reading as follows:

"The Assembly of the Republic of Kosovo:

(1) adopts laws, resolutions and other general acts;

[…]

(4) ratifies international treaties;"

74. In the present case, the Assembly, pursuant to its competence under Article 65.1 of the Constitution, voted and adopted the Law on Ratification, in accordance with the requirements for the adoption of a law foreseen in Article 80.1 [Adoption of Laws] which provides: *"Laws, decisions and other acts are adopted by the Assembly by a majority vote of deputies present and voting, except when otherwise provided by the Constitution."*

75. Furthermore, the Court also refers to Article 18.1 of the Constitution and Article 10.2 of Law No. 04/L-052 on International Agreements, which defines the procedure for the ratification of international agreements. Article 18.1 [Ratification of International Agreements] reads as follows:

"International agreements relating to the following subjects are ratified by two thirds (2/3) vote of all deputies of the Assembly:

(1) territory, peace, alliances, political and military issues;

(2) fundamental rights and freedoms;

(3) membership of the Republic of Kosovo in international organizations;

(4) the undertaking of financial obligations by the Republic of Kosovo;"

76. As such, the ratification of the 'First International Agreement' comes within the scope of Article 18.1 of the Constitution, and, therefore, requires a two-thirds majority vote in the Assembly for the adoption of the Law on Ratification.

77. As to the question which authority of a State has the power to conclude international treaties, the Court refers to Article 2 (c) of the Vienna Convention on the Law of Treaties of 1969, which defines "full powers" as meaning *"[…] a document emanating from the competent authority*

of a State designating a person or persons to represent the State for negotiating, adopting or authenticating the text of a treaty, for expressing the consent of the State to be bound by a treaty, or for accomplishing any other act with respect to a treaty;".

78. In this regard, the Court notes that the reference to the "competent authority" to conclude international agreements, leaves it to the internal law of each State to determine the authority that issues the full powers. Usually, such documents emanate from the Head of State (or somebody to whom he/she has delegated the necessary powers), the head of government or the foreign minister and bear the official emblem and, in some cases, the seal of a country.

79. In addition, the internal law of Kosovo that regulates which institutions are authorized to conclude international agreements is specified in Article 6 of Law No. 04/L-052 on International Agreements which reads as follows:

"[...]

1. The President and the Prime Minister and the Minister of Foreign Affairs shall be entitled to perform all acts relating to the conclusion of the International Agreements of the Republic of Kosovo, in compliance with the Constitution of Republic of Kosovo and the Vienna Convention on the Law of Treaties.

2. The head of a diplomatic mission of the Republic of Kosovo or the authorized representative of the Republic of Kosovo at an international conference, international organization or one of its bodies shall be entitled to negotiate the conclusion of an International Agreement of the Republic of Kosovo or to approve its text with the State to which he is accredited or at the international conference, international organization or one of its bodies.

3. Other persons may perform acts relating to the conclusion of the International Agreements of the Republic of Kosovo only provided they possess powers granted to them on the basis of the laws in force and according to the procedure established in Article 6 of this Law.

[...]"

80. In the present case, the Court notes that, on 18 October 2012, the Assembly authorized the Government to lead the process of reaching an agreement between the Republic of Kosovo and the Republic of Serbia

in order to normalize the relations between these two states (see paragraph 14). In addition, the Court notes that the Assembly has subsequently issued other decisions whereby it has declared support for the Government to continue these negotiations (see paragraph 15).

81. Following this, the Government, pursuant to the authorization granted by the Assembly of the Republic of Kosovo, entered into the First International Agreement with the Republic of Serbia on 19 April 2013.

82. In this regard, the Court refers to Article 10 of Law No. 04/L-052 on International Agreements, which provides that:

"[...]

1. Assembly of the Republic of Kosovo by two thirds (2/3) votes of all deputies shall ratify the international agreement on following issues:

1.1. territory, peace, alliances, political and military issues;

1.2. fundamental rights and freedoms;

1.3. membership of the Republic of Kosovo in international organizations;

1.4. the undertaking of financial obligations by the Republic of Kosovo.

2. International Agreements referred to in paragraph 1 of this Article shall be ratified by a law by two thirds (2/3) vote of all deputies of the Assembly of the Republic of Kosovo.

[...]"

83. In respect of the requirement established in Article 10.2 of Law No. 04/L-052 on International Agreements, the Court notes that, for the purposes of the incorporation into the Kosovo legal order of the agreement, the Government is responsible to submit to the Assembly, according to the established procedure, a draft of the appropriate law, pursuant to Article 15.3 of Law No. 04/L-052 on International Agreements, which reads as follows: *"If a law or any other legal act has to be passed for the purpose of implementation of an International Agreement of the Republic of Kosovo, the Government of the Republic of Kosovo shall submit to the Assembly according to the established*

procedure a draft of the appropriate law or shall adopt an appropriate decision of the Government or ensure according to its competence the passing of another legal act."

84. Moreover, the Court notes that, on 28 May 2013, the Government, pursuant to its competences under Article 92.4 of the Constitution and on the basis of the Resolution no. 04-R-08 (see paragraph 14), proposed for adoption to the Assembly a Draft Law on Ratification.

85. In this respect, the Court refers to Article 60 of the Rules of Procedure of the Assembly which regulates the adoption of this kind of laws, which is different from other laws, and stipulates as follows:

"[...]

1. *The Assembly of the Republic of Kosovo ratifies international agreements by law, pursuant to Article 18 of the Constitution of the Republic of Kosovo.*

2. *The Draft-Law on ratification of international agreements shall contain the text of the international agreement, reasons for such ratification and financial statement, in cases of financial implications.*

3. *Proceeding a Draft-Law on ratification of international agreements is special and shall be subject to only one reading.*

[...]"

86. In this regard, particular attention should be paid to the wording of Article 60, paragraph 3, which provides that *"Proceeding a Draft-Law on ratification of international agreements is special and shall be subject to only one reading."* Other laws adopted by the Assembly require more than one reading.

87. In view of the above considerations, the Court notes that the Assembly followed the procedures prescribed in Articles 65.1, 65.4 and 18.1 of the Constitution, Article 10 of the Law on International Agreements and Rule 60 of the Rules of Procedure of the Assembly.

88. The Court, therefore, concludes that that the procedure for adopting the contested law was followed in accordance with the provisions as provided by the Constitution.

89. Furthermore, as to the Applicants' allegations that *"[...] the financial statement is missing.",* the Court notes that Article 60 paragraph 2 of the Rules of Procedure of the Assembly specifies clearly that a financial statement shall be attached only *in case* there are financial implications, which is within the discretion of the Government to assess whether there will be financial implications or not.

90. Moreover, Article 60 of the Rules of Procedure, which is applicable in the present case, foresees only that the draft law on ratification of international agreements contains:

    a. the text of the international agreement;

    b. the reasons for such ratification; and

    c. a financial statement, in case of financial implications.

91. In this respect, the Court considers that this complaint concerns a question of legality, and as such falls outside of the jurisdiction of the Court. Therefore, the Court will not deal with it, as previously held by the Court in Case KO 29/11: *"[...] its duty is only to review alleged breaches of the Constitution."* (see Case KO 29/11, Applicant Sabri Hamiti and other Deputies, Judgment of 30 March 2011).

92. As to the part of the Referral regarding the procedural complaint for the adoption of the Law on Ratification, the Court concludes that the procedure followed for the adoption of this Law is compatible with the Constitution of the Republic of Kosovo.

As to the substance of the contested Law

93. The Applicants make a number of specific complaints with respect to the various Items contained in the First International Agreement.

94. In this respect, the Court observes that international agreements serve to satisfy a fundamental need of States to regulate by consent issues of common concern, and thus to bring stability into their mutual relations. Thus, International Agreements are instruments for ensuring stability, reliability and order in international relations and therefore these international agreements have always been the primary source of legal relations between the States.

95. In this connection, the Court remarks that it first needs to consider whether or not it is competent under the Constitution to deal with these complaints. As mentioned above in the comparative analysis, there are some Constitutions that empower the Constitutional Court to review the conformity of international agreements with the Constitution. For example Albania and Bulgaria empower their Constitutional Court to review the constitutionality of an international agreement prior to its ratification, while Bosnia and Herzegovina, Croatia and Macedonia have chosen not to give jurisdiction to their Constitutional Court to review international agreements. In addition, Slovenia has adopted a mixed system whereby, during the ratification procedure, the Constitutional Court reviews the constitutionality of international agreements if expressly requested to do so by the President, the Government or one third of the Deputies of the Parliament.

96. Thus, the comparative analysis reveals that Constitutional Courts of the countries surveyed generally do not have jurisdiction to review the constitutionality of international agreements after the adoption of the ratification law by the Parliament. However, some Constitutional Courts may indeed review the constitutionality of international agreements prior to its ratification.

97. The Court considers that the Law on Ratification and the First International Agreement are two separate legal acts. Each of these acts follows a different legal procedure, for the adoption of the Law on Ratification in the first-mentioned case, and for the signing of the First International Agreement in the second-mentioned case, respectively. As to the adoption of the Law on Ratification by the Assembly, the Court notes that the ratification law was adopted by the required two-thirds majority in one reading. Therefore, the Court considers that the adoption by the Assembly of the Law on Ratification was in compliance with the procedural provisions of the Constitution.

98. In addition, the Court is of the opinion that the purpose of the contested law is to establish the binding nature of the agreement on the Kosovo state, and to incorporate the First International Agreement into the Kosovo legal system.

99. Regarding the substance of the First International Agreement, the Court notes that no Article of the Constitution provides for a review by the Court of the constitutionality of the substance of international agreements.

100. In these circumstances, it follows that under the Constitution the Court has jurisdiction to review the Law on Ratification, but is not empowered to review whether the international agreement as such is in conformity with the Constitution.

101. The Court concludes that it is not within its jurisdiction *ratione materiae* to review the constitutionality of the First International Agreement. Consequently, it rejects the Applicants request to review the constitutionality of the First International Agreement.

FOR THESE REASONS

The Constitutional Court therefore, pursuant to Article 113.5 of the Constitution, Article 20 of the Law and Rule 36 of the Rules, on 2 September 2013,

DECIDES

I. UNANIMOUSLY, TO DECLARE the Referral admissible;

II. UNANIMOUSLY, TO DECLARE that the procedure followed for the adoption of the Law, No. 04/L-199, on Ratification of the First International Agreement of Principles Governing the Normalization of Relations between the Republic of Kosovo and the Republic of Serbia and the Implementation Plan of this agreement is compatible with the Constitution of the Republic of Kosovo;

III. BY MAJORITY TO REJECT the Applicants' request to review the First International Agreement of Principles Governing the Normalization of Relations between the Republic of Kosovo and the Republic of Serbia and the Implementation Plan to this agreement as being outside of the scope of the Court's jurisdiction *ratione materiae*.

IV. TO DECLARE that pursuant to Article 43 of the Law, this law adopted by the Assembly of the Republic of Kosovo shall be sent to the President of the Republic of Kosovo for promulgation;

V. TO NOTIFY this Judgment to the Applicants, the President of the Republic of Kosovo, the President of the Assembly of Kosovo and the Government of Kosovo;

VI. TO PUBLISH this Judgment in the Official Gazette in accordance with Article 20(4) of the Law;

VII. TO DECLARE this Judgment effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Snezhana Botusharova	Prof. Dr. Enver Hasani

Case No. KO 95/13
Applicants
Visar Ymeri and 11 other deputies of the Assembly of the Republic of Kosovo
Constitutional review of the Law, No. 04/L-199, on Ratification of the First International Agreement of Principles Governing the Normalization of Relations between the Republic of Kosovo and the Republic of Serbia

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of :
Enver Hasani, President
Ivan Cukalovic, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Kadri Kryeziu, Judge
Arta Rama-Hajrizi, Judge.

CONCURRING OPINION OF JUDGE ROBERT CAROLAN

I agree with the effect of the Judgment of the majority of the Court that this law is in compliance with the Constitution.

But I disagree with the reasoning of the majority that concludes that the Constitutional Court only has the authority to decide whether the procedures followed by the Assembly in adopting this law complied with the Constitution but does not have the authority to review whether the substantive provisions of this law comply with the Constitution.

Article 65(4) of the Constitution merely authorizes the Assembly to ratify international treaties. It does not prohibit the Constitutional Court from reviewing whether those treaties comply with the Constitution. Indeed, Article 113.5 of the Constitution clearly authorizes the Constitutional Court to review the substantive provisions of a treaty whether they be adopted by enactment of a law or decision of the Assembly of the Republic of Kosovo. It specifically provides:

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.

(Emphasis added.)

This Agreement is a law adopted by a decision of the Assembly of the Republic of Kosovo. The Constitution specifically provides that even a treaty can have the effect of being an adopted law:

> *Article 19 [Applicability of International Law]*
>
> *1. International agreements ratified by the Republic of Kosovo become part of the internal legal system after their publication in the Official Gazette of the Republic of Kosovo. They are directly applied except for cases when they are not self-applicable and the application requires the promulgation of a law.*

Indeed, Chapter II of the Constitution requires the Court to make a substantive Constitutional review of a treaty that may be adopted.

> *Article 21 [General Principles]*
>
> *1. Human rights and fundamental freedoms are indivisible, inalienable and inviolable and are the basis of the legal order of the Republic of Kosovo.*
>
> *2. The Republic of Kosovo protects and guarantees human rights and fundamental freedoms as provided by this Constitution.*
>
> *3. Everyone must respect the human rights and fundamental freedoms of others.*
>
> *4. Fundamental rights and freedoms set forth in the Constitution are also valid for legal persons to the extent applicable.*

For example, if the Assembly were to adopt a treaty that violated human rights of citizens or members of certain communities, then the Constitution would be meaningless if the Constitutional Court could not review and enforce the human rights that are protected by the Constitution. Therefore, the Court does have the authority to review

the substantive provisions of this law and the decision of the Assembly in enacting this law.

The substantive provisions of this law and decision do not violate the Constitution.
Respectfully submitted,

Robert Carolan
Judge

KO 108/13, Albulena Haxhiu and 12 other deputies of the Assembly of the Republic of Kosovo, date 09 August 2013- Constitutional review of the Law, No. 04/L-209, on Amnesty.

Case KO 108/13, Judgment, of 2 September 2013.

Keywords: Referral by Deputies of the Assembly of the Republic of Kosovo

The Applicants submit that the aim of the Law on Amnesty is the amnesty of persons from criminal prosecution and of persons who have not completed their sentence prior to 20 June 2013. According to them, the Law "[...] includes the amnesty of persons who have committed a total of 67 (sixty-seven) criminal offences under the Criminal Code of the Republic of Kosovo, Criminal Code of Kosovo (UNMIK Regulation 2003/25 of 6 July 2003) and UNMIK Regulation No. 2004/19 amending the Provisional Criminal Code of Kosovo, Criminal Law of SAPK in conjunction with UNMIK Regulations No. 1999/24 and 2000/59 on the applicable law in Kosovo and all the criminal offences provided under the SFRY Criminal Code." In the Applicants' view, the Law on Amnesty has not provided a starting date, but has only provided a date for the amnesty of offences committed prior to that date.

The Applicants state that in the criminal law doctrine the main reasons for sanctioning criminal offences is to focus on the protection of social and individual integrity against harmful actions that may violate certain values and that precisely there lies the main foundation of the principle of legality in the criminal branch of every legal system.

Considering that the Law on Amnesty contains provisions by which persons having committed criminal offences which have caused harm to the injured party in the criminal proceedings, are exempted from criminal prosecution and from complete execution of the punishment, the Applicants hold that amnesty for such persons violates the right of the injured party to make use of effective legal remedies regarding the exercise of their right to criminal prosecution and individual compensation.

In the Applicants' view, besides criminal offences against the state or the constitutional order and those related to violations of tax and customs obligations, Article 3 [Conditions on granting Amnesty from criminal prosecution and complete execution of the punishment] of the Law includes criminal offences which may have caused or may have attempted to cause harmful consequences for any citizen of the Republic of Kosovo or a foreign citizen.

The Court notes that the Applicants allege that Law No. 04/L-209, On Amnesty, is in violation of the Constitution as regards its substance and the procedure followed for adopting the law. As to the substance of the contested Law, the Applicants maintain with respect to the amnestied crimes under the Law on Amnesty that they are in violation of Article 31, paragraphs 1 and 2, Article 32, and Article 24, paragraphs 1 and 2, of the Constitution, as well as Article 6, paragraph 1, in conjunction with Articles 13 and 14 of the European Convention on Human Rights and Fundamental Freedoms (ECHR). The Applicants also allege that some of the amnestied crimes are in violation of Article 1 of the First Protocol to the ECHR.

The Constitutional Court, on 3 September 2013, decided unanimously to declare the Referral admissible, unanimously to declare that the procedure followed for the adoption of the Law on Amnesty, No. 04/L-209, is compatible with the Constitution of the Republic of Kosovo, and by majority to declare that the Law, No. 04/L-209, On Amnesty as to its substance is compatible with the Constitution with the exception of the following articles which are declared null and void: 1.1.10 (Destruction or damage to property), 1.1.11 (Arson), 1.1.15.10 (Falsifying documents), 1.1.15.11 (Special cases of falsifying documents), 1.2.5 (Damaging movable property), 1.2.9.7 (Falsifying official documents), 1.3.1 (Damaging another person's object), 1.3.5.6 (Falsifying documents) and 1.3.5.7 (Falsifying official documents);

JUDGMENT
in
Case No. KO 108/13
Applicants
Albulena Haxhiu and 12 other deputies of the Assembly of the Republic of Kosovo
Constitutional review of the Law, No. 04/L-209, on Amnesty

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Enver Hasani, President
Ivan Cukalovic, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Kadri Kryeziu, Judge, and
Arta Rama-Hajrizi, Judge.

Applicants

1. The Applicants are Albulena Haxhiu, Visar Ymeri, Albin Kurti, Glauk Konjufca, Rexhep Selimi, Afrim Kasolli, Afrim Hoti, Liburn Aliu, Albana Gashi, Emin Gërbeshi, Albana Fetoshi, Agim Kuleta and Aurora Bakalli, all of them deputies of the Assembly of the Republic of Kosovo. Before the Constitutional Court of the Republic of Kosovo (hereinafter: the "Court"), the Applicants have authorized Ms Albulena Haxhiu to represent them.

Challenged law

2. The Applicants challenge the Law, No. 04/L-209, on Amnesty, which was adopted by the Assembly on 11 July 2013.

Subject matter

3. The Applicants request the review of the constitutionality of the Law, No. 04/L-209, On Amnesty, which was adopted by the Assembly of the Republic of Kosovo (hereinafter: the "Assembly") with Decision No. 04-V-646 of 11 July 2013.

Legal basis

4. Article 113.5 of the Constitution of the Republic of Kosovo (hereinafter: the "Constitution"), Articles 42 and 43 of the Law, No. 03/L-121, on the Constitutional Court of the Republic of Kosovo of 15 January 2009, (hereinafter: the "Law"), and Rule 36 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 July 2013, the Applicants submitted their Referral to the Court.

6. On 19 July 2013, the President of the Constitutional Court, by Decision No.GJR.KO.108/13, appointed Judge Snezhana Botusharova as Judge Rapporteur. On the same date, the President of the Constitutional Court, by Decision No.KSH.KO.108/13, appointed the Review Panel composed of Judges Robert Carolan (Presiding), Kadri Kryeziu and Arta Rama-Hajrizi.

7. On 22 July 2013, the Court notified the President of the Assembly and the Government of the Referral and asked them to submit their comments with any documents that they would deem necessary in respect to the Referral.

8. On 22 July 2013, the President of the Republic of Kosovo was informed about the Referral submitted by the Applicants to the Court.

9. On 25 July 2013, the President of the Republic of Kosovo requested the Court clarification in respect to the Referral on the Law on Amnesty and in respect to her constitutional obligations, i.e. whether she could promulgate the Law on Amnesty and whether an interim measure would need to be imposed.

10. On the same day, the Court replied to the President of the Republic of Kosovo providing:

> *"[...]*
>
> *As to the Law on Amnesty we wish to inform you that this Law has not and cannot enter into force as long as the Constitutional Court of the Republic of Kosovo has not rendered its final decision.*

We would also like to draw the attention to the fact that any attempt to publish the Law or to apply it is unconstitutional and such an act is null and void.

The Law on Amnesty has not and it cannot enter into force until the Constitutional Court renders its decision, and as a consequence the law in question cannot have legal consequences.

[…]"

11. On 29 July 2013, the Court received the following documents submitted by the President of the Assembly of the Republic of Kosovo:

    a. The final report of the Committee for Legislation of 17 June 2013 with respect to the Law on Amnesty.

    b. The transcript of the plenary session of the Assembly of 11 July 2013.

    c. The minutes of the plenary session of the Assembly of 11 July 2013.

    d. The electronic voting register.

    e. The Decision of the Assembly of 11 July 2013 on Adopting Law no. 04/L-209 on Amnesty (Decision No. 04-V-646).

    f. The Law No. 04/L-209 on Amnesty.

12. On 1 August 2013, the Applicants submitted additional information clarifying a number of points of their Referral.

13. On 13 August 2013, the Court informed the Assembly and the Government about the Applicants submission of additional information and asked them to submit their comments.

14. On 19 August 2013, the Government provided its comments to the Court in respect to the Applicants submission of 1 August 2013.

15. On 20 August 2013, the Government submitted to the Court their *"Comments regarding the referral of Ms. Albulena Haxhiu and 12 Members of the Assembly of the Republic of Kosovo KO 108/13 dated 19 July 2013."*

16. On 21 August 2013, the Applicants were informed about the Government's comments.

17. The Review Panel considered the Report prepared by the Judge Rapporteur, Judge Snezhana Botusharova, and made a recommendation to the full Court.

18. On 3 September 2013, the Court deliberated and voted on the Case.

Summary of facts

19. On 25 June 2013, the Government of the Republic of Kosovo decided to approve the Draft-Law on Amnesty and instructed the Secretary General of the Office of the Prime Minister to present the Draft-Law to the Assembly of Kosovo for review and adoption.

20. According to the Explanatory Memorandum of the Draft-Law, *"[T]his law regulates the conditions and the procedure under which amnesty can be granted for persons who have been convicted of certain specified criminal offences, who are under prosecution for such criminal offences, or could be subject to prosecution for such criminal offences committed prior to June 20, 2013 within the territory which now constitutes the Republic of Kosovo."*

21. On 11 July 2013, pursuant to Article 65.1 of the Constitution of the Republic of Kosovo and Articles 58 and 84 of the Rules of Procedure of the Assembly, the Assembly of the Republic of Kosovo, by Decision No. 04-V-646, adopted Law No. 04/L-209, On Amnesty by 90 votes in favor, 17 against and one abstention and sent it to the President of the Republic of Kosovo for promulgation.

22. On 19 July 2013, pursuant to Articles 113.5 of the Constitution of the Republic of Kosovo and Articles 42 and 43 of the Law on the Constitutional Court, the Applicants submitted a Referral to this Court for the constitutional review of the Law on Amnesty, adopted by the Assembly of the Republic of Kosovo on 11 July 2013, challenging its substance and the procedure for its adoption.

Arguments presented by the Applicants

As to the substantial aspect of the Referral:

23. The Applicants submit that the aim of the Law on Amnesty is the amnesty of persons from criminal prosecution and of persons who have not completed their sentence prior to 20 June 2013. According to them, the Law *"[…] includes the amnesty of persons who have committed a total of 67 (sixty-seven) criminal offences under the Criminal Code of the Republic of Kosovo, Criminal Code of Kosovo (UNMIK Regulation 2003/25 of 6 July 2003) and UNMIK Regulation No. 2004/19 amending the Provisional Criminal Code of Kosovo, Criminal Law of SAPK in conjunction with UNMIK Regulations No. 1999/24 and 2000/59 on the applicable law in Kosovo and all the criminal offences provided under the SFRY Criminal Code."* In the Applicants' view, the Law on Amnesty has not provided a starting date, but has only provided a date for the amnesty of offences committed prior to that date.

24. The Applicants state that in the criminal law doctrine the main reasons for sanctioning criminal offences is to focus on the protection of social and individual integrity against harmful actions that may violate certain values and that precisely there lies the main foundation of the principle of legality in the criminal branch of every legal system.

25. Considering that the Law on Amnesty contains provisions by which persons having committed criminal offences which have caused harm to the injured party in the criminal proceedings, are exempted from criminal prosecution and from complete execution of the punishment, the Applicants hold that amnesty for such persons violates the right of the injured party to make use of effective legal remedies regarding the exercise of their right to criminal prosecution and individual compensation.

26. In the Applicants' view, besides criminal offences against the state or the constitutional order and those related to violations of tax and customs obligations, Article 3 [Conditions on granting Amnesty from criminal prosecution and complete execution of the punishment] of the Law includes criminal offences which may have caused or may have attempted to cause harmful consequences for any citizen of the Republic of Kosovo or a foreign citizen.

27. The Applicants then enumerate the criminal offences of Article 3.1 of the Law, which have or may have harmed the interests of individuals:

"[…]

1.1 Criminal offences foreseen in the Criminal Code of the Republic of Kosovo (Official Gazette of the Republic of Kosovo no. 19/13 2012), namely:

1.1.10 Destruction or damage to property (Article 333, paragraph 1);

1.1.11 Arson (article 334, paragraph 1);

1.1.13 Failure to report criminal offences or perpetrators (Article 386, only in relation to the failure to report the criminal offences or perpetrators listed under this Article);

1.1.14 Providing assistance to perpetrators after the commission of criminal offences (Art. 388, only in relation to providing assistance to perpetrators after the commission of the criminal offences listed under this Article);

1.1.15.1 Threat to a candidate (Article 211);

1.1.15.2 Preventing exercise of the right to vote (Article 212);

1.1.15.9 Endangering public traffic by dangerous acts or means (Article 380, paragraphs 1, 2, 5);

1.1.15.10 Falsifying documents (Article 398);

1.1.15.11 Special cases of falsifying documents (Article 399, subparagraphs 1.1 and 1.4 of paragraph 1);

1.1.15.12 Obstructing official persons in performing official duties (Article 409, paragraphs 1, 2 and 3);

1.1.15.13 Attacking official persons performing official duties (Article 410, paragraph 1), except in cases when the commission of this criminal offence has resulted in grievous bodily harm or death; and

1.1.16 Participating in a crowd committing criminal offences and hooliganism (article 412), except in

cases when the commission of this criminal offence has resulted in grievous bodily harm or death.

1.2 *Criminal offences foreseen by the Criminal Code of Kosovo (UNMIK Regulation no. 2003/25 of 6 July 2003, Official Gazette 2003/25) and UNMIK Regulation no. 2004/19 amending the Provisional Criminal Code of Kosovo:*

1.2.5 *Damaging movable property (Article 260);*

1.2.7 *Failure to report a criminal offence or its perpetrator (Article 303), only in relation to the criminal offences for which amnesty is granted under this law;*

1.2.8 *Providing assistance to perpetrators after the commission of criminal offences (Article 305), only in relation to the criminal offences for which amnesty is granted under this law;*

1.2.9.6 *Endangering public traffic by dangerous acts or means (Article 299, paragraphs 1 and 2);*

1.2.9.7 *Falsifying documents (Article 348);*

1.2.9.8 *Obstructing official persons in performing official duties (Article 316);*

1.2.9.9 *Attacking official persons performing official duties (Article 317), except in cases when the commission of this criminal offence has resulted in grievous bodily harm or death;*

1.2.10 *Participating in a crowd committing a criminal offence (Article 320), except in cases when the commission of this criminal offence has resulted in bodily harm or death.*

1.3 *Criminal offences foreseen under the Criminal Law of SAPK, Official Gazette nr. 20/77 and UNMIK Regulations nos. 1999/24 and 2000/59 on the Applicable Law in Kosovo, as follows:*

1.3.1 *Damaging another person's object (Article 145);*

1.3.3 *Failure to report on a criminal act or a perpetrator (Article 173), only in relation to the criminal offences for which amnesty is granted under this Law;*

1.3.4 *Aiding a perpetrator after he has committed the criminal act (Article 174), only in relation to the criminal offences granted amnesty for under this Law;*

1.3.5.5 *Endangering the public traffic by a dangerous act or means (Article 167);*

1.3.5.6 *Falsifying documents (Article 203);*

1.3.5.7 *Falsifying official documents (Article 184);*

1.3.5.8 *Obstructing official persons in performing official duties (Article 183);*

1.3.5.9 *Attacking official persons performing official duties (Article 184, paragraphs 1, 2 and 4), except in cases when the commission of this criminal offence has resulted in grievous bodily harm or death;*

1.3.6 *Participation in a group that commits a criminal act (Article 200), except in cases when the commission of this criminal offence has resulted in serious bodily harm or death.*

[…]"

28. The Applicants further indicate that the main issue of the Referral is the violation of the subjective right to a legal remedy of the injured party to initiate criminal proceedings against the perpetrator of the criminal offence or attempted criminal offence for which amnesty is granted under Article 3 of the Law on Amnesty. In their view, the right to pursue legal remedies, as guaranteed by Article 32 [Right to Legal Remedies] of the Constitution, is, therefore, violated.

29. Moreover, under criminal law the injured party has the right to submit a motion for prosecution, while under the previous legislation – the

Provisional Criminal Procedure Code- the institute of private prosecutor and subsidiary prosecutor in criminal proceedings existed. Based thereupon, the Applicants argue, Article 6, paragraph 3, of the Criminal Procedure Code No. 04/L-123 lays down the right of the injured party to file a motion with the state prosecutor to initiate criminal proceedings. Article 79, paragraph 3, of the Criminal Procedure Code, however, limits the prosecutor's right to do so depending on the injured party's motion for prosecution.

30. The Applicants hold that the motion for criminal prosecution is an important legal remedy the aim of which is to enable the injured party to protect his/her individual interests from a criminal aspect as well as from a civil aspect, when dealing with property claims related to material or moral damage caused by the criminal offence. In the Applicants' view, the right to a motion for prosecution is undoubtedly protected by Article 31 [Right to a Fair Trial], paragraphs 1 and 2, of the Constitution, of which paragraph 1 guarantees to everyone *"equal protection of rights in the proceedings before courts, other state authorities and holders of public power."*

31. Granting amnesty to persons who have committed or are suspected of having committed one of the criminal offences specified in this Referral makes it impossible for the injured party to use the legal remedies through which he/she could protect his/her legal interests with respect to the possible harm caused by the criminal action. The Applicants, therefore, maintain that the guarantee of equal protection of rights as provided in Article 31.1 of the Constitution is impossible, since the injured party's right to use legal remedies is violated.

32. They further refer to Article 31.2 of the Constitution, *"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."* In their opinion, Article 3 of the Law on Amnesty renders the constitutional guarantee of the right to a judicial hearing by an independent and impartial tribunal established by law impossible. Therefore, by granting amnesty to suspected or convicted persons for criminal offences mentioned in Article 3 of the Law and specified in this Referral, Article 31.2 is violated, since the conduct of criminal proceedings against such persons is made impossible.

33. As to Article 32 of the Constitution, providing that: *"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," the Applicants argue that Article 8.1 of the Law on Amnesty stipulates that in every case where criminal reports have been filed, an investigation was initiated, or an indictment was filed, the competent prosecutor shall terminate all these proceedings in accordance with this law, thereby granting amnesty to the said persons.

34. In their opinion, by recognizing the prosecutor's authorization, the right of the injured party to use a legal remedy against the decision of the termination of the criminal proceedings is violated, contrary to Articles 31.1 and 32 of the Constitution which recognize the inviolable right of the parties to pursue legal remedies against judicial decisions that violate their rights and interests, in the manner provided by law.

35. The Applicants further allege that, besides Articles 31 and 32 of the Constitution, the adoption of the Law will also bring about a violation of Article 24 [Equality before the Law], paragraphs 1 and 2, of the Constitution. The impediment for the injured party to exercise the right to protect his/her legal interests as well as to file a motion for prosecution, including a property claim, constitutes inequality for all injured parties who have suffered harm from the commission of the criminal offences laid down in Article 3 of the Law on Amnesty.

36. The Applicants also consider that the inclusion of the criminal offences under Article 3 of the Law violates the provisions of Article 13 and 14 in conjunction with Article 6 of the European Convention on Human Rights and, particularly, quote Article 13: *"Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."* In their view, any right guaranteed by the Convention, including the right to a fair and impartial trial of Article 6, implies the right to an effective remedy before a state authority.

37. They maintain that, apart from Article 6 ECHR, also Article 1 of Protocol 1 to ECHR has been violated, when taking into consideration that the damage to property and the absolute right of the title holder to protect the property with lawful remedies are at stake. On the other hand, they consider that Article 6.1 ECHR guarantees to everyone the right to a fair and public hearing within a reasonable time by an independent and impartial tribunal which shall decide on the nature of the matter, be it of criminal or civil nature. In their view, Articles 3 and 8.1 and 2 of the Law on Amnesty have violated the rights of parties who have been injured by

criminal offences included in Article 3 of the Law, by denying them the right to have their matter heard before an independent and impartial tribunal.

38. The Applicants further allege a violation of Article 14 ECHR which reads: *"The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."* In their opinion, the realization of the rights provided under this Convention which includes Articles 6 and 13, must be secured without any discrimination on grounds of social status.

39. They also consider that the violation of the right of the injured party to a tribunal where his case could be heard constitutes a discrimination in comparison with other injured parties who have been harmed by other criminal offences which have not been included in Article 3 of the Law.

40. The Applicants then refer to some judgments of the European Court of Human Rights dealing with the meaning of Article 13 ECHR. In the case *Iatridis v. Greece*, some fundamental principles regarding this right have been included as follows: *"The Court notes that the application under Article 13 arises out and it has similar legal grounds to Article 1 of Protocol No. 1 to ECHR regarding the inviolability and inexhaustibility of legal remedies. However, there is a difference in the nature of Article 13 and Article 1 of Protocol No. 1: the former (Article 13) affords a procedural safeguard, which includes, but is not limited only to a legal remedy, whereas Article 1 of Protocol No. 1 includes the comprehensive obligation with regard to the freedom and right of ownership."*

41. The Applicants further refer to the case *Buyukdag v. Turkey,* in which the ECtHR held that: *"The requirement under Article 13 must be realizable and executable both in practice and in legal sanctioning, especially when the enjoyment of the right depends on actions or non-actions by the authorities of the responding state."*

42. Finally, the Applicants point to the case *Leander v. Sweden*, where the ECtHR has equally established some principles regarding the interpretation of the right defined in Article 13 ECHR and underline in particular the principle that: *"Every person who shows that any of the rights under this Convention has been violated, must be recognized the right to an effective legal remedy to protect his subjective rights that derive from this Convention."*

43. They consider that here the ECtHR goes further with respect to the recognition of the right to an effective legal remedy, when stating that the state authorities referred to in Article 13 ECHR need not to be a judicial authority but that the definition of these authorities has a wide institutional character.

44. In sum, the Applicants allege that the above provisions of Article 3 of the Law on Amnesty violate Articles 3.1 and 3.2 and 32 of the Constitution of Kosovo, as well as Articles 6, 13 and 14 of the European Convention on Human Rights.

45. In their additional clarifications submitted on 1 August 2013, the Applicants state, *inter alia*, that:

> "[...]
>
> *In the provision of Article 5 of the Law on Amnesty, it was stated: „The granting of amnesty shall not affect the rights of third parties which are based upon a sentence or a judgment."*
>
> *By this provision is afforded a possibility that the third parties exercise their rights in other proceedings, which might be related to an existence of an binding relation or any other legal relation, which depends on the court decision, rendered in the criminal proceedings, such property-legal claim.*
>
> *However, because of this we should take into account that this provision has to do with the category of persons against whom was conducted the proceedings and for the criminal matter it was decided on merits. Therefore, taking into consideration that by the provisions of Article 3 of the Law on Amnesty, the persons who committed criminal offences, provided by this law are amnestied from the criminal prosecution and complete execution of the punishment, where the provision of Article 5 of the Law on Amnesty, could be applied only for the category of persons, who are exempted from the complete execution of the punishment, because the rights of third persons depend on the rendered decision of the court.*
>
> *On the contrary, the persons who have legal interest to exercise it in the court proceedings, could not exercise it against the persons who*

are exempted from the criminal prosecution, since, due to the fact that they are exempted from the criminal prosecution, the proceedings against this category (be that in the initial phase, or of the pre-criminal-investigation proceedings or in the phase after filing the indictment) are completely terminated, as it is provided in Article 8, paras. 1 and 2, of the Law on Amnesty.

On this occasion, it should be stressed that in Article 14 on the Contested Procedure is provided that: „ In the contentious procedure, regarding the existence of criminal act and criminal responsibility, the court is bound to the effective judgment of the criminal court by which the defendant has been found guilty."

By this provision it is clear that the third party, to exercise, for example the property-legal claim in the contested procedure, such a claim will be filed to the competent court, which in the contested procedure is related to the judgment by which is determined and found guilt, which is legal ground for existence the caused damage, be that material or moral.

Therefore, in the contested procedure, according to the property-legal claim, the court will only assess the height of damage, caused by the commission of the criminal offence, and the latter will not determine the guilt of the perpetrator, since this will be determined by the court in the criminal proceedings. From the content of this provision, it is clear that the court in the contested procedure depends on deciding on finding the person in capacity of defendant, guilty. Thus, the Court in any case will decide only after the defendant will be found guilty, according to the Judgment of the Court, which has decided in the criminal proceedings.

[…]"

As to the procedural aspect of the Referral

46. The Applicants allege that even though the first text of the Draft-Law on Amnesty was not voted in the session of 4 July 2013, the Government of Kosovo withdrew the text and presented a revised Draft-Law to the Assembly on the next day. This revised text was reviewed by the Legislative Committee on 8 July 2013.Thus, again Article 65.4 of the Rules of Procedure of the Assembly of Kosovo which requires that at least four working days before the meeting is convened all material for review must be provided was violated. In the Applicants' view, bearing in mind that draft-laws are the main subject of review in the meetings of

the Assembly, it is senseless and in violation of the provisions of Article 65.4 of the Rules of Procedure that a meeting is convened without the requirements set forth in this provision having been met and that the agenda is introduced in violation of the time limits foreseen by this provision.

47. The Applicants further state that in the plenary session of 11 July 2013, that is before the minimum period of two working weeks had elapsed, the Presidency of the Assembly in the meeting of 8 July 2013 decided to present this Draft-Law without taking into consideration the review that is done by the Reporting Committee. On 11 July 2013, the Assembly, by voting for the request of the parliamentary group PDK for departure from the procedures, presented the Draft-Law on Amnesty at two readings within the same session, the first reading in the morning and the second one in the afternoon. After the voting in the first reading, the Assembly assigned the Legislation Committee to review the Draft-Law for the second reading.

48. In this connection, the Applicants refer to Article 57.3 of the Rules of Procedure, reading: *"Amendments to the Draft-Law may be introduced by a Member of the Assembly, parliamentary group, parliamentary committee and the government, within two working weeks from the approval in principle. Amendments shall be addressed to the functional-lead committee."* In the Applicants view, therefore, the deputies' right to introduce amendments in the time limit provided by the Rules has been violated.

49. They further stress that departure should not be made from qualitative actions, but should always be understood as departure from formal procedures that have no impact on the quality of the decision for which such procedure is followed. In their view, by not presenting the Draft-Law to these permanent committees, Article 57.3 of the Rules of Procedure of the Assembly is violated.

50. The Applicants finally state that the Legislation Committee during the review of this Law, especially the Draft-Law, never reviewed the constitutionality and legality of the Draft-Law, which is now a ratified law. In this respect, they refer to item 3 of Annex 2 of the Rules of Procedure of the Assembly which specifies the scope of activities of the parliamentary committees, in particular, that they analyse and evaluate the conformity of acts adopted by the Assembly with the Constitution; and review the legality and constitutionality of draft laws.

51. They conclude that it can also clearly be seen from the transcripts of the Legislation Committee that the procedural requirements regarding the review procedure before the first reading of the Draft-Law on Amnesty have not been met. Therefore, the Draft-Law on Amnesty has been presented in violation of Article 65.4 of the Rules of Procedure of the Assembly. Moreover, due to the violation of the right to introduce amendments within the time limit provided by the Rules, the Draft-Law on Amnesty has been presented in violation of Article 57.3 of the Rules of Procedure of the Assembly.

Arguments presented by the Government

52. As to the Applicants additional information submitted to the Court on 01 August 2013, according to the Government the Court should *"declare the additional challenge filed by the single Member of the Parliament, on 1 of August 2013, inadmissible due to its lack of legal or procedural basis."*

53. The Government considers that there exist *"[…] the right of the parties in the proceeding, under article 22.4 of the Law on Constitutional Court, to provide additional facts to the Court, but which subject to three cumulative and imperative conditions: firstly, that the referral be unclear or incomplete; secondly, that the Court itself, through the Judge Rapporteur, requests such information from the party; and thirdly, that the information required shall only be in the nature of "additional facts that are required to assess the admissibility or grounds for the claim"."* In this respect, the Government allege that the submission of the Applicants does not fall under this provision but must be considered as *"[…] an additional challenge, filed by her personally."*, because *"[…] the original referral itself does not address the Constitutionality of article 5 of the Law on Amnesty."*

54. Furthermore, the Government's view is that *"[…] the letter of Ms. Haxhiu is a mere submission of her personally and as such, cannot be considered to be a part of the referral signed by the 13 members of the Parliament. If the Members of the Parliament meant to successfully challenge Article 5 of the Amnesty Law as they did challenge article 3 of the said Law, this challenge, would have been a part of their own referral."*

55. On 20 August 2013, the Government provided the Court with their comments in respect to Case KO 108/13 alleging that:

a. *"The Kosovo Law on Amnesty is in full compliance with International Law and the Constitution of Kosovo*

b. *The Law on Amnesty does not violate any fundamental rights guaranteed by the Constitution*

c. *Any alleged limitation of rights under Chapter II of the Constitution, is in agreement with Article 55 of the Constitution*

d. *The procedure for the adoption of the amnesty law was in accordance with the rules of procedure of the Assembly of Kosovo"*

56. The Government state that *"Amnesties are an acceptable and recognized legal instrument under international law […]"*, which *"[…] has been used in other countries and has been evaluated by international tribunals."* In this respect, *"The Government of the Republic of Kosovo was and still is in a situation not unique from other countries undergoing transition. After a harsh and gruelling war, the country has suffered a de facto severance of a part of its territory, which has kept its relations with the neighboring country dreadfully hostile. Indeed, as with many countries, examples of which are elaborated herein, this latest attempt for normalisation of relations between Kosovo and Serbia has started with the UN itself. On September 8, 2010 the General Assembly of the UN adopted a resolution "Welcom[ing] the readiness of the European Union to facilitate a process of dialogue between the parties; the process of dialogue in itself would be a factor for peace, security and stability in the region, and that dialogue would be to promote cooperation, achieve progress on the path to the European Union and improve the lives of the people" [UNGA Resolution A/64/L.65/Rev.1;p.2]. Thus, even the General Assembly of the United Nations sees the Dialogue process as necessary for peace, security and stability in the region. This Amnesty Law is an integral part of that process."*

57. Furthermore, the Government considers that *"[…] the Law on Amnesty of Kosovo is a carefully crafted amnesty, which does not in any way include serious violent crimes against International Law and practice."*

58. According to the Government *"In addition to the international law noted above, there is case law within the European Court of Human Rights (ECtHR), which addresses the compliance of Amnesty laws. The*

ECtHR, the practice of which is binding for this Honourable Court, has not so far assessed any Amnesty laws to be contrary to the ECHR. It has, however, adjudicated many cases in which Amnesty Laws have been regarded as legal and in compliance with international law [see Dujardin vs. France, Tarbuk vs. Croatia, Margus vs. Croatia]."

59. As to whether the Law on Amnesty diminish any rights and freedoms under Chapter II of the Constitution, the Government provides that *"The referring party has explicitly indicated and based its entire argument of this referral on their allegation that the mere existence of Amnesty diminishes the rights under Chapter II of our Constitution. In the second paragraph, the referring party argues that [note: unofficial translation] "Given that the Law on Amnesty [...] contains provisions through which persons that have committed criminal offences that cause consequences and damage to people are exempted from criminal prosecution and execution of punishment, which in a procedural aspect may be a damaged party in a criminal procedure, it is considered that the exemption of persons from criminal prosecution and execution of sentence diminishes their disposable right to use legal remedies in relation to accomplishing their right to criminally prosecute and accomplishing their subjective rights in the capacity of a damaged party". Hence, based on this, it is clear that the opposing party's argument seeks refuge and legal basis on something that the Constitutional Court of the Republic of Kosovo has already decided to the contrary. This Court has decided that Amnesty as an institution, entailing what it is supposed to, is indeed in compliance with our Constitution."*

60. As to whether Article 3 of the Law on Amnesty violates any rights under Chapter II of the Constitution and Articles 6 and 13 of ECHR, the Government expresses their view that *"The law has been carefully crafted not only to avoid giving amnesty to serious crimes or human rights violations, but to minimize any victim's inability to recover damages. This is shown by the Law on Amnesty in the exceptions to Amnesty in Article 4 and the safe harbour provision of Article 5. Those cases for which a victim has been identified will have either minimal harm or economic harms, which can be addressed in a civil venue. For instance, under Article 136 of the Law on Obligational Relationships, anyone who inflicts damage on another is liable. It does not require a criminal investigation to precede the civil case."*

61. As to whether Article 3 of the Law on Amnesty violates Article 14 and Protocol 12 of ECHR, the Government notes that *"Amnesty is not based upon any category, such as ethnicity, gender, or other constitutionally*

protected category. If the Law does result in a greater percentage of one gender or ethnic group being granted amnesty, it would simply be because those groups participated in those criminal acts or had those motivations at a higher rate. Such groups of people would, by their nature, not be in "analogous situations" or "relatively similar situations" with those who didn't commit those criminal acts or had those motivations. Even if this Court were to determine that the groups of people eligible for amnesty and those who were not eligible for amnesty were in analogous situations, there is an "objective and reasonable justification" for this difference in treatment, as the provision of this Amnesty was part of international negotiations for the withdrawal of Serbian institutions from the Republic of Kosovo."

62. As to whether Article 5 of the Law on Amnesty violates victims' rights under the Constitution, the Government indicates that *"The language of Article 5 is a mere explanation for interpretation by the Courts in the future. For example, when a court, in applying amnesty issues a decision for granting amnesty under Article 8 of the Law, it should be clear to them that the decisions issued beforehand based on that criminal conviction should not be nullified, even though the person is liberated from criminal prosecution of execution of the sentence for that same criminal offense. However, this does not in any way, bar other victims in the future, whose perpetrators have not been sentenced, to pursue their rights in a civil procedure."* [...] *"That is because the Law on Contentious Procedure is still valid and it provides all parties with a right to file for damages at any point in time."*

63. As to whether any alleged limitations of the rights under the Constitution is in accordance with Article 55 of the Constitution, the Government hold that *"[...] the Law on Amnesty has no intention to disrespect the essence of the rights guaranteed under Chapter II of the Constitution, or the conditions of Article 55 of the Constitution and that there is a clear and underlying connection between the intention of any potential limitation on one side and the purpose that it is being used for."*

64. In respect to the procedure for adopting the Law, the Government state that the adoption of the law was done in accordance with the Rules of Procedure of the Assembly.

65. As to whether Article 65.4 of the Rules of Procedure of the Assembly was violated, the Government considers that *"Article 65, paragraph 4,*

of the RoP states "The Commission may invite representatives to meetings and civil society institutions." and, therefore, *"[…] there is no connection with this article and the application submitted by the Members of the Assembly."*

66. As to whether Article 64.4 of the Rules of Procedure of the Assembly was violated, the Government hold that *"Upon the proposal of one of the members of the committee and the support of the majority of MPs (with only one vote against), the Commission has decided to amend the agenda to review and introduce the first point of the agenda- reviewing the Draft Amnesty Law in principle. After the review, the Commission, by majority vote, recommended the Assembly to adopt Draft Law on amnesty."* Consequently, the Government alleges that the challenge to the four day period is unfounded.

67. As to the voting procedure, the Government considers that *"The proposal of one of the MPs to deviate from the RoP and to insert "the review on first reading of the Draft Law on Amnesty" was supported by a total of 84 deputies, 14 against and no abstentions. On the first reading, the Draft Law was approved by the Assembly with 91 votes for, 17 against and no abstentions. The entire procedure is in accordance with the Regulation and Article 65, paragraph 1, item 15 of the Constitution. Then, upon the proposal of the same MP, the second reading of the Draft Law was introduced as the first item on the agenda on the plenary session of the Assembly on 11.07.2013. Review on second reading or introduction as the first point of the agenda is also made in accordance with Article 84 of the Regulation and it is supported by the votes of 86 MPs, 14 against and no abstentions. The Assembly approved the Law on Amnesty with 90 votes for, 17 against and one abstention in accordance with the Regulation and Article 65, paragraph 1, item 15 of the Constitution."*

Admissibility of the Referral

68. In order for the Court to be able to adjudicate the Applicants' Referral, 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.

69. In this respect, the Court refers to Article 113.1 of the Constitution, which establishes that *"The Constitutional Court decides only on matters referred to the Court in a legal manner by authorized parties."*

70. As to these requirements, the Court notes that the Applicants made their Referral pursuant to Article 113.5 of the Constitution which provides as follows:

"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." [**the Serbian version differs from the English and Albanian versions**]

71. In this connection, the Court observes that, when a law or an act is under review under Article 113.5 of the Constitution, the review procedure will be of a suspensive nature in that the law will be barred from being promulgated until the Court has taken a final decision on the case. In accordance with Article 43 (2) of the Law, in the event that a law adopted by the Assembly is contested under Article 113.5 of the Constitution,*"such a law [...] shall be sent to the President of the Republic of Kosovo for promulgation in accordance with the modalities determined in the final decision of the Constitutional Court on this contest."*, meaning that the adopted Law should not be returned to the Assembly but should be forwarded to the President of the Republic of Kosovo for promulgation of the Law without the Articles which have been declared incompatible with the Constitution by the Court in its Judgment.

72. This was affirmed in an analogous manner by the Court in its Judgment in Case KO 29/12 and KO 48/12 where it held that *"It is important to point out that the Constitutional Court is the final authority for the interpretation of the Constitution and the compliance of laws with the Constitution. This is an ex-post jurisdiction of the Court as the guarantor of the Constitution to ensure the compliance of legislation with the highest legal act of the State i.e. the Constitution. In addition to this jurisdiction, the Court has also the so-called ex-ante jurisdiction for a prior review of the constitutionality of the proposed amendment. This jurisdiction is given to the Court, as the guardian of the Constitution, in order to ensure that any proposed amendment does not diminish any of the rights and freedoms set forth in Chapter II of this Constitution."* (See Case KO 29/12 and KO 48/12, *Applicant President of the Assembly, Judgment of 20 July 2012*).

73. The cases quoted above concern the jurisdiction of the Court to review the compatibility with the Constitution of proposed constitutional

amendments under Article 113.9 of the Constitution, where the review is limited to compatibility with the provisions of Chapter II of the Constitution. In the current referral under Article 113.5 of the Constitution the jurisdiction of the Court extends to a review of the compatibility of the contested law with all provisions of the Constitution.

74. In the present case, the Court notes that the Referral was made by 13 Deputies of the Assembly of Kosovo.

75. In addition, the Court takes into account Article 42 of the Law which governs the submission of a Referral under Article 113.5 of the Constitution and reads as follows:

Article 42 - Accuracy of the Referral

1. In a referral made pursuant to Article 113, Paragraph 5 of the Constitution the following information shall, inter alia, be submitted: [the Albanian and Serbian versions differ from the English version]

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; and

1.3. presentation of evidence that supports the contest.

76. Apart from the names and signatures of the Deputies who submitted the Referral, the contested Law and the relevant provisions of the Constitution as well as the evidence in support of the Referral have been mentioned.

77. As to the challenged law, the Court notes that the Applicants contest the Law No. 04/L-209, On Amnesty.

78. The Court, therefore, considers that the requirements of Article 42 of the Law are satisfied.

79. As to the time limit, the Court notes that the Law, No. 04/L-209, On Amnesty, was adopted by the Assembly on 11 July 2013 (Decision No. 04-V-646) and the Referral was made to the Court on 19 July 2013. In

accordance with Rule 27 (1) (Calculation of Time Periods) of the Rules of Procedure *"A time period prescribed by the Constitution, the law or these Rules shall be calculated as follows: (1) When a period is expressed in days, the period is to be calculated starting from the day an event takes place, but the day during which the event occurs shall not be counted as falling within the time period;"*. Therefore, the Referral has been submitted within the constitutionally prescribed period of eight days.

80. As to the Applicants' submission of additional information on 1 August 2013, the Court considers that the letter of the Applicants on behalf of their representative Ms. Albulena Haxhiu is admissible. It contains further clarification from the Applicants on an issue they have already raised in their referral. Finally it is the Court that decides on submitted evidence how to proceed with it.

81. Thus, the Court concludes that there are no grounds to declare the Referral, which raises important constitutional questions, inadmissible.

Comparative analysis of the situation

Socio-political context

82. In order to obtain a clear understanding of the purpose and scope of the Law on Amnesty, the Court refers to Article 1 [Purpose and the scope] of Chapter I. General Provisions of the Law providing:

> "*This law regulates the conditions and the procedure under which amnesty can be granted for persons who have been convicted of certain specified criminal offences, who are under prosecution for such criminal offences, or could be subject to prosecution for such criminal offences committed prior to 20 June 2013 within the territory which now constitutes the Republic of Kosovo*."

83. Although the Article summarily sets out the scope of the Law, the Article is silent on its purpose. However, the Explanatory Memorandum on the Draft Law on Amnesty when it was submitted by the Government to the Assembly for adoption, describes, in its Article 2 [Objectives and their correlation with the Government priorities], the purpose of the Law in the following terms:

> "*In order to create a legal infrastructure which aims to create a sustainable environment and in view of the rule of law and order, being guided by the principles of humanism, the low risk of persons granted amnesty and the protection of the public interest, the approval of this draft law will have a positive effect on attaining the purpose of punishment, and it will also impact positively on the resettlement and reintegration of persons convicted of certain categories of criminal offenses.*"

84. The Court understands that, in order to consolidate the legal order of Kosovo and to ensure the extension of state authority to all parts of the Republic, it is necessary to incorporate those communities who have operated within the institutional frameworks of the Republic of Serbia on the territory of Kosovo. The amnesty can be seen to contribute to this consolidation by not penalizing persons who have operated within other institutional frameworks until now. As such, it is clearly intended to ease the transition of these communities into the framework of Kosovo's public administration and security institutions.

85. The Court notes that the Law on Amnesty does not define the categories of persons and behaviours which give rise to amnesty, but limits itself to providing a catalogue of criminal offences for which amnesty will be granted. Furthermore, the time period during which amnesty shall be granted is defined as beginning approximately with the end of the war in 1999 and continuing until 20 June 2013. The question of the start date for the application of amnesty is discussed below under Article 2 of the Law on Amnesty. During this somewhat extensive period of time the territory of Kosovo has been under the legal jurisdiction of a series of more or less different authorities culminating in the independent Republic of Kosovo. The Court notes that the lawfulness of these successive authorities is not in dispute, and the Law on Amnesty takes these successive authorities into account with its definitions of a succession of criminal codes and laws.

86. The Court is aware of the public and notorious fact that this Law has raised concerns in civil society and among certain sectors of the professional and business communities. These concerns relate, *inter alia*, to the substantial amount of destruction of private property which has affected all communities since the war, and for which comparatively few criminal prosecutions have been successfully concluded. In addition, there is a prevailing perception that a significant quantity of unlawful business activities has been in operation during the time period since the war with harmful consequences for the state budget and lawful business competition, and with a potentially negative impact

on public health and well-being. There is some concern that the Law on Amnesty legitimizes a degree of impunity for such unlawful practices, irrespective of who has caused them.

87. To the extent that the amnesty is intended to contribute to a reconciliation between Kosovo's communities, the broad amnesty for destruction and arson of private properties may, in fact, undermine that objective. To the extent that the amnesty is intended to consolidate the rule of law and extend the administration of public authority, the broad amnesty for unlawful professional and business activities may, in practice, serve to undermine the legal order of Kosovo by effectively guaranteeing impunity for certain criminal activities. The Court considers that the Law on Amnesty, as written, could potentially have a negative impact on the legitimacy of public order in the whole of Kosovo. This could harm the objective *"to create a legal infrastructure which aims to create a sustainable environment and in view of the rule of law and order"*, as defined in the Explanatory Memorandum.

88. When considering the Referral, the Court will, therefore, be mindful of the objectives laid down in the above Explanatory Memorandum, as well as of the social and political context of Kosovo today.

The principle of amnesty

89. As to the principle of amnesty, the Court refers to Article 65 of the Constitution setting out the competences of the Assembly of Kosovo, which, in its paragraph 15, provides: "*grants amnesty in accordance with respective law which shall be approved by two-thirds (2/3) of the votes of all members of the Assembly*."

90. In the Court's view, since neither this constitutional provision nor any other legal provision contains any guidance to the Court as to the establishment of any principle as to the concept of amnesty laid down in Article 65.15 of the Constitution, the Court will turn to the relevant legislation in neighboring countries and internationally accepted standards in this area.

91. In this respect, the Court finds that amnesty can be defined as exempting perpetrators of violations of the law from being prosecuted.

92. However, amnesty laws must be distinguished from other forms of impunity, because of the political context in which they are introduced.

The motives for introducing a law on amnesty are various, but generally speaking they are introduced for example during conflicts to end the violence, as part of peace agreements in order to promote reconciliation between the parties involved, etc. Amnesties cover, beside individuals who have already been convicted and are serving their sentence, also individuals who are being investigated or who are yet to be investigated. In order for the distinction to be made one has to look at the motives laying behind the introduction of a law on amnesty.

93. The scope of a law on amnesty varies both as to what acts can be amnestied, as to whom it applies, as well as to the time period covered. However, as a general principle, an amnesty by the Parliament must comply with certain fundamental principles of the rule of law, namely legality (including transparency), the prohibition of arbitrariness, non-discrimination and equality before the law.

94. As to the scope of the law on amnesty, meaning to whom it applies, generally speaking it can be applied to individuals or to a collective.

95. As to the acts to which a law on amnesty applies, meaning which crimes can be amnestied and which cannot, it is noted that there is a list of current crimes under international law such as gross violations of human rights, includinggenocide, war crimes, crimes against humanity, torture and disappearances, where states are obliged to prosecute the perpetrators. Amnestied crimes of a political nature include treason, sedition, subversion, rebellion, using false documents, forgery, anti-government propaganda, possessing illegal weapons, espionage, membership of banned political or religious organizations, desertion and defamation. Amnestied crimes of an economic nature are such as illegal trafficking etc.

96. Notwithstanding the fact that certain crimes can be amnestied,it is internationally accepted that the victims must have a right to equal and effective access to justice in order to be able to obtain adequate, effective and prompt reparation for the harm suffered and effective access to relevant information concerning the reparation mecanisms for such violations.

97. As to the time period, it can be said, in general, that time limits must reflect the objectives of the amnesty concerned.

98. However, as noted above, there is a bare minimum that amnesties cannot be granted for violations of the right to life and the right to liberty and security of the person, includingthe right to freedom from

torture and other forms of ill-treatment. In this respect, the principle of justice requires that violations of the victim's rights must be remedied.

99. The Court notes that the European Court of Human Rights (ECtHR) has on occasion pronounced on the question of impunity for violations of the right to freedom from ill-treatment and the right to life. The Court recalls the judgment in the case of Eski v. Tukey (Application 8354/04, Judgment of 05 September 2012) where, in relation to ill-treatment, the EctHR found that:

> *"32. The Court recalls that where an individual makes a credible assertion that he has suffered treatment infringing Article 3 at the hands of the police or other similar agents of the State, that provision, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention", requires by implication that there should be an effective official investigation. Such an investigation should be capable of leading to the identification and punishment of those responsible (see Labita v. Italy [GC], no. 26772/95, § 131, ECHR 2000-IV). According to the established case-law, this means that the domestic judicial authorities must on no account be prepared to let the physical or psychological suffering inflicted go unpunished. This is essential for maintaining the public's confidence in, and support for, the rule of law and for preventing any appearance of the authorities' tolerance of or collusion in unlawful acts (see Okkalı v. Turkey, no. 52067/99, § 65, ECHR 2006-XII (extracts), and Derman, cited above, § 27).*
> *33. It is beyond doubt that a requirement of promptness and reasonable expedition is implicit in this context. While there may be obstacles or difficulties which prevent progress in an investigation in a particular situation, a prompt response by the authorities in investigating allegations of ill-treatment may generally be regarded as essential in maintaining public confidence in their adherence to the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts (see Batı and Others, cited above, § 136).*
> *34. The Court also recalls that when an agent of the State is accused of crimes that violate Article 3, any ensuing criminal proceedings and sentencing must not be time-barred and the granting of amnesty or pardon should not be permissible. It further reiterates that where a State agent has been charged with crimes involving torture or ill-treatment, it is of the utmost importance*

that he or she be suspended from duty during the investigation and trial, and should be dismissed if convicted (see, mutatis mutandis, Abdülsamet Yaman v. Turkey, no. 32446/96, § 55, 2 November 2004, and Serdar Güzel v. Turkey, no. 39414/06, § 42, 15 March 2011)."

100. The Court also recalls the judgment of the ECtHR in Sangariyeva and Others v. Russia (Application no. 1839/04, Judgment of 01 December 2008), where it stated in reference to the right to life and the right to a remedy, that:

"74. The Court reiterates that Article 2, which safeguards the right to life and sets out the circumstances when deprivation of life may be justified, ranks as one of the most fundamental provisions in the Convention, to which no derogation is permitted. In the light of the importance of the protection afforded by Article 2, the Court must subject deprivation of life to the most careful scrutiny, taking into consideration not only the actions of State agents but also all the surrounding circumstances (see, among other authorities, McCann and Others v. the United Kingdom, judgment of 27 September 1995, Series A no. 324, pp. 45-46, §§ 146-147).
[...]
106. The Court reiterates that Article 13 of the Convention guarantees the availability at the national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order. Given the fundamental importance of the right to protection of life, Article 13 requires, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible for the deprivation of life and infliction of treatment contrary to Article 3, including effective access for the complainant to the investigation procedure leading to the identification and punishment of those responsible (see Anguelova v. Bulgaria, no. 38361/97, §§ 161-162, ECHR 2002-IV; and Süheyla Aydın v. Turkey, no. 25660/94, § 208, 24 May 2005). The Court further reiterates that the requirements of Article 13 are broader than a Contracting State's obligation under Article 2 to conduct an effective investigation (see Khashiyev and Akayeva, cited above, § 183).
107. It follows that in circumstances where, as here, the criminal investigation into the violent death was ineffective and the effectiveness of any other remedy that may have existed, including

civil remedies, was consequently undermined, the State has failed in its obligation under Article 13 of the Convention."

Constitutional and Legal Provisions on Amnesty

Albania

101. In respect of Albania, the Court notes that the Constitution of Albania in its Article 81.2 (ë) provides that a Law on Amnesty is approved by three-fifths of all members of the Assembly.

102. In this respect, the Court refers to the Decree No. 7338 of 20 November 1989 and Law 'On the Innocence and Amnesty of those formerly Convicted and Political Persecuted', No. 7516 (30 September 1991), amended by law No. 7660 (14 January 1993) and No. 7719 (8 June 1993).

103. The Decree No. 7338 of 20 November 1989 reads as follows:

"[...]

Art 1. Those persons sentenced to deprivation of freedom for up to five-years and those who have been given suspended sentences are pardoned.

1. Exempted are those persons who have been found guilty of crimes against the state according to Arts 47-60 of the Penal Code; illicit appropriation of socialist property according to Arts 61-68 of the Penal Code; appropriation of private property according to Arts 101-102 of the Penal Code; as well as those persons who have been given uncommutable sentences for various repeated penal offences.

2. All of those persons sentenced who will have reached the age of 18 by 20 Nov 1989 are pardoned.

3. Those persons sentenced to deprivation of freedom who will have reached the age of 60 by 20 Nov 1989 are pardoned.

4. All women sentenced to deprivation of freedom for up to 15 years, those who have received lesser sentences, and those who have been given conditional sentences are pardoned.

[…]"

104. The Law 'On the Innocence and Amnesty of those formerly Convicted and Political Persecuted', No. 7516 (30 September 1991), amended by law No. 7660 (14 January 1993) and No. 7719 (8 June 1993) reads as follows:

"[…]

Article 1

All persons sentenced for agitation and propaganda against the state; fleeing the country; sabotage; creating or participating in political organizations; failing to report crimes against the state; slander and insults against the highest state and party organs; and violations of Decree 7,459 On the Respect and Protection of Monuments Connected With National History and State Symbols and of Decree 7,408 On Assemblies, Gatherings and Demonstrations of Citizens in Public Places, are innocent and are considered for moral, political and social purposes as not having been convicted.

Article 2

All Albanian citizens who fled Albania because of their political convictions or activities during the war or between the liberation and the date on which this law comes into effect, and who did not commit acts of terrorism or diversion that led to deaths or serious consequences, and all those who have illegally crossed the border, are innocent. All others are amnestied.

Exclusions:

Excluded persons convicted of terrorist acts that resulted in deaths or serious consequences. {Law No 7660 (14 Jan 1993)} Excludes those sentenced for organization or participation in uprisings, organization and participation in armed gangs, for hostile activity during the war, for organization and participation in a military conflict or coup d'état, for espionage, terror and diversion.

[…]"

Bosnia and Herzegovina

105. In respect of Bosnia and Herzegovina, the Court notes that its Constitution does not contain any provision in regard to amnesty or pardon. However, the Dayton Peace Agreement in its Annex 7 - Agreement on Refugees and Displaced Persons, Article VI states:

> *"Any returning refugee or displaced person charged with a crime, other than a serious violation of international humanitarian law as defined in the Statute of the International Tribunal for the Former Yugoslavia since January 1, 1991 or a common crime unrelated to the conflict, shall upon return enjoy an amnesty. In no case shall charges for crimes be imposed for political or other inappropriate reasons or to circumvent the application of the amnesty."*

106. As a result, both Entities of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina and the Republika Srpska, adopted laws on amnesty in July 1996. According to Article 1 of the Federation Amnesty Law: *"Shall completely relieve from criminal prosecution or completely relieve from the imposed sentence or the non-served part of the sentence all persons who in the period between 1 January 1991 and 22 December 1995 committed any of the criminal acts laid down in the appropriate Criminal Code (article 1)."* This amnesty includes almost anybody who committed a crime between 1 January 1991 and 22 December 1995, although certain very serious crimes, as stated in this Federation Amnesty Law, are exempted:*"Excludes 'criminal acts against humanity and international law under chapter XVI of the adopted Criminal Code of the SFRJ, crimes defined under the Statute of the International Tribunal for the Former Yugoslavia'. Excludes acts of genocide, war crimes, and crimes against humanity, as well as acts of terrorism, acts against sexual freedom, prevention of return of refugees and displaced persons, violence in family, money laundering, and attacking a tax official on duty."*

Croatia

107. In respect of Croatia, the Court notes that the Constitution of the Republic of Croatia grants competencies to the House of Representatives to grant amnesty for criminal offenses (Article 80 of the Constitution of Croatia).

108. In this respect, the Court refers to the Croatian Law on General Amnesty of 20 September 1996, No. 80/96, which reads as follows:

"[…]

Article 1

This Act grants general amnesty from criminal prosecution and proceedings against perpetrators of criminal acts committed during aggression, armed rebellion or armed conflicts, or related to aggression, armed rebellion or armed conflicts in the Republic of Croatia. The amnesty also relates to the execution of the final verdict passed against the perpetrators of criminal acts referred to in Paragraph 1 of this Article. The amnesty from criminal prosecution and proceedings relates to acts committed in the period from August 17, 1990 to August 23, 1996.

Article 2

Criminal prosecution shall not be undertaken and criminal proceedings shall not be initiated against the perpetrators of criminal acts referred to in Article 1 of this Act. If criminal prosecution has been undertaken it shall be stopped, and if criminal proceedings have been initiated, the proceedings shall be stopped ex officio by a court ruling. If the person to whom the amnesty from Paragraph 1 of this Article is related is deprived of liberty, the person shall be released by a court ruling.

Article 3

The amnesty for criminal acts referred to in Article 1 of this Act excludes perpetrators of the most serious violations of humanitarian law having the characteristics of war crimes, specifically the criminal act of genocide under Article 119, war crimes against the civilian population under Article 120, war crimes against the wounded and sick under Article 121, war crimes against prisoners of war under Article 122, organising groups and instigating the committing of genocide and war crimes under Article 123, unlawful killing and wounding of an enemy under Article 124, illegal seizure of possessions belonging to those killed and wounded on the battlefield under Article 125, use of prohibited combat means under Article 126, violation of parliamentarians under Article 127, cruel treatment of the wounded, sick, and prisoners of war under Article 128, unjustified delay of the repatriation of prisoners of war under Article 129, destruction of cultural and historical monuments under Article 130, instigation of

war of aggression under Article 131, abuse of international symbols under Article 132, racial and other discrimination under Article 133, establishing slavery and the transport of enslaved persons under Article 134, international terrorism under Article 135, endangerment of persons under international protection under Article 136, taking of hostages under Article 137 of the Basic Criminal Code of the Republic of Croatia (Narodne Novine, No. 31/93 - revised text, 35/93, 108/95, 16/96, and 28/96), as well as the criminal act of terrorism regulated by provisions of international law. The Amnesty excludes the perpetrators of other criminal acts stipulated in the Basic Criminal Code of the Republic of Croatia (Narodne Novine, No. 31/93 - revised text 35/93., 108/95., 16/96., and 28/96.) and the Criminal Law of the Republic of Croatia (Narodne Novine, No. 32/93. - revised text, 38/93., 28/96. And 30/96) which were not committed during aggression, armed rebellion, or armed conflicts or are not related to aggression, armed rebellion, or armed conflicts in the Republic of Croatia.

The provisions of the Law on Criminal Proceedings (Narodne Novine No. 34/93 – revised text, 38/93, 25/94, 28/96) on repeating proceedings shall be applied for persons who by a final verdict are sentenced in absence for criminal acts from Paragraph 1 of the Article herein, whereby the deadline from Article 398, Paragraph 1, of that Law begins when the Act herein enters into effect.

[…]"

Greece

109. In respect of Greece, the Court notes that Article 47 of the Constitution provides that Amnesty may be granted only for political crimes, by statute passed by the Plenum of the Parliament with a majority of three-fifths of the total number of members. However, Article 47 also provides that amnesty for ordinary crimes may not be granted even by law.

Macedonia

110. In the Republic of Macedonia Article 68 of their Constitution provides that the Assembly of the Republic of Macedonia proclaims amnesties.

111. In this respect, the Court refers to the Macedonian Law on Amnesty of 7 March 2002 which reads as follows:

"[...]

Article 1

This law exempts from prosecution, discontinues the criminal proceedings and fully exempts from execution of the sentence to imprisonment (hereinafter: amnesty), citizens of the Republic of Macedonia, persons with lawful residence, as well as persons that have property or family in the Republic of Macedonia (hereinafter: persons), for whom there is a reasonable doubt that they have prepared or committed criminal acts related to the conflict in the year 2001, conclusive of 26 September 2001.

The amnesty also applies to persons who have prepared or committed criminal acts related to the conflict in the year 2001 before the 1st of January 2001.

With the amnesty mentioned in paragraph 1 and 2 of this Article:

- persons for whom there is a reasonable doubt that they have prepared or committed criminal acts related to the conflict until 26th September 2002 are exempted from prosecution for criminal acts pursuant to the Criminal Code and other law of the Republic of Macedonia;

- the criminal proceedings for criminal acts pursuant to the Criminal Code and other law of the Republic of Macedonia against persons for whom there is a reasonable doubt that they have prepared or committed criminal acts related to the conflict until 26 September 2001 are discontinued;

- persons who have prepared or committed criminal acts related to the conflict until 26 September 2001, are fully exempted from the execution of the sentence to imprisonment for criminal acts pursuant to the Criminal Code and other law of the Republic of Macedonia; and

- It is determined that the convicting verdict be deleted and and that the legal consequences of the convicting verdict be repealed, conclusive of 26 September 2001.

Exclusions:

The provisions of paragraphs 1, 2 and 3 of this Article do not apply to persons who have committed criminal acts related to and in connection with the conflict in the year 2001, which are under the jurisdiction of and for which the 1991 International Tribunal for Prosecution of Persons Responsible for Serious Violation of International Humanitarian Law in the Territory of Former Yugoslavia, will instigate proceedings.

[…]"

112. From the above-mentioned examples, the Court notes that different countries have chosen different methods of regulating the issue of amnesty both in their constitutions and respective laws. Some of the countries (Macedonia, Croatia) chose in their constitutions a very general formulation to grant this competence to their national parliaments, whilst Greece does specify which crimes cannot be amnestied in any circumstance, like ordinary crimes. On the other hand, the Albanian constitution contains a general formulation, butadds that amnesty laws cannot be subject to a referendum.

113. Amnesty laws of some other countries specifically cover political or conflict-related crimes, by referring to the factual context without referring to specifically prescribed offenses. For example, a Liberia 1993 amnesty covers *"all persons and parties involved in the Liberian civil conflict,"*whereas an Angola 1994 amnesty encompasses *"illegal acts committed. . . in the context of the current conflict,"* and an Albania 1997 *"crimes connected to the popular revolt."*

114. Another approach, which is more common and more reliable, involves both to refer to a specific context or event and to expressly limit the application to particular types of offenses. For example, in some cases, an exhaustive list of specific crimes of an inherently political nature is given without any reference to a person's motivation. Thus, a Brazil 1979 amnesty includes military desertion and a series of other inherently political crimes without reference to any motivation. In other cases, specific political crimes are listed but in a non-exhaustive fashion. The France 1962 amnesty covers infractions committed in the context of operations for the maintenance of order and directed against the Algerian insurrection, provided they were committed before March 20, 1962. The Greece 1974 amnesty covers a variety of specific crimes, such

as sedition and treason, which are punishable under the Criminal Code and Military Code, together with "other acts having to do with the situation of 21 April 1967 which were intended to overthrow the status quo."

115. However, there are cases where the amnesty laws expressed explicitly that the political motivation element is required to grant amnesty for a criminal act. For example, a Romania 1990 amnesty covers political offenses defined as *"deeds that had as their purpose (a) protest against dictatorship, the cult of personality, terror or the abuse of power by the authorities; (b) the respect of fundamental human rights and freedoms, exercising political, economic, social and cultural rights, or abolishing of discriminatory practices; (c) the satisfaction of democratic claims."* The South Africa 1995 amnesty covers acts, omissions, and offenses *"associated with political objectives and committed in the course of conflicts in the past,"* and then it provides a long list of related criteria. That list includes, importantly, a proportionality requirement between the (political) act and the political objective. In other cases, by contrast, the requirement of a political motivation is expressed in more simple terms. For example, the Guatemala 1996 amnesty simply provides that, for state actors, the crime must have had a political and not a personal motive. The Philippines 2000 amnesty covers crimes committed "in pursuit of political beliefs," and it expressly excludes crimes committed "for personal ends."

116. In view of the above references, the Court is of the opinion that, in general, amnesty can be granted for a variety of reasons. Although it appears that amnesty is usually granted for offenses which are considered political or connected to a particular conflict, amnesty for economic or ordinary crimes are also not uncommon. However, what must be inherent in all laws on amnesty is clarity and transparency. Not only the amnestied perpetrators have the right to know how the relevant law on amnesty will be applied to them, also the victims of such perpetrators are entitled to know in what manner they will be compensated for any damage inflicted upon them and through which efficient and effective legal mechanism.

117. The Court notes that paragraph 1 of Article 2 [Amnesty] of the Law on Amnesty provides that, *"All perpetrators of offenses listed in Article 3 that were committed before 20 June 2013 shall be granted a complete exemption from criminal prosecution or from the execution of punishment for such offenses, in accordance with the terms and conditions of Article 3 of this law."*

118. In the Court's opinion, this can only mean that perpetrators of criminal offenses mentioned by the Law will no longer be punished for having committed such an offense, but will continue to be accountable for the damage they have caused or for the fulfillment of obligations they have omitted. The intention of the legislator to ensure that the results of criminal acts would not be affected by the amnesty for the criminal offence itself can be understood with reference to Article 9 [Finality of Confiscation] of the Law on Amnesty, which stipulates that,

> *"Regardless of the application of amnesty under this law to any criminal offence, if an object has been confiscated in accordance with the law during the criminal proceedings based in whole or in part on that criminal offence, the person receiving amnesty does not have a right to the return of that confiscated object."*

119. In the Court's understanding, for example, taxpayers who fall under the ambit of Article 3 of the Law should not expect that they do no longer need to pay the taxes due to the state of Kosovo until 20 June 2013. On the contrary, Article 2 of the Law can only be understood to mean that, though tax evaders are no longer penalized, they are not amnestied from rectifying their omissions in tax payments. If not, this would create an unjustified inequality amongst taxpayers. The same is true for crimes for personal gain/greed.

120. In the same spirit, the perpetrators of amnestied offenses having caused damage to third parties should remain accountable for paying compensation to the victims who should have an efficient and effective legal remedy to satisfy their rights.

121. Moreover, also in cases where the perpetrators of, for instance, falsified documents have been amnestied, but where the Law is silent on the way in which the products of the amnestied crimes could be annihilated, a mechanism should be available, whereby the products of amnestied crimes can be identified and taken out of circulation or be destroyed. If not, these products risk to continue to be used as evidence, thereby compromising the legal foundations of Kosovo as a state governed by the rule of law.

122. Mindful of these considerations and the objectives of the Law mentioned above, the Court will now review the constitutionality of Law No. 04/L-209, On Amnesty, adopted by the Assembly on 11 July 2013.

Merits of the Referral

123. The Court notes that the Applicants allege that Law No. 04/L-209, On Amnesty, is in violation of the Constitution as regards its substance and the procedure followed for adopting the law.

As to the substance of the contested Law

124. The Applicants maintain with respect to the amnestied crimes under the Law on Amnesty that they are in violation of Article 31, paragraphs 1 and 2, Article 32, and Article 24, paragraphs 1 and 2, of the Constitution, as well as Article 6, paragraph 1, in conjunction with Articles 13 and 14 of the European Convention on Human Rights and Fundamental Freedoms (ECHR). The Applicants also allege that some of the amnestied crimes are in violation of Article 1 of the First Protocol to the ECHR.

125. Article 31 [Right to Fair and Impartial Trial] of the Constitution provides, in its paragraphs 1 and 2, that:

> *"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."*

126. Article 32 [Right to Legal Remedies] of the Constitution provides that:

> *"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."*

127. Article 24 [Equality Before the Law] of the Constitution, in its paragraphs 1 and 2, provides that:

> *"1. All are equal before the law. Everyone enjoys the right to equal legal protection without discrimination.*
>
> *2. No one shall be discriminated against on grounds of race, color, gender, language, religion, political or other opinion, national or*

social origin, relations to any community, property, economic and social condition, sexual orientation, birth, disability or other personal status."

128. Article 6, paragraph 1, of the ECHR provides, in its relevant first sentence, that:

"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. [...]"

129. Article 13 of the ECHR provides that:

"Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

130. Article 14 of the ECHR provides that:

"The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

131. Article 1 of the First Protocol to the ECHR provides that:

"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 the state to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure payment of taxes or other contributions or penalties."

132. However, the Court will first make some preliminary observations as to the generally established principles in respect to amnesty.

133. As a first preliminary observation, the Court recalls Article 55 [Limitations on Fundamental Rights and Freedoms] of the Constitution which provides:

> *"1. Fundamental rights and freedoms guaranteed by this Constitution may only be limited by law.*
>
> *2. Fundamental rights and freedoms guaranteed by this Constitution may be limited to the extent necessary for the fulfillment of the purpose of the limitation in an open and democratic society.*
>
> *3. Fundamental rights and freedoms guaranteed by this Constitution may not be limited for purposes other than those for which they were provided.*
>
> *4. In cases of limitations of human rights or the interpretation of those limitations; all public authorities, and in particular courts, shall pay special attention to the essence of the right limited, the importance of the purpose of the limitation, the nature and extent of the limitation, the relation between the limitation and the purpose to be achieved and the review of the possibility of achieving the purpose with a lesser limitation.*
>
> *5. The limitation of fundamental rights and freedoms guaranteed by this Constitution shall in no way deny the essence of the guaranteed right."*

134. In this respect, the Court notes that, as it stated in Case KO 131/12 (see Case KO 131/12, Applicant Dr. Shaip Muja and 11 Deputies of the Assembly of the Republic of Kosovo, Judgment of 15 April 2013), a law when limiting fundamental rights and freedoms must fulfill the conditions as prescribed by the abovementioned Article.

135. As a second preliminary observation, the Court recalls the case of *Centro Europa 7 S.R.L. and di Stefano v. Italy* (Application no. 38433/09, Judgment of 7 June 2012) whereby the ECtHR held that,

> *"141. [...] a norm cannot be regarded as a "law" unless it is formulated with sufficient precision to enable the citizen to regulate his conduct: he must be able -if need be with appropriate advice - to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail. Those consequences need not be foreseeable with absolute certainty: experience shows*

this to be unattainable. Again, whilst certainty is highly desirable, it may bring in its train excessive rigidity and the law must be able to keep pace with changing circumstances. Accordingly, many laws are inevitably couched in terms which, to a greater or lesser extent, are vague and whose interpretation and application are questions of practice. The level of precision required of domestic legislation - which cannot in any case provide for every eventuality -depends on a considerable degree on the content of the law in question, the field it is designed to cover and the number and status of those to whom it is addressed."

Amnesty and the Rule of Law – General Observations

136. The Court notes that the Applicants' allegations concern primarily the right of victims of the amnestied crimes to have access to a court to seek reparation for the damage they may have suffered as a result of these crimes. This is fundamentally an argument concerning a violation of the rights to a fair hearing guaranteed by Article 31 of the Constitution and Article 6(1) of the ECHR.

137. As noted above, the right to a legal remedy, as provided in Article 32 of the Constitution and Article 13 of the ECHR, requires that the damage suffered by an individual can be attributed to the state and/or its agents. Any crimes which rise to the level of serious violations of the right to life or freedom from ill-treatment are excluded from amnesty by Article 4 of the Law. Therefore, the Court finds that the right to a legal remedy does not apply to the criminal offences foreseen in the Law on Amnesty, and this argument must be dismissed as manifestly ill-founded. For the same reasons, the arguments related to discrimination in conjunction with the right to a remedy, as guaranteed by Article 24 of the Constitution and Article 14 of the ECHR must also be rejected as manifestly ill-founded.

138. Regarding the right to access to a court, the Court notes the ECtHR judgment in Ashingdane v. United Kingdom (Application 8225/78, Judgment of 28 May 1985), where the ECtHR stated that:

"57. [...] *Certainly, the right of access to the courts is not absolute but may be subject to limitations; these are permitted by implication since the right of access "by its very nature calls for regulation by the State, regulation which may vary in time and in place according to the needs and resources of the community and of*

individuals" (see the above-mentioned Golder judgment, p. 19, para. 38, quoting the "Belgian Linguistic" judgment of 23 July 1968, Series A no. 6, p. 32, para. 5). [...]

Nonetheless, the limitations applied must not restrict or reduce the access left to the individual in such a way or to such an extent that the very essence of the right is impaired. [...]

Furthermore, a limitation will not be compatible with Article 6 para. 1 (art. 6-1) if it does not pursue a legitimate aim and if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved."

139. The question arises whether the amnesty foreseen by the Law on Amnesty would restrict or reduce the access left to individuals for access to a court to such an extent that the very essence of the right is impaired.

140. The Court recalls the judgment of the ECtHR in the case of Tarbuk v. Croatia (Application no. 31360/10, Judgment of 29 April 2013), where the ECtHR found in relation to amnesties that:

"50. [...] Moreover, the Convention organs have already held that, even in such fundamental areas of the protection of human rights as the right to life, the State is justified in enacting, in the context of its criminal policy, any amnesty laws it might consider necessary, with the proviso, however, that a balance is maintained between the legitimate interests of the State and the interests of individual members of the public (see Dujardin and Others v. France, no. 16734/90, Commission decision of 2 September 1991, Decisions and Reports 72, p. 236)."

141. The Court notes that individuals suffering damage due to the amnestied crimes could, in principle, have access to either a motion for prosecution, or private prosecution, or subsidiary prosecution of the crime (depending on which criminal law was in force at the time of the crime and in certain cases), or to a civil action in damages against the perpetrator. The Court notes, in this regard, that Article 5 of the Law on Amnesty stipulates that, *"The granting of amnesty shall not affect the rights of third parties which are based upon a sentence or judgment."*

142. Furthermore, the Court notes that in those cases where a private prosecution has been initiated prior to the entry into force of the Law on

Amnesty, and have not yet reached a conclusion, these private prosecutions may continue.

143. What remains is the question whether individuals claiming to have suffered damage as a result of a criminal offence which has benefitted from an amnesty remain enabled to bring a civil suit in damages before the civil courts.

144. The Court recalls Article 136 [Basis for Liability] of the Law on Obligational Relationships (Law no. 04/L-077, Official Gazette of the Republic of Kosovo no. 16/19, of June 2012) which stipulates that,

> *"(1) Any person that inflicts damage on another shall be obliged to reimburse it, unless it is proved that the damage was incurred without the culpability of the former."*

145. This general provision grants to victims of damage access to civil proceedings for harm caused by the perpetrators of crimes foreseen to be amnestied by the Law on Amnesty. The relationship between possible civil proceedings for damages, where the damage is the result of a criminal offence, and criminal proceedings against the perpetrator is regulated in the Law on Contested Procedure (Law no. 03/L-006), which stipulates in Article 14 that,

> *"In the contentious procedure, regarding the existence of a criminal act and criminal responsibility, the court is bound to the effective judgment of the criminal court by which the defendant has been found guilty."*

146. In this regard, the Court makes the following observations:

1) The Law on Amnesty stipulates in Article 5 that where someone has already been convicted but is now amnestied, the amnesty will not affect the rights of third parties (i.e. victims).

2) Article 14 of the Law on Contested Proceedings states that the civil court is bound by the decision of the criminal courts *"regarding the existence of criminal act and criminal responsibility"*. A victim taking civil proceedings for damages is not asking the court to make any findings of criminal responsibility or of criminal acts.

3) Article 14 also says that the *"court is bound to the effective judgment of the criminal court by which the defendant has been found guilty."* However, after the Amnesty there is no judgment of any court on criminal responsibility whatsoever, so there is no judgment for the civil court to take into account or be bound by.

147. Therefore, the Court observes that in cases where a defendant has previously been found guilty of a criminal offence, the operation of Article 5 of the Law on Amnesty would ensure that the rights of individuals who claim damages as a result of that offence would retain their rights to seek compensation in civil proceedings.

148. However, in cases where no criminal prosecution has been completed, and there is no determination by a criminal court of guilt or innocence, the effect of the amnesty would imply that there will never be a determination of guilt.

149. In the absence of any determination of criminal responsibility, the question arises whether the right to a determination by a court of civil liability for damages can be exercised effectively. The European Court of Human Rights has frequently stated that, *"[…] the Convention is intended to guarantee not rights that are theoretical or illusory but rights that are practical and effective; […]"* (See Artico v Italy, Application no. 6694/74, Judgment of 13 May 1980, para. 33).

150. In the light of the stipulation in Article 14 of the Law on Contested Procedure, and the lack of convincing arguments to the contrary, the Court considers that the rights of victims of a criminal offence to practical and effective access to a civil court for a claim of compensation for damages may not be assured where there has been no previous criminal trial. The Court finds that the possibilities for civil compensation may not guarantee a prospect of successful civil proceedings without a criminal trial and a final judgment.

151. Therefore, the Court concludes that, in certain classes of criminal offences foreseen to benefit from amnesty, where damage may have been caused to individuals, the relevant provisions of the Law on Amnesty would effectively block those individuals from practical and effective access to court for a determination of their claim to compensation for damages, in violation of their rights under Article 31 of the Constitution and Article 6 ECHR.

152. The Court notes, in addition, that the Applicants allege a violation of the right to the peaceful enjoyment of property under Article 1 First

Protocol ECHR as a result of the amnesty of certain criminal offences foreseen by the Law on Amnesty.

153. The Court notes that the fundamental right to the peaceful enjoyment of property concerns interferences with this right by the state or its agents. The criminal offences in question concern damage to property caused by private individuals in the context of the commission of criminal offences. However, the fact of the Law on Amnesty itself providing amnesty for crimes against private property, and the subsequent decisions by prosecution and judicial authorities to grant amnesty on the basis of this Law, bring the interference with the right to property within the scope of the state's responsibilities.

154. Therefore, the Court concludes that, in certain classes of criminal offences foreseen to benefit from amnesty, where damage to property has been caused to individuals, these provisions of the Law on Amnesty effectively violate the right to the peaceful enjoyment of one's possessions as protected by Article 1 First Protocol of the ECHR.

Assessment per Article of the Law on Amnesty

155. The Court will now deal in turn with each of the articles of the Law on Amnesty and each of the proposed amnestied crimes.

I. Article 1 (Purpose and Scope)

> *"The [Law on Amnesty] regulates the conditions and the procedure under which amnesty can be granted for persons who have been convicted of certain specified criminal offences, who are under prosecution for such criminal offences, or could be subject to prosecution for such criminal offences committed prior to June 20, 2013 within the territory which now constitutes the Republic of Kosovo."*

156. In this respect, the Court refers to Article 22 [Direct Applicability of International Agreements and Instruments] of the Constitution, which provides that:*"Human rights and fundamental freedoms guaranteed by the following international agreements and instruments are guaranteed by the Constitution, are directly applicable in the Republic of Kosovo and, in case of conflict, have priority over provisions of laws and other acts of public institutions:*

1) Universal Declaration of Human Rights; […]"

157. Article 8 of the Universal Declaration of Human Rights proclaims: *"Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law."*

158. In this respect, the Court refers to theestablished principles and practice of the United Nations in relation to amnesties, as summarized in the United Nations Publication *"Rule of Law Tools for Post-Conflict States - Amnesties"* (New York and Geneva, 2009, HR/PUB/09/1), taking together established amnesties, bodies of principles and case-law of international courts. This summary of principles states, at page 11, that amnesties are not allowed if they:

a. *Prevent prosecution of individuals who may be criminally responsible for war crimes, genocide, crimes against humanity or gross violations of human rights, including gender-specific violations;*

b. *Interfere with victims' right to an effective remedy, including reparation; or*

c. *Restrict victims' and societies' right to know the truth about violations of human rights and humanitarian law.*

159. The Court notes, in this regard, that the Law on Amnesty provides, in its Article 4, for certain criminal offences that will not benefit from amnesty. This Article provides that:

"1. Amnesty from any criminal offence within this law will not apply for:

1.1. Acts against international actors and international security forces in Kosovo. Members of international security forces are always under the jurisdiction of the sending state.

1.2. Acts that constitute serious violations of international humanitarian law, including those offences provided in Chapter XV of the Criminal Code of the Republic of Kosovo, Chapter XIV of the Provisional Criminal Code of Kosovo and Chapter XVI of the Criminal Code of the SFRY 1976.

1.3. *Criminal offence that resulted in serious bodily harm or death."*

160. The Court considers that the scope of the Law on Amnesty, as defined in its Article 1, clearly comes within the ambit of international norms regarding amnesties, and secures limitations to the criminal offences foreseen for amnesties such that the Law remains within the bounds of these norms.

II. Article 2 of the Law on Amnesty provides:

"1. All perpetrators of offenses listed in Article 3 that were committed before 20 June 2013 shall be granted a complete exemption from criminal prosecution or from the execution of punishment for such offenses, in accordance with the terms and conditions of Article 3 of this law.

2. Amnesty may be provided under this law only in accordance with the procedures set in Chapter III of this law."

161. In this respect, the Court notes that, as stated above, an adopted law must be formulated with sufficient precision to enable the citizen to regulate his conduct meaning that he must be able to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail. Furthermore, a law must be formulated sufficiently clearly in order for the citizens to foresee their rights and responsibilities, including the period of time during which the law will be in effect.

162. As to the determination of the period of time, concerning which the Law on Amnesty will apply, the Court refers to Article 2, paragraph 1, of the Law on Amnesty which establishes that the crimes (mentioned in Article 3 of the Law on Amnesty) committed until 20 June 2013 will be amnestied.

163. This Article does not contain any explicit provision as to the starting date as of which crimes would be amnestied.However, the Court notes the series of criminal codes for which amnesties are to apply. These are mentioned in sequence in the Law on Amnesty and include specifically the following codes:

a. Criminal Code of the Socialist Federal Republic of Yugoslavia (SFRY), Official Gazette SFRY no. 44 of 8 October 1976;

b. Criminal Law of the Socialist Autonomous Province of Kosovo (SAPK), Official Gazette no. 20/77;

c. UNMIK Regulations 1999/24 and 2000/59 On the Law Applicable in Kosovo, which define that the Criminal Code of SFRY of 1976 and the Criminal Law of SAPK of 1977 are the applicable criminal law in Kosovo with entry into force on 10 June 1999;

d. UNMIK Regulation 2003/25 On a Provisional Criminal Code of Kosovo, which entered into force on 6 April 2004; and

e. Criminal Code of the Republic of Kosovo, Official Gazette no. 19/13 2012, which entered into force on 1 January 2013.

164. In the Court's view, given the specific mention of these criminal codes and laws, it is sufficiently clear that the legislator intended the Law on Amnesty to apply only during the period of applicability of these enumerated codes. Therefore, it can be readily interpreted that the starting date of the Law on Amnesty is implicitly understood to be 10 June 1999. This conclusion is all the more apparent when taking into consideration that the criminal legislation that applied in the territory of Kosovo immediately prior 10 June 1999 is not mentioned in the Law on Amnesty.

165. To the extent that the Amnesty may be considered to apply to criminal offences committed during the 1970s and 1980s, when the Criminal Code of SFRY and the Criminal Law of SAPK were originally applicable, the Court notes that such criminal offences would have benefitted from a period of prescription except in certain cases of very serious crimes which the Law on Amnesty does not foresee to benefit from amnesty.

166. Therefore, the Court finds that the period of applicability contained in Article 2, paragraph 1, of the Law on Amnesty is sufficiently clearly defined to comply with the requirements of legal certainty in accordance with the principle of the rule of law.

III. Article 3 (Conditions on granting Amnesty from criminal prosecution and complete execution of the punishment)

"1. The perpetrators of the following criminal offences are completely exempted from criminal prosecution or execution of punishment for those criminal offences:

1.1 Criminal offences foreseen with the Criminal Code of the Republic of Kosovo (Official Gazette of the Republic of Kosovo no. 19/13 2012);"

167. Article 438 (Continuation of criminal sanctions) of the current Criminal Code of Kosovo provides that *"All criminal sanctions for acts still criminalized by this Code and imposed by final judgments before the entry into force of this Code shall continue with the same duration or to the same extent."*

168. Furthermore, Article 439 (Repeal of legal and sub-legal acts) of the current Criminal Code of Kosovo foresees that *"Provisions in UNMIK Regulations and the Criminal Code of the Republic of Kosovo UNMIK REG 2003/25 covering matters addressed in the Criminal Code of Kosovo shall cease to have effect upon the entry into force of this Code."*

1.1.1 Assault on the Constitutional order of the Republic of Kosovo (article 121), except in cases when committing this criminal offence has resulted in another criminal offence for which amnesty is not granted.

> *"Article 121 (Assault on constitutional order of the Republic of Kosovo)*
>
> *1. Whoever attempts, by the use of violence or threat of violence, to change the established constitutional order of the Republic of Kosovo or to overthrow the highest institutions of the Republic of Kosovo shall be punished by imprisonment of not less than five (5) years.*
>
> *2. Whoever by use of violence or threat of violence attempts to obstruct the establishment of the constitutional order of the Republic of Kosovo or by the use of violence or threat of violence implements foreign legal order in any part of the Republic of Kosovo, shall be punished by imprisonment of not less than five (5) years.*

3. Whoever attempts, by use of violence or threat of violence, to endanger the independence of Kosovo, its sovereignty and territorial integrity, its territorial entirety or its democracy, shall be punished by imprisonment of not less than ten (10) years."

169. The Court considers that this amnestied crime is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

1.1.2 Armed rebellion (article 122);

"Article 122 (Armed rebellion)

1. Whoever takes part in an armed rebellion that is aimed against the constitutional order, security or territorial integrity of the Republic of Kosovo, shall be punished by imprisonment of not less than five (5) years.

2. An organizer of an armed rebellion described in paragraph 1. of this Article shall be punished by imprisonment of not less than ten (10) years imprisonment."

170. The Court considers that this amnestied crime is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

1.1.3 Endangering territorial integrity of the Republic of Kosovo (article 125)

"Article 125 (Endangering the territorial integrity of the Republic of Kosovo)

Whoever by the use of violence or threat of violence attempts to detach a part of the territory of the Republic of Kosovo or to join a part of the territory to another state, shall be punished by imprisonment of not less than five (5) years."

171. The Court considers that this amnestied crime is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this

reason the Court concludes that this provision is compatible with the Constitution.

1.1.4 Endangering the constitutional order by destroying or damaging public installations and facilities (article 129);

> *"Article 129 (Endangering the constitutional order by destroying or damaging public installations and facilities)*
>
> *Whoever with the aim of endangering of the constitutional order or security of the Republic of Kosovo, incinerates or in any other way destroys or damages an industrial, agricultural site, or any other economic site, traffic system, telecommunication links, equipment for public use of water, heating, gas or energy, dams, depots, or any other building of importance for security, supply of citizens, economy or functioning of public services, shall be punished by imprisonment of not less than three (3) years."*

172. The Court considers that this amnestied crime is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

1.1.5 Espionage (article 131)

> *"Article 131 (Espionage)*
>
> *1. Whoever communicates, hands over a State secret or makes a State secret accessible to a foreign country, foreign organization or to the person serving them shall be punished from imprisonment of five (5) to twelve (12) years.*
>
> *2. Whoever creates an intelligence service in the Republic of Kosovo for a foreign State, country or organization or directs such service shall be punished by imprisonment of not less than ten (10) years.*
>
> *3. Whoever enters a foreign intelligence service, collects data for them or in any other way supports the work of such service shall be punished by imprisonment at least five (5) years.*

4. Whoever collects classified data or documents with the aim of communicating and handing them over to a foreign State, country, foreign organization or to the person serving them, shall be punished by imprisonment of three (3) to ten (10) years.

5. If the commission of the criminal offense in paragraph 1, 2, 3.or 4 of this Article caused severe consequences for the security, economic or military power of the Republic of Kosovo, the perpetrator shall punished by imprisonment of at least ten (10) years.

6. If the criminal offense listed in paragraph 1, 2, 3 or 4 of this Article is committed during the time of war, imminent danger of war, armed conflict or the revealing of a statesecret concerns the security of the Republic of Kosovo, the perpetrator shall be punished by imprisonment of not less than ten (10) years.

7. For the purposes of this Article, "State secret" means the military, economic, or official information, data or documents that by law or other provisions or decisions of a competent body and issued pursuant to the law that are pronounced as classified information."

173. The Court considers that this amnestied crime is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

1.1.6 Alliance for anti-constitutional actions (article 134);

"Article 134 (Alliance for anti-constitutional actions)

1. Whoever forms a group or any other alliance of persons for the commission of any criminal offense in Articles 121-134 of this Code shall be punished with the punishment prescribed for that offense.

2. Whoever participates in or becomes a member of the group or alliance from paragraph 1 of this Article shall be punished by imprisonment from one (1) to five (5) years.

3. A member of the group or alliance, who reports the group before the commission of the criminal offense from paragraph 1 of this Article shall be punished up to three (3) years of imprisonment or the punishment may be waived."

174. The Court considers that this amnestied crime is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

1.1.7 Unauthorized border or boundary crossing (article 146, paragraphs 1, 2, 3.1 and 3.3);

> *"Article 146, paragraphs 1, 2, 3.1 and 3.3, (Unauthorized border or boundary crossings)*
>
> *1. Whoever crosses a border or boundary of the Republic of Kosovo at any location other than at an authorized border or boundary crossing point shall be punished by a fine of two hundred fifty (250) EUR or by imprisonment of up to six (6) months.*
>
> *2. When the offense provided for in paragraph 1. of this Article is committed by a perpetrator who is accompanied by a child or another person, the perpetrator shall be punished by a fine of up to two thousand five hundred (2,500) EUR or by imprisonment of up to one (1) year.*
>
> *3. When the offense provided for in paragraph 1 of this Article is committed under one or more of the following circumstances, the perpetrator shall be punished by imprisonment of six (6) months to three (3) years:*
>
> *3.1. the perpetrator was previously convicted of a criminal offense provided for in this Article;*
>
> *3.3. the crossing is undertaken between the hours of 8:00 in the evening to 6:00 in the morning during the period from 1 April to 30 September, or between the hours of 6:00 in the evening to 6:00 in the morning during the period from 1 October to 31 March;"*

175. The Court considers that this amnestied crime is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

1.1.8 Inciting national, racial, religious or ethnic hatred, discord or intolerance (article 147)

> *"Article 147 (Inciting national, racial, religious or ethnic hatred, discord or intolerance)*
>
> *1. Whoever publicly incites or publicly spreads hatred, discord or intolerance between national, racial, religious, ethnic or other such groups living in the Republic of Kosovo in a manner which is likely to disturb public order shall be punished by a fine or by imprisonment of up to five (5) years.*
>
> *2. Whoever commits the offense provided for in paragraph 1 of this Article in a systematic manner or by taking advantage of his or her position or authority or causes disorder, violence, or other grave consequences by the commission of such offense shall be punished by imprisonment from one (1) to eight (8) years.*
>
> *3. Whoever commits the offense provided for in paragraph 1 of this Article by means of coercion, jeopardizing safety, exposing national, racial, ethnic or religious symbols to derision, damaging the belongings of another person, or desecrating monuments or graves shall be punished by imprisonment of one (1) to eight (8) years.*
>
> *4. Whoever commits the offense provided for in paragraph 3 of this Article in a systematic manner or by taking advantage of his or her position or authority or causes disorder, violence or other grave consequences by the commission of such offense shall be punished by imprisonment of two (2) to ten (10) years."*

176. The Court considers that this amnestied crime is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

1.1.9 Unlawful exercise of medical or pharmaceutical activity (article 262, paragraph 1);

> *"Article 262, paragraph 1, (Unlawful exercise of medical or pharmaceutical activity)*

1. Whoever, without possessing professional qualifications or legal authorization, carries out medical treatment, pharmaceutical services or engages in some other medical activity for which specific qualifications are required by law shall be punished by a fine or by imprisonment of up to one (1) year."

177. The Court considers that this amnestied crime is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

1.1.10 Destruction or damage to property (article 333, paragraph 1);

"Article 333, paragraph 1, (Destruction or damage to property)

1. Whoever destroys, damages, or renders unusable the property of another person under circumstances other than as provided in Article 334 of this Code shall be punished by imprisonment of up to one (1) year."

178. In this respect, the Court refers to Article 46 [Protection of Property] of the Constitution which 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.

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.

5. Intellectual property is protected by law.

…"

179. Furthermore, Article 1 (Protection of property) of the First Protocol to the European Convention on Human Rights and Fundamental Freedoms provides that *"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."*

180. In this respect, the Court notes that property is a fundamental human right guaranteed both under the Constitution and ECHR and other international instruments and that natural and legal persons cannot be deprived of property arbitrarily and property without just satisfaction.

181. The formulation of the Article in question clearly indicates that the amnestied crime concerns the property of another. In this respect, the Applicants allege that victims of this amnestied crime will be denied access to a court to protect their fundamental human right as granted by the Constitution and the ECHR.

182. As to the right to a remedy, including reparation, the Court notes that States are generally required to provide effective remedies to victims of gross violations of human rights and serious violations of humanitarian law, including reparation. In this respect, the Court notes that any human rights violation gives rise to a right to reparation on the part of the victim or his or her beneficiaries, implying a duty on the part of the State to make reparation and the possibility to seek redress from the perpetrator.

183. Moreover, the Court notes that the right to reparation shall cover all injuries suffered by victims; it shall include measures of restitution, compensation, rehabilitation, and satisfaction.

184. Furthermore, the Court fails to see how this amnestied crime would correspond with the purpose of the Law on Amnesty as set out above under the social-political context analysis.

185. The proposed amnestied crime amounts clearly to a restriction of the right to property and access to justice. The Court, therefore, concludes that this amnestied crime is incompatible with Article 46 [Protection of Property] of the Constitution and Article 1 of Protocol 1 to the ECHR. But also Art 31 [Right to Fair and Impartial Trial] of the Constitution and Art. 6 [Right to fair trial] ECHR.

1.1.11 Arson (article 334, paragraph 1)

"Article 334, paragraph 1, (Arson)

1. Whoever starts a fire or causes an explosion with the purpose of damaging or destroying the property of another person shall be punished by imprisonment of six (6) months to three (3) years."

186. This amnestied crime also specifies that it concerns damage of the property of another person. Therefore, the Court fails to see how this amnestied crime corresponds with the objectives of the Law on Amnesty.

187. The proposed amnestied crime amounts clearly to a restriction of the right to property and access to justice. The Court, therefore, concludes that this amnestied crime is incompatible with Article 46 [Protection of Property] of the Constitution and Article 1 of Protocol 1 to the ECHR, but also Art 31 [Right to Fair and Impartial Trial] of the Constitution and Art. 6 [Right to fair trial] ECHR.

1.1.12 Unauthorized ownership, control or possession of weapons (article 374)

"Article 374 (Unauthorized ownership, control or possession of weapons)

1. Whoever owns controls or possesses a weapon in violation of the applicable law relating to such weapon shall be punished by a fine of up to seven thousand and five hundred (7,500) EUR or by imprisonment of up to five (5) years.

2. When the offense provided for in paragraph 1 of this Article involves more than four (4) weapons, or more than four hundred (400) bullets, the perpetrator shall be punished by imprisonment of two (2) to ten (10) years.

3. The weapon owned, controlled or possessed in violation of this Article shall be confiscated."

188. The Court considers that this amnestied crime is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

1.1.13 Failure to report criminal offences or perpetrators (article 386, only in relation to the failure to report the criminal offences or perpetrators listed under this Article. [The Albanian and Serbian versions of the Law clearly indicate that this provision only applies for failure to report criminal offences that are granted amnesty under this Article]);

"Article 386 (Failure to report criminal offenses or perpetrators)
1. Whoever, having knowledge of the identity of the perpetrator of one or more of the following criminal offenses, fails to report such fact shall be punished by a fine or by imprisonment of up to three (3) years:

1.1. aggravated murder;

1.2. murder;

1.3. assault with grievous bodily injury;

1.4. anyoffense in violation of Chapter XIV-Criminal Offenses against the Constitutional Order and Security of Republic of the Republic of Kosovo;

1.5. anyoffense in violation of Chapter XV-Criminal Offenses against Humanity and Values Protected by International Law;
1.6. any offense in violation of Chapter XX-Criminal Offenses against Sexual Integrity;

1.7. anyoffense in violation of Chapter XXXIV-Criminal Offenses against Official Duty;

1.8. anyoffense in violation of Chapter XXIII-Narcotics Offenses;

1.9. anyoffense in violation of Chapter XXX-Weapons Offenses.

2. An official person or a responsible person who fails to report a criminal offense he or she has discovered in the exercise of his or her duties shall be punished as provided for in paragraph 1 of this Article, if such offense is punishable by imprisonment of at least three (3) years.

3. Except for offenses involving child abuse and domestic violence, a person is not criminally liable under this Article if he or she is related to the perpetrator of the criminal offense as the parent, child, spouse, sibling, adoptive parent or adopted child or person with whom the perpetrator lives in an extra-marital communion."

189. The Court notes that this Article amnesties persons for failure to report a crime in respect to crimes which are granted amnesty under the Law on Amnesty. That indicates that failure to report the more serious crimes listed in Article 386 do not benefit from amnesty (see Article 386 (1) 1.1), murder (see Article 386 (1) 1.2), assault with grievous bodily injury (see Article 386 (1) 1.3) and any offense in violation of Chapter XV-Criminal Offenses against Humanity and Values Protected by International Law (see Article 386 (1) 1.5).

190. The Court considers that this amnestied crime is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

1.1.14. Providing assistance to perpetrators after the commission of criminal offenses (article 388, only in relation to providing assistance to perpetrators after the commission of the criminal offences listed under this Article. [The Albanian and Serbian versions of the Law clearly indicate that this provision only applies for failure to report criminal offences that are granted amnesty under this Article])

"Article 388 (Providing assistance to perpetrators after the commission of criminal offenses)

1. Whoever harbors the perpetrator of any offense other than as provided in paragraph 2 of this Article or aids him or her to elude discovery or arrest by concealing instruments, evidence or in any

other way or whoever harbors a convicted person or takes steps towards frustrating the arrest, execution of a punishment or an order for mandatory treatment shall be punished by a fine or by imprisonment of up to one (1) year.

2. When the offense provided for in paragraph 1 of this Article relates to one or more of the following criminal offenses the perpetrator shall be punished by imprisonment of six (6) months to five (5) years:

2.1. aggravated murder;

2.2. murder;

2.3. assault with grievous bodily injury;

2.4. any offense in violation of Chapter XIV-Criminal Offenses against the Constitutional Order and Security of Republic of the Republic of Kosovo;

2.5. any offense in violation of Chapter XV-Criminal Offenses against Humanity and Values Protected by International Law;
2.6. any offense in violation of Chapter XX-Criminal Offenses against Sexual Integrity;

2.7. any offense in violation of Chapter XXXIV-Official Corruption and Criminal Offenses against Official Duty;

2.8. any offense in violation of Chapter XXIII-Narcotics Offenses;

2.9. any offense in violation of Chapter XXX-Weapons Offenses.

3. When the offense provided for in paragraph 1 of this Article relates to a criminal offense punishable by lifelong imprisonment, the perpetrator shall be punished by imprisonment of one (1) to ten (10) years.

4. The punishment provided for in paragraph 1 of this Article may not be more severe, neither in manner nor in degree, than the punishment prescribed for the criminal offense committed by the perpetrator who was given assistance.

5. Except for offenses involving child abuse and domestic violence, a person is not criminally liable under this Article if he or she is related to the perpetrator of the criminal offense as the parent, child, spouse, sibling, adoptive parent or adopted child or person with whom the perpetrator lives in an extra-marital communion."

191. The Court notes that this Article, similarly to the previous one, amnesties persons for providing assistance to perpetrators of crimes which are granted amnesty under the Law on Amnesty. That indicates that providing assistance to perpetrators of the more serious crimes listed in Article 388 do not benefit from amnesty (see Article 388 (2) 2.1), murder (see Article 388 (2) 2.2), assault with grievous bodily injury (see Article 388 (2) 2.3) and any offense in violation of Chapter XV- Criminal Offenses against Humanity and Values Protected by International Law (see Article 388 (2) 2.5).

192. The Court considers that this amnestied crime is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

1.1.15. Call for resistance (article 411), except in cases when commission of this criminal offense has resulted in commission of another criminal offense for which amnesty is not granted under this law. The perpetrators of the following criminal offenses committed with the aim of committing the criminal offence of call for resistance, are also granted amnesty from criminal prosecution or execution of punishment:

"Article 411 (Call to resistance)

1. Whoever calls upon others to resist against or disobey lawful decisions or measures issued by a competent authority or an official shall be punished by imprisonment of up to three (3) years.

2. If the offense provided for in paragraph 1 of this Article results in a severe hindrance or the impossibility of implementing a lawful decision, measure or official action, the perpetrator shall be punished by imprisonment of six (6) months to five (5) years."

193. The Court considers that this amnestied crime is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

1.1.15.1 Threat to a candidate (article 211);

"Article 211 (Threat to the candidate)

1. Whoever unlawfully forces any candidate to withdraw his or her candidacy shall be punished by a fine or imprisonment up to one (1) year.

2. Whoever unlawfully prevents or obstructs any candidate from exercising any activity during an election campaign, shall be punished by a fine or imprisonment up to one (1) year.

3. Whoever commits the offense set forth in paragraph 1.or 2. of this Article by the use of force or serious threat shall be punished by imprisonment of six (6) months to three (3) years."

194. The Court considers that this amnestied crime is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

1.1.15.2 Preventing exercise of the right to vote (article 212)

"Article 212 (Preventing exercise of the right to vote)

1. Whoever, in the exercise of duties entrusted to him or her related to elections, unlawfully, and with the intent to prevent another person from exercising his or her right to vote, fails to record such person in a voter registration list or removes such person from the voter registration list shall be punished by imprisonment of one (1) to three (3) years.

2. Whoever, during the voting or the referendum unlawfully prevents, obstructs, hinders or influences the free decision of a voter or in any other manner prevents another person from exercising his or her right to vote shall be punished by imprisonment up to one (1) year.

3. Whoever commits the offense from paragraphs 1 and 2 of this Article by the use of force or serious threat shall be punished by imprisonment of one (1) to five (5) years."

195. The Court considers that this amnestied crime is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

1.1.15.3 Misuse of economic authorizations (article 290, subparagraphs 1.1, 1.2, 1.3 and 1.4 of paragraph 1);

"Article 290 (Misuse of economic authorizations)

1. Whoever while engaging in an economic activity commits one of the following acts with the intent to obtain an unlawful material benefit for oneself or any other person shall be punished by a fine and imprisonment of six (6) months to five (5) years:

1.1. creates or holds illicit funds in the Republic of Kosovo or in any other jurisdiction;

1.2. through the compilation of documents with false content, false balance sheets, false evaluations, inventories or any other false representations or through the concealment of evidence falsely represents the flow of assets or the results of the economic activity and in this way misleads the managing bodies within the business organization in decision making on management activities;

1.3. fails to meet tax obligations or other fiscal obligations as determined by law;

1.4. uses means at his or her disposal contrary to their foreseen purpose;"

196. The Court considers that this amnestied crime is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this

reason the Court concludes that this provision is compatible with the Constitution.

1.1.15.4 Prohibited trade (article 305)

"Article 305 (Prohibited trade)

1. Whoever, without authorization, sells, buys or trades goods, objects or services shall be punished by imprisonment of three (3) months to three (3) years.

2. When the perpetrator of the offense provided for in paragraph 1 of this Article has organized a network of sellers or brokers or has acquired a profit exceeding fifteen thousand (15,000) EUR, the perpetrator shall be punished by imprisonment of one (1) to eight (8) years.

3. The goods and objects from the prohibited trade shall be confiscated."

197. The Court considers that this amnestied crime is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

1.1.15.5 Tax evasion (article 313)

"Article 313 (Tax evasion)

1. Whoever, with the intent that he or she or another person conceal or evade, partially or entirely, the payment of taxes, tariffs or contributions required by the law, provides false information or omits information regarding his or her income, property, economic wealth or other relevant facts for the assessment of such obligations shall be punished by a fine and by imprisonment of up to three (3) years.

2. When the obligation provided for in paragraph 1 of this Article exceeds the sum of fifteen (15,000) EUR, the perpetrator shall be punished by a fine and imprisonment of six (6) months to five (5) years.

3. When the obligation provided for in paragraph 1 of this Article exceeds the sum of fifty thousand (50,000) EUR, the perpetrator shall be punished by a fine and by imprisonment of one (1) to eight (8) years."

198. The Court considers that this amnestied crime is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

1.1.15.6 Smuggling of goods (article 317, paragraphs 1 and 2)

"Article 317 (Smuggling of goods)

1. Whoever, while crossing the border carries goods and avoids customs control, or whoever while avoiding customs control, carries the goods and crosses the border, shall be punished by a fine or by imprisonment of up to three (3) years.

2. Whoever, without a proper license, avoids the customs control and crosses the border carrying goods, the export or import of which is prohibited, limited or requires a special license issued by the competent authorities, shall be punished by imprisonment of six (6) months to five (5) years."

199. The Court considers that this amnestied crime is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

1.1.15.7 Avoiding payment of mandatory custom fees (article 318)

"Article 318 (Avoiding payment of mandatory customs fees)

1. Whoever, with the intent to enable himself or another person to avoid payment of the customs tax fee or other fees or customs obligations payable for the import or export of goods, or if a false document is presented to customs about the origin, value, quantity, quality, type and other characteristics of the goods, shall be punished by a fine or imprisonment of up to three (3) years.

2. If the avoided payment for the offense in paragraph 1 of this Article exceeds fifteen thousand (15,000) EUR, the perpetrator shall be punished by a fine and imprisonment of up to five (5) years.

3. If the avoided payment for the offense in paragraph 1 of this Article exceeds thirty thousand (30,000) EUR, the perpetrator shall be punished by a fine and by imprisonment from one (1) to eight (8) years.

4. The goods that were not accurately declared or the value of the payment avoided, whichever is greater, shall be confiscated."

200. The Court considers that this amnestied crime is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

1.1.15.8 Destroying, damaging or removing public installations (article 366, paragraphs 1 and 2)

"Article 366 (Destroying, damaging or removing public installations)

1. Whoever destroys, damages or removes installations or equipment for electricity, gas, water, heating, communications, sewage, environmental protection, pipelines, underwater cables, dams or other similar equipment and in this way causes a disturbance to the supply of services to the population or to the economy shall be punished by imprisonment of up to five (5) years.

2. When the offense provided for in paragraph 1 of this Article is committed by negligence, the perpetrator shall be punished by a fine or by imprisonment of up to one (1) year."

201. The Court considers that this amnestied crime is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

1.1.15.9 Endangering public traffic by dangerous acts or means (article 380, paragraphs 1, 2 and 5)

"Article 380 (Endangering public traffic by dangerous acts or means)

1. Whoever destroys, removes or damages installations, equipment, signs or signals designed for traffic safety, or gives erroneous signs or signals or places obstacles on public roads or in any other manner endangers human life or physical safety shall be punished by imprisonment of up to three (3) years.

2. When the offense provided for in paragraph 1 of this Article results in light bodily harm to a person or considerable damage to property, the perpetrator shall be punished by a fine or by imprisonment of six (6) months to five (5) years.

5. When the offense provided for in paragraph 1 of this Article is committed by negligence, the perpetrator shall be punished by a fine or imprisonment of up to one (1) year."

202. The Court considers that this amnestied crime is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

1.1.15.10 Falsifying documents (article 398)

"Article 398 (Falsifying documents)

1. Whoever draws up a false document, alters a genuine document with the intent to use such document as genuine or knowingly uses a false or altered document as genuine shall be punished by a fine or by imprisonment of up to three (3) years.

2. When the offense provided for in paragraph 1 of this Article is committed in relation to a public document, will, bill of exchange, public or official registry or some other registry kept in accordance with the law the perpetrator shall be punished by a fine or by imprisonment of up to five (5) years."

203. As to this amnestied crime, the Court considers that it is difficult to see how it can come within the ambit of the objectives of the Law on Amnesty. As mentioned above, the amnestied crime should have a link

with the objectives of the amnesty, i.e. to end a conflict or to promote reconciliation between the parties involved, being part of a peace agreement. To amnesty perpetrators in the way envisaged by this Article does not meet such requirements.

204. In this respect, the Court recalls that the constitutional order of the Republic of Kosovo is based amongst others on the principle of the rule of law, which entails also the aspect of legal certainty. Legal certainty should guarantee the stability of a legal system, meaning that the individuals should enjoy the guaranties which the legal system offers in protecting their rights.

205. The Court considers that, in a rule of law system, natural and legal persons should be able to rely on public documents such as documents on property rights and to challenge the genuineness of a document which would restrict their rights. Otherwise the principle of legal certainty would be undermined, since individuals can no longer be sure that such documents have not been falsified.

206. Thus, victims of such crimes would be hindered to have access to justice, since they would have to prove in civil proceedings that the documents are not genuine, whereas the judge would have to take into account that the perpetrator and the crime have benefitted from an amnesty.

207. Moreover, the perpetrators who fall under the ambit of this Article have a duty to bring forth the products of the crime. If not, this would jeopardize the above mentioned principles and do harm to Kosovo as a state governed by the rule of law.

208. The Court, therefore, concludes that this amnestied crime is incompatible with the Constitution and the principles enshrined therein.

1.1.15.11 Special cases of falsifying documents (article 399, subparagraphs 1.1 and 1.4 of paragraph 1)

"Article 399 (Special cases of falsifying documents)

1. A person shall be deemed to have committed the offense of falsifying documents and shall be punished a fine or by imprisonment of up to three (3) years, if such person:

1.1 without authorization completes a letter, blank form, or any other item which has already been signed by another person and fills in a statement that creates a legal relationship;
1.4 issues a document and claims by signing the document that he or she has a position, title or rank, although he or she does not, and such act has a substantial influence on the value of the document; or

209. The Court considers that the same reasoning as in the abovementioned crime under Article 398 of the Criminal Code applies also for this amnestied crime.

210. The Court, therefore, concludes that this amnestied crime is incompatible with the Constitution and the principles enshrined therein.

1.1.15.12 Obstructing official persons in performing official duties (article 409, paragraphs 1, 2 and 3)

"Article 409 (Obstructing official persons in performing official duties)

1. Whoever, by force or serious threat, obstructs or attempts to obstruct an official person in performing official duties or, using the same means, compels him or her to perform official duties shall be punished by imprisonment of three (3) months to three (3) years.

2. Whoever participates in a group of persons which by common action obstructs or attempts to obstruct an official person in performing official duties or, using the same means, compels him or her to perform official duties shall be punished by a fine or by imprisonment of up to three (3) years.

3. The leader or organizer of the group which commits the offense provided for in paragraph 2 of this Article shall be punished by imprisonment of one (1) to five (5) years."

211. The Court considers that this amnestied crime is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

1.1.15.13 Attacking official persons performing official duties (article 410, paragraph 1) except in cases when commission o this criminal offense has resulted in grievous bodily harm or death

"Article 410 (Attacking official persons performing official duties)

1. Whoever attacks or seriously threatens to attack an official person, judge, prosecutor or a person who assists in performing official duties related to public security or the security of the Republic of Kosovo or maintaining public order shall be punished by imprisonment of three (3) months to three (3) years."

212. The Court considers that this amnestied crime is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

1.1.15.14 Criminal provisions under the Customs and Excise Code of Kosovo, as follows:

1.1.15.14.1 Impeding movement of a Custom Vehicle (Article 296)

"Article 296 (Impeding movement of a Customs Vehicle)

Whoever, except for sufficient cause, impedes in any way in any vehicle, boat or aircraft which is used by customs officers in the performance of the official duty shall be punished by a fine or by imprisonment of up to three years."

213. The Court considers that this amnestied crime is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

1.1.15.14.2 Making an Untrue Declaration (Article 297)

"Article 297 (Making an Untrue Declaration)

(1) Whoever, makes or signs, or causes to be made or signed, or delivers or causes to be delivered to a customs officer, any declaration, notice, certificate or other document which is untrue in

any material particular, shall be punished by a fine or by imprisonment of up to three years.

(2) Whoever makes any statement in answer to any question put to him by a customs officer, being a statement made for a Customs purpose, which is untrue in any material particular, shall be punished by a fine or by imprisonment of up to one year."

214. The Court considers that this amnestied crime is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

1.1.15.14.3 Fraudulent Evasion of Import Duty and Excise Tax (Article 298)

"Article 298 (Fraudulent Evasion of Import Duty and Excise Tax)

(1) Whoever is in any way knowingly concerned in any fraudulent evasion of import duty or excise tax chargeable on any goods shall be punished by:

1) where the amount of import duty or excise tax evaded does not exceed 15,000 EUR, by a fine and imprisonment of three months to three years; and

2) where the amount of import duty or excise tax evaded exceeds 15,000 EUR, by a fine and imprisonment of six months to five years.

(2) Any attempt to commit the criminal offence provided for in paragraph 1 of the present article shall also be punishable."

215. The Court considers that this amnestied crime is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

1.1.15.14.4 Fraudulent Evasion of Prohibitions and Restrictions on Goods (Article 299)

"Article 299 (Fraudulent Evasion of Prohibitions and Restrictions on Goods)

(1) Whoever is in any way knowingly concerned in any fraudulent evasion of any prohibition or restriction for the time being in force shall be punished by a fine or by imprisonment of three months to five years.

(2) An attempt to commit the criminal offence provided for in paragraph 1 of the present article shall also be punishable."

216. The Court considers that this amnestied crime is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

1.1.15.14.5 Criminal Offences in relation to Excise Products (Article 300)

"Article 300 (Criminal Offences in relation to Excise Products)

(1) Whoever in violation of the applicable law relating to excise tax and customs, imports or exports or is in possession of or transports unmarked products, shall be punishable by a fine of up to five times the amount of the excise tax not accounted for or paid if does not exceed 25,000 EUR, or by imprisonment of up to seven years if the excise tax not accounted for or paid exceeds 25,000 EUR.

(2) With punishment from paragraph 1 of this Article, to be punished also whoever in violation of the applicable law relating to excise tax and customs, imports or exports or is in possession of or transports unmarked products.

(3) Whoever permits premises under his or her control or possession to be used for the sale of, or any other dealing in, unmarked products, shall be punished by a fine of 5,000 EUR or by imprisonment of up to three years."

217. The Court considers that this amnestied crime is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this

reason the Court concludes that this provision is compatible with the Constitution.

1.1.16 Participating in a crowd committing criminal offense and hooliganism (article 412), except in cases when commission of this criminal offense has resulted in grievous bodily harm or death.

"Article 412 (Participating in a crowd committing a criminal offense and hooliganism)

1. Whoever participates in an assembled crowd of more than eight persons which by collective action deprives another person of his or her life, inflicts a grievous bodily injury on another person, causes a general danger, causes damages of twenty thousand (20,000) EUR or more to property or commits other offenses of grave violence, punishable by imprisonment of at least five (5) years or attempts to commit such offenses, shall be punished by imprisonment of six (6) months to five (5) years.

2. The organizer of the crowd referred to in paragraph 1 of this Article shall be punished by imprisonment of two (2) to ten (10) years."

218. The Court considers that this amnestied crime is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

Criminal offences foreseen by Criminal Code of Kosovo (UNMIK Regulation No. 2003/25 OF 6 July 2003, Official Gazette 2003/25) and the UNMIK Regulation No. 2004/19 amending the Provisional Criminal Code of Kosovo, as follows:

219. Article 353 of the Provisional Criminal Code of Kosovo provided that *"All criminal sanctions for acts still criminalized by the present Code and imposed by final judgments before the entry into force of the present Code shall continue with the same duration or to the same extent."*

220. Furthermore, Article 354 of the Provisional Criminal Code of Kosovo provided that *"(1) Provisions in UNMIK Regulations and*

Administrative Directions covering matters addressed in the present Code shall cease to have effect upon the entry into force of the present Code unless otherwise expressly determined in the present Code or in an UNMIK Regulation. 2) Provisions in the applicable Criminal Codes shall cease to have effect upon the entry into force of the present Code."

1.2.1 Attack against Constitutional Order of Kosovo (article 108)

"Article 108 (Assault on Legal Order of Kosovo)

Whoever attempts, by use of violence or threat, to change the established legal order of Kosovo in the legislative, executive or judicial fields or to overthrow a public entity shall be punished by imprisonment of at least five years."

221. The Court considers that this amnestied crime is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

1.2.2 Unauthorized border or boundary crossing (article 114, paragraphs 1 and 2, paragraph 3.1, 3.3 and paragraph 4)

"Article 114 (Unauthorised Border or Boundary Crossings)

(1) Whoever crosses a border or boundary of Kosovo at any location other than at an authorised order or boundary crossing point shall be punished by a fine of 250 EUR or by imprisonment of up to three months.

(2) When the offence provided for in paragraph 1 of the present Article while the perpetrator is accompanied by a child or another person, the perpetrator shall be punished by a fine of up to 2.500 EUR or by imprisonment of up to one year.

(3) When the offence provided for in paragraph 1 of the present article is committed under one or more of the following circumstances, the perpetrator shall be punished by imprisonment of up to two years:

1) The perpetrator was previously convicted of a criminal offence provided for in the present article;

3) The crossing is undertaken between the hours of 8:00 in the evening to 6:00 in the morning during the period from 1 April to 30 September, or between the hours of 6:00 in the evening to 6:00 in the morning during the period from 1 October to 31 March; or

(4) A person is not criminally liable under the present article for crossing at an unauthorized border or boundary crossing point if the crossing occurred at a checkpoint that was temporarily established by COMKFOR."

222. The Court considers that this amnestied crime is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

1.2.3 Inciting national, racial, religious or ethnic hatred, discord or intolerance (article 115)

"Article 115 (Inciting National, Racial, Religious or Ethnic Hatred, Discord or Intolerance)

(1) Whoever publicly incites or publicly spreads hatred, discord or intolerance between national, racial, religious, ethnic or other such groups living in Kosovo in a manner which is likely to disturb public order shall be punished by a fine or by imprisonment of up to five years.

(2) Whoever commits the offence provided for in paragraph 1 of the present article in a systematic manner or by taking advantage of his or her position or authority or causes disorder, violence, or other grave consequences by the commission of such offence shall be punished by imprisonment up to eight years.

(3) Whoever commits the offence provided for in paragraph 1 by means of coercion, jeopardizing of safety, exposing national, racial, ethnic or religious symbols to derision, damaging the belongings of another person, or desecrating monuments or graves shall be punished by imprisonment of one to eight years.

(4) Whoever commits the offence provided for in paragraph 3 of the present article in a systematic manner or by taking advantage of his or her position or authority or causes disorder, violence or other grave consequences by the commission of such offence shall be punished by imprisonment of one to ten years."

223. The Court considers that this amnestied crime is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

1.2.4 Unlawful exercise of medical activity (article 221, paragraph 1)

"Article 221 (Unlawful Exercise of Medical Activity)

(1) Whoever, without possessing professional qualifications or legal authorisation, carries out medical treatment or engages in some other medical activity for which specific qualifications are required by law shall be punished by a fine or by imprisonment of up to one year."

224. The Court considers that this amnestied crime is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

1.2.5 Damaging movable property (article 260)

"Article 260 (Damage to Movable Property)

(1) Whoever damages, annihilates or renders unusable the movable property of another person shall be punished by a fine or by imprisonment of up to six months.

(2) When the offence provided for in paragraph 1 of the present article is motivated by bias relating to ethnicity, nationality, race, religion, gender, sexual orientation or language, the perpetrator shall be punished by a fine or by imprisonment of up to one year."

225. In this respect, the Court refers to Article 46 [Protection of Property] of the Constitution which 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.

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.

5. Intellectual property is protected by law.

..."

226. Furthermore, Article 1 (Protection of property) of Protocol 1 of the European Convention on Human Rights and Fundamental Freedoms provides that "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 preceeding 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."

227. In this respect, the Court notes that property is a fundamental human right guaranteed both under the Constitution and ECHR and other international instruments and that natural and legal persons cannot be deprived of property arbitrarily and property without just satisfaction.

228. The formulation of the Article in question clearly indicates that the amnestied crime concerns the property of another person. In this respect, the Applicants allege that victims of this amnestied crime will

be denied access to a court to protect their fundamental human right as granted by the Constitution and the ECHR.

229. As to the right to a remedy, including reparation, the Court notes that States are generally required to provide effective remedies to victims of gross violations of human rights and serious violations of humanitarian law, including reparation. In this respect, the Court notes that any human rights violation gives rise to a right to reparation on the part of the victim or his or her beneficiaries, implying a duty on the part of the State to make reparation and the possibility for the victim to seek redress from the perpetrator.

230. Moreover, the Court notes that the right to reparation shall cover all injuries suffered by victims; it shall include measures of restitution, compensation, rehabilitation, and satisfaction.

231. Furthermore, the Court fails to see how this amnestied crime would correspond with the purpose of the Law on Amnesty as set out above under the social-political context analysis.

232. The proposed amnestied crime amounts clearly to a restriction of the right to property and access to justice. The Court, therefore, concludes that this amnestied crime is incompatible with Article 46 [Protection of Property] of the Constitution and Article 1 of Protocol 1 to the ECHR. But also Art 31 [Right to Fair and Impartial Trial] of the Constitution and Art. 6 [Right to fair trial] ECHR.

1.2.6 Unauthorized ownership, control or possession of weapons (article 328, paragraph 2); and ownership, control or possession or use of weapons if he or she is not the holder of a valid weapon authorization card (Article 8.6 UNMIK Regulation no. 2001/7 of the date 21 February 2001, Official Gazette 2001/7)

"Article 328 (Unauthorised Ownership, Control, Possession or Use of Weapons)

(2) Whoever owns, controls, possesses or uses a weapon without a valid Weapon Authorisation Card for that weapon shall be punished by a fine of up to 7.500 EUR or by imprisonment of one to eight years.

Section 8 (Offences and Penalties)

8.6 Any person committing an offence under sections 8.2 and 8.4 above shall be liable upon conviction to imprisonment for a term not exceeding 8 years or a fine of up to 15,000 DM or both. Any WAC issued to that person shall be automatically revoked."

233. The Court considers that this amnestied crime is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

1.2.7 Failure to report a criminal offence or its perpetrator (article 303, only in relation to the criminal offences, granted amnesty for under this law)

"Article 303 (Failure to Report Preparation of Criminal Offences)

(1) Whoever, having knowledge about the preparation of the commission of a criminal offence punishable by imprisonment of least five years, fails to report the fact at the time when the commission of the offence may still be averted and the offence is committed or attempted shall be punished by a fine or by imprisonment of up to one year.

(2) Whoever fails to report the preparation of the commission of a criminal offence punishable by long-term imprisonment shall be punished by imprisonment of three months to three years.

(3) A person is not criminally liable under paragraph 1 of the present article if he or she is related to the perpetrator of the criminal offence as the spouse, extra-marital partner, first-line blood relative, brother or sister, adoptive parent or adopted child or their spouse or cohabiting partner."

234. The Court considers that this amnestied crime is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

1.2.8 Providing assistance to perpetrators after the commission of criminal offences (article 305, only in relation to criminal offences granted amnesty for under this law)

> *"Article 305 (Providing Assistance to Perpetrators after the Commission of Criminal Offences)*
>
> *(1) Whoever harbors the perpetrator of a criminal offence prosecuted ex officio or aids him or her to elude discovery by concealing instruments, evidence or in any other way or whoever harbors a convicted person or takes steps towards frustrating the execution of a punishment or an order for mandatory treatment shall be punished by imprisonment of up to one year.*
>
> *(2) Whoever assists the perpetrator of a criminal offence punishable by imprisonment of more than five years shall be punished by imprisonment of six months to five years.*
>
> *(3) Whoever assists the perpetrator of a criminal offence punishable by long-term imprisonment shall be punished by imprisonment of one to ten years.*
>
> *(4) The punishment provided for in paragraph 1 of the present article may not be more severe, neither in manner nor in degree, than the punishment prescribed for the criminal offence committed by the person who has been given assistance.*
>
> *(5) A person is not criminally liable under the present article if he or she is related to the perpetrator of the criminal offence as the spouse, extra-marital partner, first-line blood relative, brother or sister, adoptive parent or adopted child or their spouse or cohabiting partner."*

235. The Court considers that this amnestied crime is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

1.2.9 Call for resistance (article 319) except in cases when commission of this criminal offense has resulted in commission of another criminal offense for which amnesty is not granted under this law. The perpetrators of the following criminal offenses below committed with the purpose of committing the criminal offence of

call for resistance, are also granted amnesty from criminal prosecution and execution of punishment:

"Article 319 (Call to Resistance)

Whoever calls upon others to prevent, by use of force or serious threat, the execution of lawful decisions or measures issued by a competent authority or an official while carrying out an official activity shall be punished by imprisonment for a term not exceeding three years."

236. The Court considers that this amnestied crime is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

1.2.9.1 Misuse of economic authorizations (article 236, paragraph 1, subparagraphs 1.1, 1.2, 1.3 and 1.4)

"Article 236 (Misuse of Economic Authorisations)

(1) A responsible person within a business organization or legal person which engages in an economic activity shall be punished by imprisonment of six months to five years if he or she commits one of the following acts with the intent to obtain an unlawful material benefit for the business organization or legal person where he or she is employed or for another business organization or legal person:

1) Creates or holds illicit funds in Kosovo or in any other jurisdiction;

2) Through the compilation of documents with a false content, false balance sheets, false evaluations, inventories or any other false representations or through the concealment of evidence falsely represents the flow of assets or the results of the economic activity and in this way misleads the managing bodies within the business organization or legal person to err in decision-making on management activities;

3) Fails to meet tax obligations or other fiscal obligations as determined by law in Kosovo;

4) Uses means at his or her disposal contrary to their foreseen purpose;"

237. The Court considers that this amnestied crime is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

1.2.9.2 Prohibited trade (article 246)

"Article 246 (Prohibited Trade)

(1) Whoever, without authorisation, sells, buys or trades goods or objects whose distribution is prohibited or restricted shall be punished by imprisonment of three months to three years.

(2) When the perpetrator of the offence provided for in paragraph 1 of the present article has organized a network of sellers or brokers or has acquired a profit exceeding 15.000 EUR, the perpetrator shall be punished by imprisonment of six months to five years.

(3) Goods and objects from prohibited trade shall be confiscated."

238. The Court considers that this amnestied crime is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

1.2.9.3 Tax evasion (article 249)

"Article 249 (Tax Evasion)

(1) Whoever, with the intent that he or she or another person evade, partially or entirely, the payment of taxes, tariffs or contributions provided for by the law, provides false information or omits information regarding his or her income, economic wealth or other relevant facts for the assessment of such obligations shall be punished by a fine and by imprisonment of up to three years.

(2) When the obligation provided for in paragraph 1 of the present article whose payment has been evaded exceeds the sum of 15.000 EUR, the perpetrator shall be punished by a fine and by imprisonment of six months to five years."

239. The Court considers that this amnestied crime is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

1.2.9.4 Smuggling of goods (article 273)

"Article 273 (Smuggling of Goods)

(1) Whoever, without authorisation or license, trades or otherwise transports goods into or out of Kosovo shall be punished by a fine or by imprisonment of up to three years.

(2) The smuggled goods shall be confiscated."

240. The Court considers that this amnestied crime is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

1.2.9.5 Destroying, damaging or removing public installations (article 292, paragraphs 1 and 2)

"Article 292 (Destroying, Damaging or Removing Public Installations)

(1) Whoever destroys, damages or removes installations or equipment for electricity, gas, water, heating, telecommunications, sewage, environmental protection or pipelines, underwater cables, dams or other similar equipment and in this way causes disturbance to the supply of services to the population or to the economy shall be punished by imprisonment of up to five years.

(2) When the offence provided for in paragraph 1 of the present article is committed by negligence, the perpetrator shall be punished by a fine or by imprisonment of up to one year."

241. The Court considers that this amnestied crime is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

1.2.9.6 Endangering public traffic by dangerous acts or means (article 299 paragraphs 1 and 2)

"Article 299 (Endangering Public Traffic by Dangerous Acts or Means)

(1) Whoever destroys, removes or seriously damages installations, equipment, signs or signals designed for traffic safety, or gives erroneous signs or signals, places obstacles on public roads or in any other manner endangers traffic and thereby endangers human life or physical safety or property on a large-scale shall be punished by imprisonment of up to three years.

(2) When the offence provided for in paragraph 1 of the present article is committed by negligence, the perpetrator shall be punished by imprisonment of up to one year."

242. The Court considers that this amnestied crime is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

1.2.9.7 Falsifying official documents (article 348)

"Article 348 (Falsifying Official Documents)

(1) An official person or a responsible person who, in an official or business document, official register or file, enters false information or fails to enter essential information or with his or her signature or official stamp certifies an official or business document, official register or file which contains false data or enables the compilation of such document, register or file with false contents shall be punished by imprisonment of three months to three years.

(2) An official person or a responsible person who uses a false official or business document, official register or file as if it were true in his or her duty or business activity or who destroys, hides, damages or in any other way renders unusable the official or business document, official register or file shall be punished as provided for in paragraph 1 of the present article."

243. As to this amnestied crime, the Court considers that it is difficult to see how it can come within the ambit of the objectives of the Law on Amnesty. As mentioned above, the amnestied crime should have a link with the objectives of the amnesty, i.e. to end a conflict or to promote reconciliation between the parties involved, being part of a peace agreement. To amnesty perpetrators in the way envisaged by this Article does not meet such requirements.

244. In this respect, the Court recalls that the constitutional order of the Republic of Kosovo is based amongst others on the principle of the rule of law, which entails also the aspect of legal certainty. Legal certainty should guarantee the stability of a legal system, meaning that the individuals should enjoy the guaranties which the legal system offers in protecting their rights.

245. The Court considers that, in a rule of law system, natural and legal persons should be able to rely on public documents such as documents on property rights and to challenge the genuineness of such documents. Otherwise the principle of legal certainty would be undermined, since individuals can no longer be sure that such documents have not been falsified.

246. Thus, victims of such crimes would be hindered to have access to justice, since they would have to proof in civil proceedings that the documents are not genuine, whereas the judge would have to take into account that the crime has benefitted from an amnesty.

247. Moreover, the perpetrators who fall under the ambit of this Article have a duty to bring forth the products of the crime. If not, this would jeopardize the above mentioned principles and do harm to Kosovo as a state governed by the rule of law.

248. The Court, therefore, concludes that this amnestied crime is incompatible with the Constitution and the principles enshrined therein.

1.2.9.8 Obstructing official persons in performing official duties (article 316)

> *"Article 316(Obstructing Official Persons in Performing Official Duties)*
>
> *(1) Whoever, by force or threat of immediate use of force, obstructs an official person in performing official duties falling within the scope of his or her authorisations or, using the same means, compels him or her to perform official duties shall be punished by imprisonment of three months to three years.*
>
> *(2) When the offence provided for in paragraph 1 of the present article involves insulting or abusing an official person or a threat to use a weapon or results in light bodily injury, the perpetrator shall be punished by imprisonment of six months to three years.*
>
> *(3) When the offence provided for in paragraph 1 or 2 of the present article is committed against an official person performing his or her duties of maintaining public security, the security of Kosovo or public order or apprehending a perpetrator of a criminal offence or guarding a person deprived of liberty, the perpetrator shall be punished by imprisonment of three months to five years.*
>
> *(4) An attempt of the offence provided for in paragraph 1 or 2 of the present article shall be punishable.*
>
> *(5) When the perpetrator of the offence provided for in paragraphs 1 to 3 of the present article is provoked by the unlawful or the brutal action of the official person, the court may waive the punishment."*

249. The Court considers that this amnestied crime is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

1.2.9.9 Attacking official persons performing official duties (article 317), except in cases when commission of this criminal offense has resulted in grievous bodily harm or death.

"Article 317 (Attacking Official Persons Performing Official Duties)

(1) Whoever attacks or seriously threatens to attack an official person or a person who assists in performing official duties related to public security or the security of Kosovo or maintaining public order shall be punished by imprisonment of three months to three years.

(2) When the offence provided for in paragraph 1 of the present article results in light bodily injury to the official person or his or her assistant or involves a threat to use a weapon, the perpetrator shall be punished by imprisonment of six months to five years.

(3) When the offence provided for in paragraph 1 of the present article, results in serious bodily injury to the official person or his or her assistant, the perpetrator shall be punished by imprisonment of one to ten years.

(4) When the perpetrator of the offence provided for in paragraph 1, 2 or 3 of the present article is provoked by the unlawful or brutal action of the official person or his or her assistant, the court may waive the punishment."

250. The Court considers that this amnestied crime is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

1.2.10 Participating in a crowd committing a criminal offence (article 320), except in cases when commission of this criminal offense has resulted in serious bodily harm or death.

"Article 320 (Participating in a Crowd Committing a Criminal Offence)

(1) Whoever participates in an assembled crowd which by collective action deprives another person of his or her life, inflicts a grievous bodily harm on another person, causes a general danger, damages a property on a large scale or commits other offences of grave

violence, or attempts to commit such offences, shall be punished by imprisonment of three months to five years.

(2) The organizer of the crowd referred to in paragraph 1 of the present Article shall be punished by imprisonment of one to ten years."

251. The Court considers that this amnestied crime is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

1.3 Criminal offences foreseen with the Criminal Law of SAPK, Official Gazette no. 20/77 and the UNMIK Regulations No. 1999/24 and 2000/59 on the Law Applicable in Kosovo, as follows:

1.3.1 Damaging another person's object (article 145)

"Article 145 (Damaging another person's object)

(1) Whoever damages, destroys or makes another person's object unusable shall be fined or punished with up to three years of imprisonment.

(2) If the damage exceeds the amount of 30,000 dinars, the perpetrator shall be punished with six months to five years of imprisonment.

(3) If the act from Para 1 of this Article is committed against private property, the proceedings shall be undertaken by private prosecution."

252. In this respect, the Court refers to Article 46 [Protection of Property] of the Constitution which 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.
>
> 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.
>
> 5. Intellectual property is protected by law.
>
> ..."

253. Furthermore, Article 1 (Protection of property) of Protocol 1 of the European Convention on Human Rights and Fundamental Freedoms provides that "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."

254. In this respect, the Court notes that property is a fundamental human right guaranteed both under the Constitution and ECHR and other international instruments and that natural and legal persons cannot be deprived of property arbitrarily and property without just satisfaction.

255. The formulation of the Article in question clearly indicates that the amnestied crime concerns the property of another person. In this respect, the Applicants allege that victims of this amnestied crime will be denied access to a court to protect their fundamental human right as granted by the Constitution and the ECHR.

256. As to the right to a remedy, including reparation, the Court notes that States are generally required to provide effective remedies to victims of gross violations of human rights and serious violations of humanitarian law, including reparation. In this respect, the Court notes that any

human rights violation gives rise to a right to reparation on the part of the victim or his or her beneficiaries, implying a duty on the part of the State to make reparation and the possibility to seek redress from the perpetrator.

257. Moreover, the Court notes that the right to reparation shall cover all injuries suffered by victims; it shall include measures of restitution, compensation, rehabilitation, and satisfaction.

258. Furthermore, the Court fails to see how this amnestied crime would correspond with the purpose of the Law on Amnesty as set out above under the social-political context analysis.

259. The proposed amnestied crime amounts clearly to a restriction of the right to property and access to justice. The Court, therefore, concludes that this amnestied crime is incompatible with Article 46 [Protection of Property] of the Constitution and Article 1 of Protocol 1 to the ECHR. But also Art 31 [Right to Fair and Impartial Trial] of the Constitution and Art. 6 [Right to fair trial] ECHR.

1.3.2 Unlawful possession of weapons or explosive substances (article 199, paragraph 1);

> "Article 199 (Unlawful possession of weapons or explosive substances)
>
> (1) Whoever without an authorization manufactures, sells, procures or exchanges firearms, ammunition or explosive substances or who without an authorization possesses firearms, ammunition or explosive substances which procurement is forbidden to citizens, shall be punished with up to three years of imprisonment."

260. The Court considers that this amnestied crime is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

1.3.3 Failure to report on a criminal act or a perpetrator (article 173, only in relation to the criminal offences granted amnesty for under this law);

> "Article 173 (Failure to report on a criminal act or a perpetrator)

(1) Whoever knows a perpetrator of a criminal act for which the penalty may be pronounced or who knows that such an act has been committed but fails to report it although the timely identification of the perpetrator of a criminal act depends on such a report shall be punished with up to three years of imprisonment.

(2) An official person or a responsible person who consciously fails to report a criminal act about which he has learned during the performance of his duty, if for that act five years of imprisonment or a more severe penalty can be pronounced and if this act is prosecuted ex officio, shall be punished with the penalty from Para 1 of this Article.

(3) For the criminal act from Para 1 of this Article, the following persons shall not be punished: the perpetrator's spouse, the person with whom the perpetrator lives in common law marriage, his direct relative by blood, brother or sister, the adopter or the adoptee or the perpetrator's defense attorney, physician or a confessor. If any of the persons referred to in this paragraph, except for the defense attorney, physician or a confessor of the perpetrator are not to be punished for failing to report a criminal act or the perpetrator from Para 1 of this Article, his spouse or a person with whom he lives in a common law marriage shall not be punished either."

261. The Court considers that this amnestied crime is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

1.3.4 Aiding a perpetrator after he has committed the criminal act (article 174, only in relation to the criminal offences granted amnesty for under this law);

"Article 174 (Aiding a perpetrator after he has committed the criminal act)

(1) Whoever harbors a perpetrator of a criminal act for which the prosecution is undertaken ex officio or by concealing the tools, traces, objects or in any other way helps him not to be found or any person who harbors a convicted person or undertakes other actions intended to prevent the enforcement of the imposed penalty, security

measure or correctional measures of referral to an educational facility or an educational-corrective institution shall be punished with up to one year of imprisonment.

(2) Whoever aids a perpetrator of a criminal act for which the penalty of over five years of imprisonment is prescribed shall be punished with three months to three years of imprisonment.

(3) Whoever aids the perpetrator of a criminal act for which a death penalty is prescribed, shall be punished with ten years of imprisonment.

(4) The penalty for the act from Para 1 of this Article may not be more severe by type or by length than the penalty stipulated for the criminal act committed by the person to whom the aid was given.

(5) For the criminal act from Para 1 to 3 of this Article, the following persons shall not be punished: the perpetrator's spouse, the person with whom the perpetrator lives in common law marriage, his direct relative by blood, brother or sister, the adopter or the adoptee. If any of the persons referred to in this paragraph is not to be punished for the criminal acts from Para 1 to 3 of this Article, his spouse or a person with whom he lives in a common law marriage shall not be punished either for aiding a perpetrator of a criminal act from Para 1 to 3 of this Article."

262. The Court considers that this amnestied crime is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

1.3.5 Inciting resistance (article 186) except in cases when commission of this criminal offense has resulted in commission of another criminal for which amnesty is not granted under this criminal offenses bellow committed with the purpose of committing the criminal offence of call for resistance, are also granted amnesty from criminal prosecution and execution of punishment:

"Article 186 (Incitement to resistance)

(1) Whoever incites other people to resistance or disobedience to comply with legal decisions or measures of the government agencies

or towards an official person in execution of his official duty shall be punished with up to three years of imprisonment.

(2) If the act from Para 1 of this Article resulted in the failure to enforce a legal decision or the measures of government agencies or in considerable difficulties in its enforcement or if the act is committed by the leader of the group, the perpetrator shall be punished with one to five years of imprisonment."

263. The Court considers that this amnestied crime is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

1.3.5.1 Abuse of authorisations in economy (article 108 paragraphs 1, 2, 3, 4, and 5);

"Article 108 (Abuse of authorization in economy)

(1) A responsible person in the organization of associated labor that performs business operations or any other legal entity that performs such operations with the intention of acquiring unlawful material gain for the organization of associated labor or a legal entity in which he is employed, or for another organization or another legal entity:

1) creates or holds illegal funds in the country or abroad;

2) falsely presents the situation, money flow and the business results by producing documents with untrue content, false balance sheets, evaluations or through the inventory, or with other false presentation or concealment of the facts, thereby misleading the management authorities in the organization of associated labor or any other legal entity while making management policy decisions;

3) puts an organization of associated labor or a legal entity into a more favorable position when obtaining funds or other benefits that would not have been recognized pursuant to the effective regulations;

4) withholds the funds belonging to the community while performing tasks pertaining to the social community;

5) utilizes the funds at his disposal contrary to their purpose;"

264. The Court considers that this amnestied crime is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

1.3.5.2 Prohibited trade (article 116);

"Article 116 (Illicit trade)

(1) Whoever, without a trade license, procures the products or any other goods in large quantities or value intended for sale, or who is involved in trade to a larger extent or in mediation in trade or in representing domestic organizations of associated labor in the exchange of goods and services without authorization, shall be fined or punished with up to three years of imprisonment.

(2) Whoever is involved in the sale of goods which production he unauthorizedly organized shall be punished with the same penalty.

(3) Whoever sells, buys or exchanges the products or goods, the trade of which is prohibitedor limited, shall be punished with three months to five years of imprisonment.

(4) If the perpetrator of the act from Para 1 to 3 of this Article has organized the middleman or mediator network or if it has resulted in material gain exceeding 30,000 dinars, he shall be punished with one to eight years of imprisonment.

(5) The products and goods of illicit trade shall be seized."

265. The Court considers that this amnestied crime is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

1.3.5.3 Tax evasion (article 123);

"Article 123 (Tax evasion)

(1) Whoever, with the intention to make it possible for himself or for another person to evade, in full or in part, the payment of tax, contributions, social security or any other stipulated contributions, provides false information on his legally earned income, on matters or other facts relevant to determining these obligations or who with the same intention in the case of obligatory tax report fails to report his legally earned income or a matter or any other fact relevant for determining these obligations, and if the amount of the obligation, which payment is evaded, exceeds 10,000 dinars, shall be fined and punished with up to three years of imprisonment.

(2) If the evaded amount from Para 1 of this Article exceeds 50,000 dinars, the perpetrator shall be fined and punished with one to ten years of imprisonment."

266. The Court considers that this amnestied crime is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

1.3.5.4 Destruction or damage of communal infrastructure devices (article 158);

"Article 158 (Destruction or damage of communal infrastructure devices)

(1) Whoever destroys, damages, alters, renders unusable, or removes devices of communal infrastructure, the water, heat, gas or power devices or the communication system installations, thereby causing considerable destruction of life of citizens, shall be punished with six months to five years of imprisonment.

(2) If the act from Para 1 of this Article is committed out of negligence, the perpetrator shall be punished with up to three years of imprisonment."

267. The Court considers that this amnestied crime is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this

reason the Court concludes that this provision is compatible with the Constitution.

1.3.5.5 Endangering the public traffic by a dangerous act or means (article 167);

"Article 167 (Endangering the public traffic by a dangerous act or means)

(1) Whoever by destroying, removing or inflicting major damage on traffic installations, equipments, signs or signal installations serving the purpose of traffic safety or who by giving inadequate signs or signals, placing obstacles on the traffic lines or in any other way endangers public traffic to such an extent that it endangers human life or body or the sizeable property shall be punished with up to three years of imprisonment.

(2) If the act from Para 1 of this Article is committed out of negligence, the perpetrator shall be punished with up to one year of imprisonment."

268. The Court considers that this amnestied crime is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

1.3.5.6 Falsifying documents (article 203);

"Article 203 (Forging a document)

(1) Whoever makes a forged document or modifies a proper document with the intention to use it as a proper one, or who uses a forge or modified document as a proper one or procures it for the purpose of using it, shall be punished with up to three years of imprisonment.

(2) An attempt shall be punished.

(3) If the act from Para 1 of this Article is committed on an official document, a will, a bill of exchange, a cheque, a public or an official register, or any other book, which is to be kept under the law, the perpetrator shall be punished with three months to five years of imprisonment."

269. As to this amnestied crime, the Court considers that it is difficult to see how it can come within the ambit of the objectives of the Law on Amnesty. As mentioned above, the amnestied crime should have a link with the objectives of the amnesty, i.e. to end a conflict or to promote reconciliation between the parties involved, being part of a peace agreement. To amnesty perpetrators in the way envisaged by this Article does not meet such requirements.

270. In this respect, the Court recalls that the constitutional order of the Republic of Kosovo is based amongst others on the principle of the rule of law, which entails also the aspect of legal certainty. Legal certainty should guarantee the stability of a legal system, meaning that the individuals should enjoy the guaranties which the legal system offers in protecting their rights.

271. The Court considers that, in a rule of law system, natural and legal persons should be able to rely on public documents such as documents on property rights and to challenge the genuineness of a document which would restrict their rights. Otherwise the principle of legal certainty would be undermined, since individuals can no longer be sure that such documents have not been falsified.

272. Thus, victims of such crimes would be hindered to have access to justice, since they would have to prove in civil proceedings that the documents are not genuine, whereas the judge would have to take into account that the crime has benefitted from an amnesty.

273. Moreover, the perpetrators who fall under the ambit of this Article have a duty to bring forth the products of the crime. If not, this would jeopardize the above mentioned principles and do harm to Kosovo as a state of the rule of law.

274. The Court, therefore, concludes that this amnestied crime is incompatible with the Constitution and the principles enshrined therein.

1.3.5.7 Falsifying official documents (article 184);

> "Article 184 (Attack on an official person while executing security duties)

(1) Whoever attacks or seriously threatens to attack an official person while executing duties pertaining to public or state security or to the duties of maintaining public order, or another person who is aiding him in executing these duties, shall be punished with up to three years of imprisonment.

(2) If the perpetrator of the act from Para 1 of this Article inflicts a light bodily injury on an official person or on another person who is aiding him, or threatens to use a weapon, he shall be punished with three months to five years of imprisonment.

(3) If the perpetrator of the act from Para 1 of this Article inflicts a serious bodily injury on official person or on another person who is aiding him, he shall be punished with one to ten years of imprisonment.

(4) If the perpetrator of the act from Para 1 to 3 of this Article was provoked into action by unlawful or brutal conduct of the official person or by another person who is aiding him, he shall be fined or punished with up to six months of imprisonment, but may also be exempted from penalty."

275. The Court notes that the amnestied crime under 1.3.5.7 of the Law on Amnesty refers to Article 184 (Falsifying official documents). However, when looking at the mentioned Article in the relevant Criminal Code, the Court notes that Article 184 refers to *"Attack on an official person while executing security duties"*. The proper reference to the forging of an official document should, therefore, be to Article 216.

276. Article 216 of the Criminal Code in question reads as follows:

"Article 216 Forging an official document

(1) An official person who enters untrue information or fails to enter an important information in an official document, register or a document[1] or by his signature or the official seal certifies an official document, register or a document with untrue contents, or who by his signature or the official seal enables issuing of an official document, register or a document with untrue contents shall be punished with three months to five years of imprisonment.

(2) An official person who, while performing official duty, uses an untrue official document, register or a document as true, or who destroys, conceals or damages to a large extent or in any other way renders unusable an official document, register or a document shall be punished with the penalty from Para 1 of this Article.

(3) A responsible person in the organization of associated labor or another self-management organization or association or in the self-management body, who commits the act from Para 1 and 2 of this Article, shall be punished with the penalty as stipulated for this act."

277. The Court assumes that the correct reference intended by the Law on Amnesty is indeed to Article 216 of the Criminal Law of SAPK of 1977, because Article 184 is mentioned under 1.3.5.9.

278. As to the forging an official document, the Court considers that the same reasoning as in the abovementioned crime under Article 203 of the Criminal Law of SAPK applies also for this amnestied crime.

279. The Court, therefore, concludes that this amnestied crime is incompatible with the Constitution and the principles enshrined therein.

1.3.5.8 Obstructing official persons in performing official duties (article 183);

"Article 183 (Prevention of an official person from executing his official duties)

(1) Whoever by force or by threat to directly use force prevents an official person from executing his official duty that he has undertaken within the scope of his authorities, or in the same manner forces him to execute an official duty, shall be punished with up to three years of imprisonment.

(2) If the perpetrator, while committing the crime from Para 1 of this Article, insults or abuses official person or inflicts a light bodily injury on him, or threatens to use a weapon, shall be punished with three months to three years of imprisonment.

(3) Whoever commits the act from Para 1 and 2 of this Article against an official person while he is executing duties pertaining to public or

state security or to the duties of maintaining public order, capturing of perpetrator of a criminal act, or guarding a person deprived of freedom, shall be punished with three months to five years of imprisonment.

(4) An attempt from Para 1 and 2 of this Article shall be punished.

(5) If the perpetrator of the act from Para 1 to 3 of this Article was provoked into action by unlawful or brutal conduct of the official person, he shall be fined or punished with up to six months of imprisonment, but may also be exempted from penalty."

280. The Court considers that this amnestied crime is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

1.3.5.9 Attacking official persons performing official duties (article 184 paragraphs 1, 2 and 4); except in cases when commission of this criminal offense has resulted in grievous bodily harm or death.

"Article 184 (Attack on an official person while executing security duties)

(1) Whoever attacks or seriously threatens to attack an official person while executing duties pertaining to public or state security or to the duties of maintaining public order, or another person who is aiding him in executing these duties, shall be punished with up to three years of imprisonment.

(2) If the perpetrator of the act from Para 1 of this Article inflicts a light bodily injury on an official person or on another person who is aiding him, or threatens to use a weapon, he shall be punished with three months to five years of imprisonment.

(4) If the perpetrator of the act from Para 1 to 3 of this Article was provoked into action by unlawful or brutal conduct of the official person or by another person who is aiding him, he shall be fined or punished with up to six months of imprisonment, but may also be exempted from penalty."

281. The Court considers that this amnestied crime is of a nature that does not affect the fundamental rights of injured parties and does not

estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

1.3.6 Participation in a group that commits a criminal act (article 200, except in cases when commission of this criminal offense has resulted in serious bodily harm or death.

"Article 200 (Participation in a group that commits a criminal act)

(1) Whoever participates in a group that through joint action takes another person's life or inflicts serious bodily injury on that person, commits arson, considerably damages property, or commits other grave violence, or who attempts to commit such acts, shall be punished for mere participation with three months to five years of imprisonment.

(2) The leader of the group that commits the act from Para 1 of this Article shall be punished with one to ten years of imprisonment."

282. The Court considers that this amnestied crime is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

1.4. Criminal offences foreseen with the Criminal Code of the Socialist Federal Republic of Yugoslavia, Official Gazette SFRY No. 44 of October 8, 1976:

1.4.1 Endangering territorial integrity (article 116);

"Article 116 (Endangering the territorial integrity)

(1) Whoever commits and act aimed at detaching a part of the territory of the SFRY by force or in any other unconstitutional way, or at joining of a part of the territory with another country, shall be punished by imprisonment for not less than five years.

(2) Whoever commits an act aimed at changing borders between the republics and autonomous provinces by force or in any other

unconstitutional way, shall be punished by imprisonment for not less than one year."

283. The Court considers that this amnestied crime is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

1.4.2 Espionage (article 129);

"Article 129 (Imparting a state secret)

(1) Anybody who without authority imparts, passes on or renders accessible information or documents constituting a state secret to an unauthorized person not entitled to receive such documents, shall be punished by imprisonment for not less than one year.

(2) If an act referred to in Paragraph 1 of this Article has been committed during a state of war or imminent war danger, or if it has led to the endangerment of the security, economic or military power of the SFRY, the offender shall be punished by imprisonment for not less than three years or by imprisonment for a term of 20 years.

(3) If an act referred to in Paragraph 1 of this Article has been committed by negligence, the offender shall be punished by imprisonment for a term exceeding six months but not exceeding five years.

(4) The term state secret shall be understood to be information or documents whose disclosure has produced or might have produced detrimental consequences for political, economic or military interests of the country."

284. The Court considers that this amnestied crime is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

1.4.3 Inciting national, racial or religious hatred, discord or hostility (article 134).

"Article 134 (Inciting national, racial or religious hatred, discord or hostility)

(1) Whoever by means of propaganda or in some other way incites or fans national, racial or religious hatred or discord between peoples and nationalities living in the SFRY, shall be punished by imprisonment for a term exceeding one year but not exceeding 10 years.

(2) Whoever, by insulting citizens or in some other way, incites national, racial or religious hostility, shall be punished by imprisonment for a term exceeding three months but not exceeding three years.

(3) If an act referred to in Paragraphs 1 and 2 of this Article has been committed systematically or by taking advantage of one's position or office, as part of a group, or if disorder, violence or other grave consequences resulted from these acts, the offender shall for an act referred to in Paragraph 1 be punished by imprisonment for not less than one year and for an act referred to in Paragraph 2 by imprisonment for a term exceeding six months but not exceeding five years."

285. The Court considers that this amnestied crime is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

IV. Article 4 (Exceptions from Amnesty)

"1. Amnesty from any criminal offense within this law will not apply for:

1.1. Acts against international actors and international security forces in Kosovo. Members of the international security forces are always under the jurisdiction of the sending state.

1.2 Acts that constitute serious violations of international humanitarian law, including those offenses provided in chapter XV of the Criminal Code of the Republic of Kosovo, Chapter XIV of the

> Provisional Criminal Code of Kosovo and Chapter XVI of the Criminal Code of the SFRY 1976.
>
> 1.3 criminal offense that resulted in serious bodily harm or death."

286. The Court considers that this Article of the Law on Amnesty is in accordance with the established general principles of international law in respect of those crimes which can never be amnestied.

V. Article 5 (Rights of third parties)

> "The granting of amnesty shall not affect the rights of third parties which are based upon a sentence or a judgment."

287. As to this Article, the Court bears in mind that amnesty under the Law on Amnesty can also be granted for persons who are serving a sentence for having committed a crime covered by the Law on Amnesty, who are under prosecution for such crimes, or who could be subject to prosecution for such criminal offences (see paragraphs 141, 146-151).

VI. Article 6 (Notifications on the condition of the convicted person covered by amnesty who is serving his punishment of imprisonment)

> "1. Kosovo Correctional Service has the obligation to inform in a written form the court of first instance that has sentenced the convicted persons, who are serving a punishment of imprisonment covered by an amnesty, within (seventy two) 72 hours from the day this law comes into force.
>
> 2. Information should include information about the start and end dates of their execution of the punishment of imprisonment.
>
> 3. The court ex officio, seven (7) days from receiving the above mentioned information, shall issue a decision for granting amnesty, whereas for the convicted persons who have not started the execution of their punishment, the court shall decide for granting amnesty five (5) days from the day the request was received.
>
> 4. If a convicted person is serving his punishment in another country, it shall be notified through the Ministry of Justice."

288. The Court considers that this procedural provision related to the amnesty of a criminal offense is of a nature that does not affect the

fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

VII. Article 7 (Decision for granting Amnesty from execution of the punishment)

> "1. The decision for granting amnesty shall be rendered, with EULEX assistance, by the first instance court, respectively the court that has subject matter and territorial jurisdiction to adjudicate the respective issue that is addressed to it:
>
> *1.1 ex officio; or*
>
> *1.2 requested by the convicted person, the perpetrator, the State Prosecutor or the persons who according to Criminal Procedure Code may appeal the judicial decision.*
>
> 2. The Court renders a decision where it determines the part of the punishment that shall be waived, unless otherwise provided by thislaw."

289. The Court considers that this procedural provision related to the amnesty of a criminal offense is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

VIII. Article 8 (Decision on granting amnesty from criminal prosecution)

> "1. Where a criminal report has been filed, an investigation initiated, or an indictment filed, the competent prosecutor shall render a decision to grant amnesty from criminal prosecution in accordance with this law.
>
> 2. Within 30 days from the entry into force of this law, the competent prosecutor shall take a decision ex officio in accordance with the Criminal Procedure Code of the Republic of Kosovo to dismiss the criminal reports or terminate the investigation for the criminal offences provided in this law.

> 3. Within 60 days of the entry into force of this law, any final convictions for which amnesty applies under Article 3 of this law shall be erased from the criminal records in accordance with relevant applicable law."

290. The Court considers that this procedural provision related to the amnesty of a criminal offense is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

IX. Article 9 (Finality of Confiscations)

> "Regardless of the application of amnesty under this law to any criminal offence, if a object has been confiscated in accordance with the law during the criminal proceedings based in whole or in part on that criminal offence, the person receiving amnesty does not have a right to the return of that confiscated object."

291. The Court considers that this procedural provision related to the amnesty of a criminal offense is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

X. Article 10 (Appeals against decisions for granting Amnesty)

> "1. Against a decision granting amnesty an appeal may be initiated in the Court of Appeals within (7) seven days from the day the decision was rendered. The Court of Appeals shall render a decision for the appeal (3) three days from the day that it received the request for appeal.
>
> 2. An appeal shall cease the execution of a decision.
>
> 3. If a convicted person due to amnesty will be completely exempted from the execution of the punishment of imprisonment, the court shall render a decision waiving the punishment of the convict, and the same shall be sent immediately to the Kosovo Correctional Service."

292. The Court considers that this procedural provision related to the amnesty of a criminal offense is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of

access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

XI. Article 11 (Subsidiary Application)

"For implementation of amnesty mutatis mutandis provisions of Criminal Procedure Code Nr. 04/L- 123 shall apply, unless provided differently with this law."

XII. Article 12 (Entry into force)

"This Law shall enter into force fifteen (15) days following its publication in the Official Gazette of the Republic of Kosovo."

As to the procedure for adopting the contested Law

293. The Applicants complain that the procedure for adopting the contested law is in violation of:

a. Article 65, paragraph 4, of the Rules of Procedure of the Assembly of the Republic of Kosovo, because *"[…] the meeting was convened without the requirements set forth in this provision having been met and that the agenda was introduced in violation of the time limits foreseen by this provision."*; and

b. Article 57, paragraph 3, of the Rules of Procedure of the Assembly of the Republic of Kosovo, because *"[…] the deputies' right to introduce amendments in the time limit provided by the Rules has been violated."*

294. In this respect, the Court notes that on 28 May 2013, the Government, pursuant to its competences under Article 92.4 of the Constitution, proposed to the Assembly a Draft Law on Amnesty.

295. In this connection, pursuant to the amendment of Article 65.15 of the Constitution (Published in the Official Gazette on 26 March 2013) the Assembly *"gives amnesty by the respective Law, which shall be approved by two-thirds (2/3) of the votes of all deputies of the Assembly"*.

296. In the present case, the Assembly voted and adopted the Law on Amnesty with 90 votes in favour, 17 against and 1 abstention.

297. As to the Applicants' allegations that the Rules of Procedure of the Assembly have been violated, the Court refers to its Case KO 29/11 where it held that *"[...] its duty is only to review alleged breaches of the Constitution."* (see Case KO 29/11, Applicant Sabri Hamiti and other Deputies, Judgment of 30 March 2011). To review the Law on Amnesty for compliance with the Rules of Procedure of the Assembly is a matter of legality and not of constitutionality and, falls, therefore, outside the Court's jurisdiction.

298. In these circumstances, the Court concludes that the procedure for adopting the contested law was done in accordance with the provisions of Article 65.15 of the Constitution.

FOR THESE REASONS

The Constitutional Court therefore, pursuant to Article 113.5 of the Constitution, Article 20 of the Law and Rule 36 of the Rules, on 3 September 2013

DECIDES

I. UNANIMOUSLY TO DECLARE the Referral admissible;

II. UNANIMOUSLY TO DECLARE that the procedure followed for the adoption of the Law on Amnesty, No. 04/L-209, is compatible with the Constitution of the Republic of Kosovo;

III. BY MAJORITY TO DECLARE that the Law, No. 04/L-209, On Amnesty as to its substance is compatible with the Constitution with the exception of the following articles which are declared null and void: 1.1.10 (Destruction or damage to property), 1.1.11 (Arson), 1.1.15.10 (Falsifying documents), 1.1.15.11 (Special cases of falsifying documents), 1.2.5 (Damaging movable property), 1.2.9.7 (Falsifying official documents), 1.3.1 (Damaging another person's object), 1.3.5.6 (Falsifying documents) and 1.3.5.7 (Falsifying official documents);

concerning the following criminal offences:

- of the Criminal Code of the Republic of Kosovo (Official Gazette of the Republic of Kosovo no. 19/13, 2012) articles: 333 (1), 334 (1), 398, and 399 (1) 1.1, 1.4;

- of the Provisional Criminal Code of Kosovo (UNMIK Regulation no. 2003/25 of the date of 6 July 2003, Official Gazette no. 2003/25, and UNMIK Regulation no. 2004/19 amending the Provisional Criminal Code of Kosovo) articles: 260 and 348;

- of the Criminal Law of SAPK (Official Gazette no. 20/77, and the UNMIK Regulations 1999/24 and 2000/59 On the Law Applicable in Kosovo) articles: 145, 203, and 216.

IV. TO DECLARE that pursuant to Article 43 of the Law, the adopted Law, No. 04/L-209, on Amnesty by the Assembly of the Republic of Kosovo shall be sent to the President of the Republic of Kosovo for promulgation in accordance with the modalities contained in this Judgment;

a. TO NOTIFY this Judgment to the Applicants, the President of the Republic of Kosovo, the President of the Assembly of Kosovo and the Government of Kosovo;

b. TO PUBLISH this Judgment in the Official Gazette in accordance with Article 20(4) of the Law;

c. TO DECLARE this Judgment effective immediately.

Judge Rapporteur
Snezhana Botusharova

President of the Constitutional Court
Prof. Dr. Enver Hasani

in
Case No. KO 108/13
Applicants
Albulena Haxhiu and 12 other deputies of the Assembly of the Republic of Kosovo
Constitutional review of the Law, No. 04/L-209, on Amnesty

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Enver Hasani, President
Ivan Cukalovic, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Kadri Kryeziu, Judge
Arta Rama-Hajrizi, Judge.

CONCURRING AND DISSENTING OPINION OF JUDGE ROBERT CAROLAN

I agree with the decision of the Majority that the draft law on Amnesty, Law No. 04/L-209, is compatible with the Constitution and that the procedure in adopting it was compatible with the Constitution.
However, I disagree with the Majority in its conclusion that Articles 1.1.10; 1.1.11; ; 1.1.15.10;1.1.15.11; 1.2.5; 1.2.9.7; 1.3.1; 1.3..5.6 and 1.3.5.7, granting amnesty to persons who may have committed the crimes of destruction to property, arson and falsifying documents, are incompatible with the Constitution.

The Assembly of the Republic of Kosovo, in accordance with Article 65.15 of the Constitution, has the same authority, in it's legislative discretion, to grant amnesty for these offenses as it had in granting amnesty for all of the offenses the Majority concludes are compatible with the Constitution. Although there are certain restrictions under international law and treaties limiting the authority of sovereign nations to grant amnesty for certain crimes, such as genocide, crimes against humanity and war crimes, the crimes of failing to report a criminal offense, aiding a perpetrator of a crime, destruction to property, arson and falsifying legal documents are not in that category of prohibited crimes. Therefore, there is no authority in the Constitution to support this distinction.

In fact, Article 4 of the Constitution provides that there shall be a separation of powers between the various branches of the Government of the Republic of Kosovo. It specifically provides, under paragraph 2, that:

> *"The Assembly of the Republic of Kosovo exercises the legislative power."*

It also provides, under paragraph 6, that:

> *"The Constitutional Court is an independent organ in protecting the constitutionality and is the final interpreter of the Constitution."*

In exercising its authority and legislative discretion, the Assembly of the Republic of Kosovo adopted this law at approximately the same time that it enacted Law No. 04/L-199 on the Ratification of the First International Agreement of Principles Governing the Normalization of Relations between the Republic of Kosovo and the Republic of Serbia. It appears that this law on amnesty was enacted in part to fulfill some of the terms of this international agreement.

Whether the perpetrators of any of the crimes that are designated in the draft law should be granted amnesty is a public policy decision that the Assembly of the Republic, not the Constitutional Court, has the authority to decide unless and only to the extent that that public policy decision violates the Constitution. The amnesty granted for these offenses does not violate Article 46 of the Constitution that protects citizens from the arbitrary deprivation of their property, nor, in general, deprives third parties of access to civil legal remedies. Indeed, it does not modify or change the civil laws that would allow all citizens to pursue legal remedies to protect their property rights in the courts of Kosovo. Nor does it violate any citizen's right to pursue legal remedies in accordance with Article 32 of the Constitution nor to an effective legal remedy, pursuant to Article 54 of the Constitution and Articles 6 and 13 of the European Convention.
The right to initiate criminal proceedings and criminal investigations against anybody is a right that belongs to the Government and Government authorities, not to private citizens. Therefore, the crimes that the law now allows to be sheltered with amnesty merely restricts the Government and the Courts of Kosovo in initiating or pursuing criminal proceedings, not private citizens in initiating civil legal remedies.

Therefore, these abovementioned Articles of the Law No. 04/L-209 on Amnesty do not violate any constitutional rights, and thus are compatible with the Constitution of the Republic of Kosovo.

Respectfully submitted,
Robert Carolan
Judge

Case No. KO108/13
Applicants
Albulena Haxhiu and 12 other deputies of the Assembly of the Republic of Kosovo
Constitutional review of the Law, No. 04/L-209, on Amnesty

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Enver Hasani, President
Ivan Cukalovic, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Kadri Kryeziu, Judge
Arta Rama-Hajrizi, Judge

CONCURRING AND DISSENTING OPINION OF
Judge Almiro Rodrigues

1. I agree with the decision of the Majority that the draft Law No. 04/L-209 on Amnesty is compatible with the Constitution and that the procedure in adopting it was compatible with the Constitution too.

2. However, I respectfully disagree with the Majority in its conclusion that Articles 1.1.10; 1.1.11; 1.1.15.10;1.1.15.11; 1.2.5; 1.2.9.7; 1.3.1; 1.3..5.6 and 1.3.5.7, granting amnesty to persons who may have committed the crimes of destruction to property, arson and falsifying documents, are incompatible with the Constitution.

3. I follow the reasoning presented by Judge Robert Carolan in its concurring and dissenting opinion.

4. Therefore, pursuant to Rule 58.1 of the Rules of Procedure, I join the dissenting opinion of Judge Robert Carolan.

5. In addition, the Majority conclusion on that the abovementioned Articles of the Law are incompatible with the Constitution is not grounded on a relevant and pertinent factual basis.

6. In fact, the Court states that it is "aware of the public and notorious fact that this Law has raised concerns in civil society and among certain sectors of the professional and business communities", namely, in relation "to the substantial amount of destruction of private property" (see all paragraph 86 of the Judgment)

7. However, I consider that this awareness, including the more general socio-political context (paragraphs 82-88 of the Judgment) is not enough factual ground to found a different conclusion on the incompatibility with the Constitution of Articles 1.1.10; 1.1.11; 1.1.15.10;1.1.15.11; 1.2.5; 1.2.9.7; 1.3.1; 1.3.5.6 and 1.3.5.7.

Respectfully submitted,
Almiro Rodrigues
Judge

KO 118/13, Albana Fetoshi and 12 other deputies of the Assembly of the Republic of Kosovo, date 09 August 2013- Constitutional review of the Law, No. 04/L-201, on Amending and Supplementing Law, No. 04/L-165, on Budget of the Republic of Kosovo for Year 2013.

Case KO 118/13, Resolution on Inadmissibility, of 2 September 2013.

Keywords: Referral by Deputies of the Assembly of the Republic of Kosovo, manifestly ill-founded.

The Applicants consider that Article 2 of the Amended Law on Budget, which reads as follows *"All public money collected from goods imported by businesses registered in North Mitrovica, Zubin Potok, Leposaviq or Zvecan, with a destination for consumption in these municipalities upon entering into Kosovo through Jarinje (gate I) or Brnjak (gate 31) are required to be sent to the Kosovo Fund and separately identified and accounted for in KFMIS, are hereby appropriated to the Development Trust Fund that is to be established by the EUSR in a commercial bank.", violates the Constitution*".

They allege that the abovementioned Article violates Article 119.4 [General Principles] of the Constitution, reading: *"The Republic of Kosovo promotes the welfare of all of its citizens by fostering sustainable economic development."*

In the Applicants' view, *"[…]" the term promotes welfare of all of its citizens and expresses the spirit of equality and non-discrimination of all citizens before the law and the commitment of the state authorities without distinction to any affiliation of citizens. So, the promotion of the welfare of every citizen expresses the equal commitment, without any distinction, by the state authorities, in the sense of economic relations, which includes all economic aspects starting from macro-economic factors until the creation of micro-economic conditions."*

The Applicants allege also that Article 2 of the Amended Law on Budget violates Article 120.1 [Public Finances] of the Constitution. Article 120.1 reads: *"Public expenditure and the collection of public revenue shall be based on the principles of accountability, effectiveness, efficiency and transparency."*

As to the Applicants' claim that the contested Law infringes the provisions of Law No. 03/L-048 on Public Financial Management, the Court reiterates its view that, by virtue of Article 112 [General Principles] of the Constitution, it is only competent to review the constitutionality of a contested law, but not its legality. It follows that this part of the Referral is outside the jurisdiction of the Court under Article 112 of the Constitution and is, therefore, incompatible

ratione materiae with the Constitution.

As to the Applicants' allegations that the contested Law infringes paragraphs 1 and 2 of Article 3 [Equality before the Law], paragraph 4 of Article 19 [On General Principles] and paragraph 1 of Article 120 [Public Finances] of the Constitution, the Court refers to paragraph 1.3 of Article 42 [Accuracy of the Referral] of the Law on the Constitutional Court, providing that the following information shall, inter alia, be submitted: *"presentation of evidence that supports the contest."*

RESOLUTION ON INADMISSIBILITY
in

Case No. KO118/13
Applicants
Albana Fetoshi and 12 other deputies of the Assembly of the Republic of Kosovo
Constitutional review of the Law, No. 04/L-201, on Amending and Supplementing Law, No. 04/L-165, on Budget of the Republic of Kosovo for Year 2013

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Enver Hasani, President
Ivan Cukalovic, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Kadri Kryeziu, Judge and
Arta Rama-Hajrizi, Judge.

Applicants

1. The Applicants are Albana Fetoshi, Visar Ymeri, Albulena Haxhiu, Albin Kurti, Liburn Aliu, Albana Gashi, Afrim Kasolli, Glauk Konjufca, Afrim Hoti, Rexhep Selimi, Emin Gërbeshi, Agim Kuleta and Muhamet Mustafa, all of them deputies of the Assembly of the Republic of Kosovo. Before the Constitutional Court of the Republic of Kosovo (hereinafter: the "Court"), the Applicants have authorized Ms Albana Fetoshi to represent them.

Challenged law

2. The Applicants challenge Law, No. 04/L-201, on Amending and Supplementing Law No. 04/L-165 on Budget of the Republic of Kosovo for Year 2013 (hereinafter: the Amended Law on Budget), which was adopted by the Assembly of the Republic of Kosovo (hereinafter: the "Assembly") on 25 July 2013.

Subject matter

3. The Applicants request the Court to review the constitutionality and legality of the Amended Law on Budget, which was adopted by the Assembly, by Decision No. 04-V-671 of 25 July 2013.

Legal basis

4. Article 113.5 of the Constitution of the Republic of Kosovo (hereinafter: the "Constitution"), Articles 42 and 43 of the Law, No. 03/L-121, on the Constitutional Court of the Republic of Kosovo of 15 January 2009, (hereinafter: the "Law"), and Rule 36 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 1 August 2013, the Applicants submitted their Referral to the Court.

6. On 1 August 2013, the President of the Court, by Decision No. GJR. KO118/13, appointed Judge Snezhana Botusharova as Judge Rapporteur. On the same date, the President of the Court, by Decision No. KSH. KO118/13, appointed the Review Panel composed of Judges Robert Carolan (Presiding), Altay Suroy and Ivan Čukalović.

7. On 2 August 2013, the Court notified the President of the Assembly and the Government of the Republic of Kosovo (hereinafter: the "Government") of the submission of the Referral by the Applicants to the Court and asked them to submit their comments as well as any documents they would deem necessary in respect of the Referral.

8. On the same day, the President of the Republic of Kosovo was informed about the Referral submitted by the Applicants to the Court.

9. On 7 August 2013, the Court received the following documents from the President of the Assembly of the Republic of Kosovo:

    a. The final report of the Committee for Budget and Finance of 19 July 2013 in respect to the Draft Amended Law on Budget.

b. The transcript of the plenary session of the Assembly of 25 July 2013.

c. The minutes from the plenary session of the Assembly of 25 July 2013.

d. The electronic voting register.

e. The Decision of the Assembly of 25 July 2013 on Adopting Amended Law on Budget (Decision No. 04-V-671).

f. A copy of Amended Law on Budget.

10. On 29 August 2013, the Government submitted to the Court their comments in respect of Case KO118/13.

11. On 30 August 2013, the Applicants were informed about the Government's comments.

12. The Review Panel considered the Report prepared by the Judge Rapporteur, Judge Snezhana Botusharova, and made a recommendation to the full Court.

13. On 2 September 2013, the Court deliberated and voted on the Referral.

Summary of facts

14. On 17 June 2013, the Government decided to approve the Draft Amended Law on Budget and instructed the Secretary General of the Office of the Prime Minister to present the Draft-Law to the Assembly for review and adoption.

15. On 18 June 2013, the President of the Assembly sent to all Deputies of the Assembly the Draft-Amended Law on Budget. Furthermore, the Committee for Budget and Finance was assigned to review the Draft–Amended Law on Budget and to present to the Assembly a report with recommendations.

16. On 26 June 2013, the Committee for Budget and Finance reviewed the Draft Amended Law on Budget and recommended the Assembly to approve this draft law in the first reading.

17. On 11 July 2013, pursuant to Article 65.1 of the Constitution and Articles 58 and 84 of the Rules of Procedure of the Assembly, the Assembly, by

Decision No. 04-V-646, in the first reading adopted in principle the Draft Amended Law on Budget by 49 votes in favor, 35 against and no abstention.

18. On 19 July 2013, the Committee for Budget and Finance reviewed the Draft Amended Law on Budget for a second time and recommended the Assembly to approve this draft law in the second reading.

19. On 25 July 2013, pursuant to Article 65.1 of the Constitution and Articles 58 and 84 of the Rules of Procedure of the Assembly, the Assembly, by Decision No. 04-V-671, in the second reading adopted the Draft Amended Law on Budget by 51 votes in favor, 31 against and 2 abstentions.

20. On 1 August 2013, pursuant to Articles 113.5 of the Constitution and Articles 42 and 43 of the Law, the Applicants submitted a Referral to this Court for the constitutional review of the Amended Law on Budget challenging its substance.

Arguments presented by the Applicants

21. The Applicants consider that Article 2 of the Amended Law on Budget, which reads as follows *"All public money collected from goods imported by businesses registered in North Mitrovica, Zubin Potok, Leposaviq or Zvecan, with a destination for consumption in these municipalities upon entering into Kosovo through Jarinje (gate I) or Brnjak (gate 31) are required to be sent to the Kosovo Fund and separately identified and accounted for in KFMIS, are hereby appropriated to the Development Trust Fund that is to be established by the EUSR in a commercial bank."*,violates the Constitution.

22. They allege that the abovementioned Article violates Article 119.4 [General Principles] of the Constitution, reading: *"The Republic of Kosovo promotes the welfare of all of its citizens by fostering sustainable economic development."*

23. In the Applicants' view, *"[...] the term promotes the welfare of all of its citizens and expresses the spirit of equality and non-discrimination of all citizens before the law and the commitment of state authorities without distinction to any affiliation of citizens. So, the promotion of the welfare of every citizen expresses the equal commitment, without any distinction, by the state authorities, in the sense of economic*

relations, which includes all economic aspects starting from macro-economic factors until the creation of micro-economic conditions."

24. The Applicants refer further to Article 3, paragraphs 1 and 2, of the Constitution reading:

> *"1. The Republic of Kosovo is a multi-ethnic society consisting of Albanian and other Communities, governed democratically with full respect for the rule of law through its legislative, executive and judicial institutions."*
>
> *"2. The exercise of public authority in the Republic of Kosovo shall be based upon the principles of equality of all individuals before the law and with full respect for internationally recognized fundamental human rights and freedoms, as well as protection of the rights of and participation by all Communities and their members."*

In their opinion, *"The state by guaranteeing the equality in public access, in this case the promotion of the welfare of citizens, should take care that this approach does not violate the individual and collective rights of any community within the territory of the Republic of Kosovo."* In this respect, according to the Applicants, *"In this particular case, it is impossible that the Development Trust Fund is in compliance with the principle of equality that is expressed with the provisions of this constitutional paragraph."*

25. The Applicants allege also that Article 2 of the Amended Law on Budget violates Article 120.1 [Public Finances] of the Constitution. Article 120.1 reads: *"Public expenditure and the collection of public revenue shall be based on the principles of accountability, effectiveness, efficiency and transparency."*

26. In the Applicants' view, under this Article there exist a *"[...] constitutional obligation that expenses and collection of public revenue should be grounded on the principles of accountability.",* whereby accountability includes *"[...] the responsibility of budgetary organizations (namely state authorities that have the competencies to manage public finances) that they adapt all their actions pursuant to the constitutional-legal standards on the grounds of which is conceptualized the responsibility of these budgetary organizations."* and *"[...] responsibility of the authority that reports on its financial activities and to do so pursuant to the legal regulations grounded on the constitutional principles that are mentioned above."*

27. In this connection, the Applicants argue that the provisions of the Amended Law on Budget must always be in compliance with the norm derived from Law No. 03/L-048 on Public Financial Management, that *"Public money shall only be used for approved public purposes. No public authority, budget organization, person or undertaking may divert, misapply, improperly dispose of or improperly use public money."* (see Article 17 of the Law on Public Financial Management). Therefore, according to the Applicants, the use and allocation of these public means can only be done through a preliminary approval defined by a general act adopted by the Assembly.

28. The Applicants further state that in no way can a special fund be established due to the centralization of the allocation of financial means by the Kosovo Budget based on Article 17.2 of the Law on Public Financial Management which reads as follows: *"An expenditure or other use of public money shall only occur from appropriated and allocated funds and only in conformity with the process that, in accordance with paragraph 2 of Article 38 of this Law, has been established by the FMC Rules."*

29. Therefore, in the Applicants' opinion, the tax revenues should be allocated to accounts that are part of the Treasury Single Account comprising all accounts and sub-accounts that are kept at the Central Banking Authority of Kosovo, pursuant to Article 18.1 of the Law on Public Financial Management which reads as follows: *"[...] All such accounts and sub-accounts shall be part of the Treasury Single Account. All payments and expenditures of public money shall be made through the Treasury Single Account."* Thus, according to the Applicants, the establishment of the Development Trust Fund in any commercial bank is in contradiction with this provision.

30. The Applicants maintain that *"Law No.03/L-048 on Public Financial Management and Accountability has not envisaged the possibility of allocating financial means without a preliminary project by a budgetary organization pursuant to the Law on Budgetary Allocations, such financial means cannot be registered in the KFMIS (Kosovo Financial Management Information System) and then allocated to an account, let alone in an account that is not part of the TSA."*

31. The Applicants further note that, *"[...] the provisions of paragraph 9 of Article 20 of the Law on Public Financial Management in conjunction*

with the Preparation and Review of Proposed Budgets and Appropriation Requests does not envisage the legal opportunity to initiate the budgetary review that includes the establishing of a Fund and the allocation of means to a special fund." In this respect, they refer to Article 20.9 reading as follows:

> *"[…]*
>
> *20.9 The proposed Appropriations Law shall establish appropriations for all budget organizations and shall set out:*
>
> *a) in the case of an appropriation for a budget organization, the classification of each such expenditure in accordance with the applicable classification methodology, including actual aggregate expenditures for the previous fiscal year, and estimated actual aggregate expenditures for the current fiscal year;*
>
> *b) in the case of an appropriation for a payment related to a debt permitted by the present law, the amount (if any) appropriated:*
>
> *(i) for the payment of interest, or other amount in the nature of interest, on the debt;*
>
> *(ii) for the repayment of the principal amount of the debt;*
>
> *(iii) for the payment of penalties or other amounts assessed for late payment, if any; and*
>
> *(iv) for the payment of any other amounts in respect of the debt, if any; and*
>
> *c) in the case of contingency expenditures, a proposed appropriation not exceeding five percent (5%) of total expenditures.*
>
> *[…]"*

32. The Applicants further allege that Article 2 of the Amended Law on Budget emphasizes that the establishment of the Development Trust Fund will be done by the EU Special Representative in Kosovo. They maintain that the EU Special Representative does not have constitutional authorization to establish such a fund and that this would be in violation of Article 4 [Form of Government and Separation of

Power] of the Constitution because *"the provisions of the Article clearly define the principles on which the form of governing the state power in the Republic of Kosovo is based, including the separation of such powers in the legislative, executive and judicial field."* They maintain that *"Such a competence violates the attribute of executive power as defined in the provisions of paragraph 4 of this Article, as well as the provision of Article 92, paragraphs 2 and 3 in conjunction with Article 93, item (6) and (7) of the Constitution of Kosovo."* since *"[…] the establishment of this Fund is an executive quality inalienable from the executive power and as such is a constitutional category pursuant to Article 4, paragraph 4, and Article 92, paragraphs 2 and 3, of the Constitution."*

Arguments presented by the Government

33. The Government states that the *"[…] establishment of the Development Trust Fund, that has as a purpose the development of the Municipalities North Mitrovica, Zubin Potok, Leposaviq and Zvecan […] is in accordance with Article 58 of the Constitution of the Republic of Kosovo and such a measure cannot be considered as discriminatory by the rest of the society. The purpose of this measure is exactly the integration of this community in the economic, social, political and cultural life of the Republic of Kosovo through enhanced economic development of these municipalities belonging to the Serb minority and promoting a full and effective equality between the members of communities."*

34. Furthermore, the Government considers that *"[…] the provisions of this law are fully consistent with the unitary character of the Republic of Kosovo in terms of revenue collection, as they are collected in the same manner in all border points of the Republic of Kosovo, in accordance with the same legislation in force in the Republic of Kosovo and sent to the Fund of Kosovo."*

35. In addition, the Government notes that *"Based on the conclusions of the Working Group on Customs between Serbia and Kosovo intermediated by EU, dated 10-17 January 2013, is envisaged the establishment of the Development Trust Fund […]",* which will be *"[…] supervised by a Commission composed of Ministry of Finance, EUSR and a Kosovo Serb representative."*

Admissibility of the Referral

36. In accordance with Article 113.5 of the Constitution, the task of the Court is to review whether the substance of the contested law is in violation of the Constitution as alleged by the Applicants. In this respect, the latter submit that the contested Law violates Articles 3.1 and 3.2, 4, 19.4, 92.2 and 92.3, 93.6 and 93.7, 119.4 and 120.1 of the Constitution and various provisions of Law No. 03/L-048 on Public Financial Management.

37. In this connection, the Court observes that, when a law or an act is under review under Article 113.5 of the Constitution, the review procedure will be of a suspensive nature in that the law will be barred from being promulgated until the Court has taken a final decision on the case. In accordance with Article 43 (2) of the Law, in the event that a law adopted by the Assembly is contested under Article 113.5 of the Constitution, *"such a law [...] shall be sent to the President of the Republic of Kosovo for promulgation in accordance with the modalities determined in the final decision of the Constitutional Court on this contest.",* meaning that the adopted Law should not be returned to the Assembly but should be forwarded to the President of the Republic of Kosovo for promulgation of the Law without the Articles which have been declared incompatible with the Constitution by the Court in its Judgment.

38. As to the Applicants' claim that the contested Law infringes the provisions of Law No. 03/L-048 on Public Financial Management, the Court reiterates its view that, by virtue of Article 112 [General Principles] of the Constitution, it is only competent to review the constitutionality of a contested law, but not its legality. It follows that this part of the Referral is outside the jurisdiction of the Court under Article 112 of the Constitution and is, therefore, incompatible *ratione materiae* with the Constitution.

39. As to the Applicants' allegations that the contested Law infringes paragraphs 1 and 2 of Article 3 [Equality before the Law], paragraph 4 of Article 19 [On General Principles] and paragraph 1 of Article 120 [Public Finances] of the Constitution, the Court refers to paragraph 1.3 of Article 42 [Accuracy of the Referral] of the Law on the Constitutional Court, providing that the following information shall, inter alia, be submitted: *"presentation of evidence that supports the contest."*

40. In the present case, the Court notes that the Applicants have only argued in the abstract the alleged unconstitutionality of the contested Law, but have not substantiated in a convincing manner that the

contested Law would violate each of the Articles of the Constitution invoked by them and have not presented evidence in support of their allegations.

41. As to the alleged violation of Article 120 of the Constitution, providing that: *"Public expenditure and the collection of public revenue shall be based on the principles of accountability, effectiveness, efficiency and accountability",* the Applicants stated what accountability in this case should include and how a state authority could report on its actions without the existence of the obligation to act in a specific way.

42. Regarding this complaint, the Court is of the opinion that the Applicants have neither built a case on a violation of the rights invoked by them, nor have they submitted prima facie evidence on such violations (see, Vanek v. Slovak Republic, Application no. 53363/99, ECtHR Decision on Admissibility of 31 May 2005, and Case KI 70/11, Applicants Faik Hima, Magbule Hima, Bestar Hima, Resolution on Inadmissibility of 13 December 2011).

43. It follows that this part of 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."*

44. Finally, the Applicants allege that the establishment of the Development Trust Fund by the EUSR (European Union Special Representative), as mentioned in Article 2 of the contested Law, violates Articles 4 [Form of Government and Separation of Powers] as well as paragraphs 2 and 3 of Article 92 [General Principles] and paragraphs 6 and 7 of Article 93 [Competencies of the Government] of the Constitution. In their view, the EUSR does not have "constitutional authorization" under those Articles to establish such a special fund, since, pursuant to these constitutional provisions, this is an inalienable competence of the executive power.

45. In this respect, the Court notes that Article 2 of the contested Law provides that: *"All public money collected from goods imported by businesses registered in North Mitrovica, Zubin Potok, Leposaviq or Zvecan, with a destination for consumption in these municipalities upon entering into Kosovo through Jarinje (gate I) or Brnjak (gate 31) are required to be sent to the Kosovo Fund and separately identified and accounted for in KFMIS and are hereby appropriated to the*

Development Trust Fund that is to be established by the EUSR in a commercial bank."

46. As to the Applicants' complaint, the Court observes that the above Article does not define any modalities regarding the establishment of the Development Trust Fund by the EUSR, let alone that it could be interpreted as a clear delegation of executive powers from the Government to the EUSR. The Court, therefore, finds that the allegations of the Applicants, that the above constitutional provisions are violated, are not sufficiently substantiated, since they have not presented any convincing evidence that supports those allegations, as required by Article 42.1.3 of the Law on the Constitutional Court.

47. Furthermore, the Court notes that the Government of the Republic of Kosovo undertook financial obligations with the First International Agreement of Principles Governing the Normalization of Relations between Republic of Kosovo and Republic of Serbia. In point 12 of this Agreement, it is stated that *"An implementation plan including time frame shall be produced by April 26. In implementing this agreement the principle of transparent funding will be addressed."*, while in point 15 it is provided that *"An implementation committee will be established by the two sides, with the facilitation of the EU"*. Moreover, the implementation plan under point 6 [General Provisions] *inter alia* provides that *"[...] method of accomplishing principles for transparent funding will be defined by the two sides in the implementation committee"*.

48. In this respect, the Court notes that similarly to this situation, an issue was raised by a group of deputies before the Constitutional Court of the Federal Republic of Germany concerning the question whether the permanent bailout fund which the eurozone nations had established (the European Stability Mechanism) was in compliance with the German Constitution. This was a consequence of the financial obligations of Federal Republic of Germany derived from the Maastricht Treaty, where *"[...] the parties agreed to a common monetary policy of the Member States, which was intended in stages to create a European monetary union and finally to communitarise the monetary policy in the hands of the European System of Central Banks (ESCB). In the third stage of this process, the euro was introduced as the single currency."*

49. The German Constitutional Court stated that it cannot be established that the amount of the guarantees given exceeds the limit of budget

capacity to such an extent that budget autonomy would virtually be rendered completely ineffective.

50. Therefore, the German Constitutional Court rejected as unfounded the constitutional complaints of the group of deputies which were directed against German and European legal instruments and other measures in connection with the aid to Greece and with the euro rescue package (see, Judgment 2 BvR 987/10, 2 BvR 1485/10, 2 BvR 1099/10 of 12 September 2012).

51. The Court notes that the Constitution provides that the Government and they alone may determine the national budget. In this respect, by adopting Law, No. 04/L-201, on Amending and Supplementing Law, No. 04/L-165, on Budget of the Republic of Kosovo for Year 2013 the Assembly did not impair in a constitutionally impermissible manner its right to adopt the budget and control its implementation.

52. Taking the Applicants' complaints as a whole, the Court concludes that the Referral must be rejected as manifestly ill-founded, pursuant to Rule 36.1(c) of the Rules of Procedure.

53. However, the Court notes that if in further phases of the implementation of this Law, constitutional issues arise, authorized parties may submit such issues to this Court.

FOR THESE REASONS

The Constitutional Court therefore, pursuant to Article 113.5 of the Constitution, Article 20 of the Law and Rule 36 of the Rules, on 2 September 2013, unanimously

DECIDES

I. TO DECLARE the Referral inadmissible;

II. TO DECLARE that pursuant to Article 43 of the Law, this law adopted by the Assembly of the Republic of Kosovo shall be sent to the President of the Republic of Kosovo for promulgation;

III. TO NOTIFY this Decision to the Applicants, the President of the Republic of Kosovo, the President of the Assembly of Kosovo and the Government of Kosovo;

IV. TO PUBLISH this Decision in the Official Gazette in accordance with Article 20(4) of the Law;

V. TO DECLARE this Decision effective immediately.

Judge Rapporteur
Snezhana Botusharova

President of the Constitutional Court
Prof. Dr. Enver Hasani

KI 23/10, Jovica Gadžić, date 20 September 2013- Constitutional Review of decision of the Municipality of Prizren No. 04/4-351-114dated 23 March 2001

Case KI23/10, Resolution on Inadmissibility of 19 September 2013

Keywords: individual referral, inadmissible referral, failure to exhaust all legal remedies, equality before the law, the right to property, *res judicata*, excessive length of proceedings

The referral is based on Article 113.7 of the Constitution, Article 20 of the Law and Rule 56 (2) of the Rules of Procedure. The applicant among other claimed that his right to property had been violated.

The Court, among other, notes that the Applicant's submission to the regular courts to exercise his right to property is still ongoing which deems the referral before the Constitutional Court premature, which means that the Applicant had not exhausted all legal remedies. Due to the above mentioned reasons, the Court pursuant to Article 113.7 of the Constitution, Rule 36 (1) h) and Rule 56 (2) of the Rules of Procedure decided to reject as inadmissible the Applicant's referral.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI23/10
Applicant
Jovica Gadžić
Constitutional Review of the decisionNo.04/4-351-114 of the Municipality of Prizren dated 23 March 2001

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

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

The Applicant

1. The Applicant is Jovica Gadžić from Prizren, residing in Niš, Serbia. In the proceedings before the Constitutional Court, the applicant is represented by Mr. Orhan Rekathati, a lawyer from Prizren.

Subject matter

2. The Applicant claims violation of Articles 7, 24 and 46 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution).

3. The Applicant claims that the above mentioned decision of the Municipality of Prizren and also the decisions of the Municipal and District Court of Prizren have violated his right to enjoy his personal property, also claiming that he has been discriminated due to his ethnicity.

4. In the proceedings before the regular courts and administrative bodies, there were three parties' namely, the Applicant, Municipality of Prizren and Mr. RM claiming ownership of parcel no. 7204 located in Northern Lakuriq, Prizren.

Legal basis

5. Article 113.7 of the Constitution, Article 20 of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo dated 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

6. On 14 April 2010, the Applicant submitted his Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

7. On 14 September 2010, the President, by Decision No. GJR. 23/10, appointed Judge Iliriana Islami as the Judge Rapporteur. On the same date, the President, by Decision Nr. KSH 23/10, appointed the Review Panel composed of Judges: Ivan Čukalović, Snezhana Botusharova and Enver Hasani.

8. On 2 July 2012, the President by Decision (No. GJR.KI-23/10) appointed Judge Ivan Čukalović as Judge Rapporteur after the term of office of Judge Iliriana Islami as Judge of the Court had ended. On 26 November 2012, the President, by Decision (No.KSH.KI-23/10), appointed the new Review Panel composed of Judges Altay Suroy (Presiding), Snezhana Botusharova and Enver Hasani.

9. On 14 June 2012, the Court informed the Municipal and District Court in Prizren and the Kosovo Property Agency (hereinafter: the KPA) regarding the applicant's referral.

10. On 18 June 2012, the KPA submitted their response together with supporting documentation.

11. On 19 June 2012, the District Court in Prizren submitted a copy of the most recent decision, dated 8 September 2011 of the Municipal Court in Prizren and later informed the Constitutional Court that this decision has been appealed by both parties and as of 23 February 2012 is under review before the District Court in Prizren.

Summary of the facts

12. On 30 March 1993, the Municipality of Prizren by decision Nr. 04/3-463-186 allocated a parcel to the Applicant in "Northern Lakuriq".

13. On 29 June 1993, the Department of Urbanism and Municipal affairs of the Municipality of Prizren through decision No. 04/4-351-114, approved the Applicant's request and allowed him to construct the residential building in the cadastral parcel No 76204.

14. On 27 April 2001, the Directorate for Urbanism and Planning by decision 04/4-351-89, declared null and void decision nr. 04/4-351-89 dated 23 March 2001 regarding the extension of the construction license of the Applicant.

15. During the year 1999, the Applicant claims that a third party RM has occupied the parcel allocated to him *"who had already build the first floor but due to the war could not continue the constructions on the site."*

Summary of the proceedings before the HPCC

16. On 5 September 2002, the Applicant submitted a claim for immovable property to the HPCC.

17. The Housing and Property Claims Commission through decision HPCC/D/99/2003 dated 12 December 2003, decided in favour of Mr. Jovica Gadžić and ordered the recovery of the possession of the claimed property.

18. The Municipal Court in Prizren through Resolution C.nr.420/2005 dated 24 April 2005 imposed an interim measure ordering RM to discontinue the constructions on the parcel until the completion of the procedure before the courts.

19. On 19 May 2005, the Applicant filed a law suit with the Municipality of Prizren against RM for obstruction of possession.

20. The Municipal Court of Prizren through decision C.nr.420/05 dated 29 June 2005 rejected as out time the Applicant's claim leaving in force the Interim Measure dated 24 April 2005, imposed by this court.

21. The Municipality of Prizren through decision Nr.03/3-463-186/2 dated 18 November 2005 rejected the Applicant's complaint as ungrounded an upheld the decision of the Directorate for Property-Legal Matters of the Municipality.

22. On 10 July 2006, RM submitted his complaint against the decision of the Housing and Property Claims Commission.

23. On 17 January 2007, The Housing and Property Claims Commission by decision HPCC/REC/91/2007, rejected the request for reconsideration submitted by RM.

24. On 31 March 2009, the KPA at the request of the applicant to execute the decision of the Housing and Property Claims Commission, after visiting the parcel notified the applicant that the execution of the decision is not possible due to the fact that the parcel has been modified and thus advised him to direct his request to the legal authorities.

The Municipality of Prizren and RM

25. On 19 February 2008, the Municipal Court in Prizren by decision C.nr. 805/07 approved the RM's claim suit against the Municipality of Prizren and recognized RM as the owner of the parcel.

26. On 7 July 2008, the District Court in Prizren by decision Ac.nr. 224/2008 rejected the appeal submitted by the Municipality of Prizren and upheld the decision of the Municipal Court in Prizren.

27. On 13 August 2008, the Municipality of Prizren submitted the request for revision before the Supreme Court.

28. On 19 September 2008, the Municipal Court in Prizren by decision C.nr. 805/07, rejected the request for revision submitted by the Municipality of Prizren as being inadmissible as the value of the subject of dispute is less than the limit set forth in UNMIK Regulation No. 2000/10.

29. On 28 October 2008 the Municipality of Prizren submitted an appeal to the District Court in Prizren against decision of the Municipal Court in Prizren rejecting their request for revision.

30. On 13 November 2008 the Public Prosecutor at that time (now: State Prosecutor) submitted the request for Protection of Legality seeking the annulment of the Judgment of the District Court in Prizren Ac.br. 224/08 of 7 July 2008 and the Judgment of the Municipal Court in Prizren C.br. 805/07 of 19 February 2008 which recognized RM as the owner of the parcel in dispute and due to essential violations of Article 40 of the Law on Contested Procedure.

31. On 8 July 2009, the Supreme Court of the Republic of Kosovo by decision Mls.nr. 16/2009 rejected the request for the Protection of Legality submitted by the Public Prosecutor as out of time.

32. On 13 October 2009, the District Court in Prizren by decision Ac.Nr. 392/2009 rejected the appeal of the Municipality of Prizren as ungrounded and held that the Municipal Court in Prizren had correctly established the factual situation when it decided upon revision (paragraph 29 of this report).

33. On 13 October 2010, the District Court in Prizren through decision Ac.nr. 392/2009 rejected the appeal submitted by the Municipality of Prizren against decision Ac.nr. 224/2008 of the District Court in Prizren dated 7 July 2008 and upheld decision C.nr.805/07 of the Municipal Court in Prizren (this decision recognized R.M as the owner of the parcel).

The applicant and RM

34. On 19 January 2007, the Housing and Property Claims Commission rejected the Reconsideration Request submitted by the third party RM against the Housing and Property Claims Commission decision of 12 December 2003, by which the Applicant was given the possession of the parcel.

35. On 8 September 2011, the Municipal Court in Prizren by decision C.nr.400/10 , approved the applicant's claim and held that RM from Prizren has obstructed the applicant from the enjoyment of the parcel by starting construction for his own benefit on the already existing foundation. However, the same decision rejected the applicants request to return the parcel to its previous condition by removing the building which has been build.

36. The applicant and RM have both submitted an appeal against the above mentioned decision of the Municipal Court in Prizren.

37. The Constitutional Court has been notified by the District Court in Prizren that the case Ac. 74/12, is still underway before the District Court in Prizren and is yet to be completed.

Applicant's allegations

38. The Applicant alleges a violation of Article 46 [Protection of Property], in addition to Articles 7 [Values] and 24 [Equality Before the Law] of the Constitution.

39. The Applicant also claims that there has been an excessive length of proceedings since the District Court in Prizren has not reached a decision for 2 years.

40. Furthermore, the Applicant requests from the Constitutional Court to order the restoration of the parcel.

Applicable law

41. 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 March 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 not 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

42. 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.

43. 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";*

44. The Court also refers to Article 47.2 of the Law, which stipulates:

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

45. In the Court's view, the Housing and Property Claims Commission decision of 19 January 2007 must be considered as the final decision, which became *res judicata*, when it was certified by the Housing and Property Claims Commission Registrar, as was confirmed by the Housing and Property Claims Commission 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.

46. In this respect the applicants request to execute the decision of the Housing and Property Claims Commission, the court notes that on March 2009, the KPA states "that the execution of the decision is not possible due to the fact that the parcel has been modified and thus advised him to direct his request to the legal authorities".

47. n this respect, the Court notes that, the Applicant's submission to the regular courts to exercise his right according to the Housing and

Property Claims Commission decision is still ongoing which deems the Referral before the Constitutional Court premature.

48. In this respect, the Court reiterates 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 the 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).*

49. In these circumstances, the Court concludes that the Applicant has not exhausted all legal remedies available to him under applicable law.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Rules 36 (1) h) and 56 (2) of the Rules of Procedure, on 30 April 2013, 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**
Prof. Dr. Ivan Čukalović	Prof. Dr. Enver Hasani

KI 71/13, Sadije Tërbunja, date 11 October 2013- Constitutional Review of the Judgment of the Special Chamber of the Supreme Court of the Republic of Kosovo, ASC-11-0069, dated 22 April 2013.

Case KI 71/13, Resolution on Inadmissibility of 13 September 2013

Keywords: individual referral, manifestly illfounded

The applicant, Sadije Tërbuna, filed a Referral pursuant to Article 113.7 of the Constitution of Kosovo challenging the Judgment of the Special Chamber of the Supreme Court of the Republic of Kosovo, ASC-11-0069, of 22 April 2013, as being taken in violation of the Constitution. However, the Applicant did not specify, which constitutional provisions has been violated. The Applicant alleged that *"My husband, Hasan Terbunja, used to work for the Industrial Combine "Ramiz Sadiku", from 21.04.1980, until its bankruptcy on 31.01.1990, and after the bankruptcy, 01.08.1990, and until 01.05.1993. in 1993, he was forcefully expelled from work, because of the forced regime of Serbia, and was maltreated by the Serbian paramilitary, and as a result of such abuse, he died. If he would be capable, he would still be working like his colleagues did."*

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.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI71/13
Applicant
Sadije Tërbunja
Constitutional Review of the Judgment of the Special Chamber of the Supreme Court of the Republic of Kosovo, ASC-11-0069, dated 22 April 2013

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Enver Hasani, President
Ivan Cukalovic, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Kadri Kryeziu, Judge and
Arta Rama-Hajrizi, Judge

Applicant

1. The Referral is submitted by Sadije Tërbunja-Sopjani (hereinafter: the "Applicant") on behalf of her deceased husband Mr. Hasan Tërbunja. The spouse had taken part in the regular court proceedings on behalf of her deceased husband.

Challenged decision

2. The Applicant challenges the Judgment of the Appellate Panel of the Special Chamber of the Supreme Court, ASC-11-0069, of 22 April 2013, which was served on the Applicant on 3 May 2013.

Subject matter

3. The Applicant alleges that the Judgment of the Appellate Panel of the Special Chamber of the Supreme Court, ASC-11-0069, by removing her spouse from the list of eligible employees to 20 % of the proceedings from the privatization of the Socially Owned Enterprise "KNI Ramiz Sadiku" has violated the Constitution of the Republic of Kosovo (hereinafter: the "Constitution"), without specifying what articles of the Constitution have been violated.

Legal basis

4. The Referral is based on 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: 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 14 May 2013, the Applicant submitted the Referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the "Court").

6. On 27 May 2013, the President of the Constitutional Court, with Decision No.GJR.KI-71/13, appointed Judge Robert Carolan as Judge Rapporteur. On the same date, the President of the Constitutional Court, with Decision No.KSH.KI-71/13, appointed the Review Panel composed of Judges Snezhana Botusharova (Presiding), Kadri Kryeziu and Arta Rama-Hajrizi.

7. On 10 June 2013, the Referral was communicated to the Special Chamber of the Supreme Court of the Republic of Kosovo and the Privatization Agency of Kosovo.

8. On 12 June 2013, the Court requested the Special Chamber of the Supreme Court of the Republic of Kosovo:

    a. To submit the Judgment of the Appellate Panel of the Special Chamber of the Supreme Court, ASC-11-0069, dated 22 April 2013; and
    b. To inform the Court about decision taken or response to the appeal of the Applicant against the Judgment of the Trial Panel of the Special Chamber of the Supreme Court of the Republic of Kosovo of 10 June 2011.

9. On 13 June 2013, the Special Chamber of the Supreme Court of the Republic of Kosovo replied to the Court submitting the requested information and documents.

10. On 13 September 2013, 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 27 June 2006, the Socially Owned Enterprise "KNI Ramiz Sadiku" was privatized.

12. In March 2009, the Privatization Agency of Kosovo published the final list of eligible employees entitled to 20 % of the proceeds of the privatization of the Socially Owned Enterprise "KNI Ramiz Sadiku", whereby was included also Mr. Hasan Tërbunja. The inclusion of Mr. Hasan Tërbunja was contested by the Complainant R.D. to the Special Chamber of the Supreme Court of the Republic of Kosovo.

13. On 10 June 2011, the Trial Panel of the Special Chamber of the Republic of Kosovo (Judgment SCEL-09-0001) held that *"The following employees, who were included by Privatization Agency of Kosovo in the final published list and whose inclusion was contested before the Special Chamber, shall be removed from the final list: […] 47. Hasan Tërbunja. […]".* The Trial Panel held that complainants who have reached retirement age or who died before the date of the privatization do not fulfill the requirements set by Section 10.4 of UNMIK Regulation 2003/13 on the Transformation of the Right of use to Socially Owned Immovable Property which provides: *"For the purpose of this section an employee shall be considered as eligible, if such employee is registered as an employee with the Socially-owned Enterprise at the time of privatization and is established to have been on the payroll of the enterprise for not less than three years. This requirement shall not preclude employees, who claim that they would have been so registered and employed, had they not been subjected to discrimination, from submitting a complaint to the Special Chamber pursuant to subsection 10.6."* Privatization Agency of Kosovo had attached to the Trial Panel the death certificate showing that Mr. Hasan Tërbunja had passed away on 7 June 2006 and a copy of his workbook indicating that he was an SOE employee from 21 April 1980 to 31 January 1990 and from 8 March 1990 to 1 May 1993. Thus, the Trial Panel considered that the request of Complainant R.D. for the deletion of the employee Mr. Hasan Tërbunja from the list is grounded and shall therefore be accepted.

14. The Applicant, the spouse of the deceased husband Mr. Hasan Tërbunja, filed an appeal to the Appellate Panel of the Special Chamber of the

Supreme Court of the Republic of Kosovo against the Judgment of the Trial Panel of the Special Chamber of the Supreme Court of the Republic of Kosovo.

15. On 22 April 2013, the Appellate Panel of the Special Chamber of the Republic of Kosovo (Judgment ASC-11-0069) rejected as ungrounded and upheld the Judgment of the Trial Panel. The Appellate Panel of the Special Chamber held that no evidence was submitted to prove that they was discriminated in any specific way and they did not even allege any fact from which it may be presumed that there has been direct or indirect discrimination.

Applicant's allegations

16. The Applicant alleges that *"My husband, Hasan Tërbunja, used to work for the Industrial Combine "Ramiz Sadiku", from 21.04.1980, until its bankruptcy on 31.01.1990, and after the bankruptcy, 01.08.1990, and until 01.05.1993. in 1993, he was forcefully expelled from work, because of the forced regime of Serbia, and was maltreated by the Serbian paramilitary, and as a result of such abuse, he died. If he would be capable, he would still be working like his colleagues did."*

17. In this respect, the Applicant alleges that the Special Chamber of the Supreme Court of Kosovo has violated the Constitution without specifying any provision of the Constitution.

Admissibility of the Referral

18. 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.

19. In this respect, the Court refers to Rule 36 (1) c) of the Rules of Procedure which foresees that *"The Court may only deal with Referrals if (...) the Referral is not manifestly ill-founded."*

20. 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 regular court, unless and in so far as they may have infringed rights and freedoms protected by the Constitution (constitutionality). Thus, this Court is not to act as a court of fourth instance, when considering the

decisions taken by the 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).

21. In sum, 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 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).

22. In this respect, the Court notes that the Applicant did not substantiate a claim on constitutional grounds and did not provide evidence that her rights and freedoms have been violated by the regular courts. The Special Chamber of the Supreme Court provided the Applicant with a well reasoned judgment why her spouse was removed from the list of eligible employees to 20 % of the proceedings from the privatization of the Socially Owned Enterprise "KNI Ramiz Sadiku".

23. 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).

24. In sum, the Applicant did not show why and how her rights as guaranteed by the Constitution have been violated. A mere statement that the Constitution has been violated cannot be considered as a constitutional complaint. Thus, the matter was not referred to the Court in a legal manner by the Applicant because pursuant to Rule 36 (1.c) of the Rules of Procedure, the Referral is manifestly ill-founded and therefore it is inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Rule 36 (1.c) and Rule 56 (2) of the Rules of Procedure, on 13 September 2013, unanimously

DECIDES

I. TO REJECT the Referral as Inadmissible;

II. TO NOTIFY the Parties of this Decision;

III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20 (4) of the Law;

IV. TO DECLARE this Decision immediatelyeffective.

Judge Rapporteur
Robert Carolan

President of the Constitutional Court
Prof. Dr. Enver Hasani

KI 124/13, NLB Prishtina (j.s.c.) with seat in Prishtina, date 11 October 2013- Constitutional Review of the Judgment of the Supreme Court Rev. No. 335/2013, of 2 May 2013 and request for imposition of interim measure

Case KI124/13, decision of 10 September 2013

Keywords: individual referral, request for interim measure, civil dispute, right to fair and impartial trial, right to a fair trial, equality before the law, prohibition of discrimination, manifestly ill-founded

The Applicant claimed that the public authorities violated his rights guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution, in conjunction with Article 6.1 of the ECHR and Article 24 [Equality before the Law] of the Constitution, in conjunction with Article 14 of the ECHR, due to the adjudication of the case by the Supreme Court in contradiction with its case law.

As to the Applicant's allegation for violation of Article 24 [Equality before the Law] of the Constitution, in conjunction with Article 14 of ECHR, the Court considered that the Applicant did not prove by any evidence that the Supreme Court has decided in a partial or unlawful manner or that it has not sufficiently reasoned its judgment. In this case, the Court stressed that it is not sufficient that the Applicant substantiates his allegation for partiality, by supporting his allegation in other cases for which the court has decided individually based on the light of the case. An allegation for violation of constitutional rights must be convincingly justified and referred based on the constitutional grounds, in order that the appeal has success to the benefit of the claiming party. As to the Applicant's allegation for violation of the right to fair and impartial trial, the Court noted that the Applicant failed to substantiate by evidence his allegation for violation of the right to *fair and impartial trial*, that is guaranteed by Article 31 of the Constitution and Article 6 of the European Convention on Human Rights.

The Court further reasoned that the allegations for violation of a constitutional right, in their essence, should contain indisputable elements of violation of fundamental rights, guaranteed by the Constitution and international instruments, in order that the Court goes into its merits. Finally, the Court found that the Applicant's Referral does not meet the admissibility requirements, either on the ground of admissibility, or on the merits of the Referral, because the Referral is manifestly ill-founded, and in compliance with Rule 36 (2) b) and d) of the Rules of Procedure, it is declared inadmissible.

RESOLUTION ON INADMISSIBILITY
in
Case no.KI124/13
Applicant
NLB Prishtina (j.s.c.) with seat in Prishtina
Constitutional Review of the Judgment of the Supreme Court
Rev. No. 335/2013, of 2 May 2013
and
request for imposition of interim measure

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

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

Applicant

1. The Applicant is NLB Prishtina (j.s.c.), with its seat in Prishtina, represented by Ms. Myjsere Mujku.

Challenged decision

2. The challenged decision is the Judgment of the Supreme Court, Rev. No. 335/2012 of 2 May 2013.

Subject matter

3. The Applicant requests from the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) the constitutional review of the Judgment of the Supreme Court, Rev. No. 335/2013, of 2 May 2013, by which the court in question decided to quash the Judgment of the District Court in Prishtina, Ac. no. 542/2010, of 18 October 2010 and uphold the Judgment of the Municipal Court in Prishtina, C1. No. 575/2009, of 8 August 2009, regarding the labor contest between the

former BRK (Employer), now the Applicant and Mr. Nazmi Vokshi (Employee).

Legal basis

4. The Referral is based on Article 113.7 in conjunction with Article 21 of the Constitution, Article 47 and 22 of the Law no. 03/L-121 on the Constitutional Court of the Republic of Kosovo of 15 January 2009 (hereinafter: the Law) and Rule 28 of the Rules of Procedure of the Constitutional Court (hereinafter: Rules of Procedure).

Proceedings before Constitutional Court

5. On 15 July 2013, the Applicant submitted request to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 24 June 2013, the President appointed Deputy President Ivan Čukalović as Judge Rapporteur and the Review Panel composed of judges: Altay Suroy (Presiding), Prof. Dr. Enver Hasani and Arta Rama-Hajrizi (members).

7. On 28 August 2013, the Constitutional Court notified the Applicant, the Supreme Court and the affected party in the procedure.

8. On 10 September 2013, the Review Panel reviewed the report of the Judge Rapporteur and recommended to the full Court, the inadmissibility of the Referral.

Summary of facts

9. On 12 February 2002, the Applicant NLB Prishtina (legal successor of the New Bank of Kosovo, BRK) claims that the former BRK concluded for the first time fix term employment contract with Mr. Nazmi Vokshi (hereinafter: Employee). According to the employment contract, no. 02-03/21, Mr. Vokshi was assigned to the job position "Head of loan services" in duration of 6 months. The BRK (Employer) extended several times the employment contract for definite time to Employee, while after expiration of the last contract, no. 02-57/4-5-6 of 29 October 2004, his employment contract was not extended anymore.

10. On 4 November 2004, the disciplinary committee of BRK rendered decision no. 3109 on imposition of public reprimand against the Employer. Against this decision, the Employee was entitled to file appeal

to the BRK management board within 15 days from the service of the decision.

11. On 30 December 2004, the BRK management board, after expiration of the contract, rendered the decision to not extend the employment contract to the employee as the "the Loan Service Analyst" in the branch of the Bank in Peja.

12. On 18 January 2005, the Employee, after receiving notification of the decision on non-extension of the employment contract, addressed the management board of former BRK with the request no. 88, for reviewing the challenged decision of 30 December 2004. The Board in question did not review the decision, with a justification that the Employee was not engaged sufficiently and efficient, therefore it considered the case as closed matter.

13. On 28 February 2005, the Employee filed claim in the Municipal Court in Prishtina against the decision of 30 December 2004 of the management board of former BRK, now the Applicant (NLB Prishtina), by requesting the annulment of the decision in question as unlawful.

14. On 20 October 2005, the Municipal Court in Prishtina (Ruling C. no. 65/2005) rejrected the claim filed by the employee as out of time, by considering that the claim against the decision of the management board of former BRK was not filed in compliance with the provision of Article 181 paragraph 1 of the Law on Associated Labor (LAL). Against this decision, unsatisfied party was allowed to file appeal within 8 days.

15. Former BRK (Employer) duly filed appeal in the District Court in Prishtina against the Ruling of the Municipal Court in Prishtina, C. no. 65/2005, of 20 October 2005,.

16. On 13 September 2006, the District Court in Prishtina (Ruling Ac. no. 135/2006), quashed the Ruling of the Municipal Court in Prishtina and decided to return the case for retrial, because according to the court in question, the first instance court has erroneously applied the substantive law in counting the time limit, due to the fact that it was referred to the provisions of the Law on Associated Labor and in the present case the Law on Basic Rights from Employment Relationship should have been applied.

17. On 14 December 2006, the Municipal Court in Prishtina (Judgment C. no. 294/2006), based on the Ruling Ac. no. 135/2006 of the District Court in Prishtina, approved as grounded the claim of the Employee and annulled as unlawful the decision of the management board of former BRK and obliged it to reinstate the Employee to his previous job position or to another job position, which corresponds with his professional background.

18. On 25 January 2007, former BRK (Employer) filed appeal to the District Court in Prishtina against the Judgment C. no. 294/2006, of 14 December 2006 of the Municipal Court in Prishtina,. The appeal is based on erroneous application of the substantive law and on incorrect determination of factual situation.

19. On 5 March 2009 the District Court in Prishtina (Judgment Ac. No. 347/2007) approved as grounded the appeal of former BRK, now the Applicant, and decided to quash the Judgment C. no. 294/2006, of 14 December 2006 of the Municipal Court in Prishtina, returning again the matter for retrial to the Municipal Court in Prishtina. The court in question based the reasoning of its judgment on the fact that “the judgment of the first instance court is in violation of the provisions of the Law on Contested Procedure, finding that the enacting clause of the judgment was in contradiction with the reasoning".

20. On 8 August 2009, the Municipal Court in Prishtina (Judgment C1.no. 575/2009), approved again the claim of the Employee as grounded and quashed the decision of the management board of former BRK, now the Applicant, as unlawful, by obliging it to return the employee to his previous job as the "Loan analyst" or to any other workplace that corresponds with his professional background, with all the rights deriving from the employment relationship.

21. On 19 February 2010, the Applicant filed the appeal against the Judgment C1. no. 575/2009, of 8 August 2009, to the District Court in Prishtina.

22. On 19 October 2010, the District Court in Prishtina (Judgment Ac. no. 542/2010), approved as grounded the Applicant’s appeal and decided to quash the Judgment C1. no. 575/2009, of 8 August 2009, of the Municipal Court in Prishtina

23. The Employee (claimant) filed revision in the Supreme Court against the Judgment Ac. no. 542/2010 of 19 October 2010.

24. On 2 May 2013, the Supreme Court (Judgment Rev. no. 335/2012) approved the revision filed by the Employee (claimant) and quashed the Judgment Ac. no. 542/2010 of the District Court in Prishtina, of 19 October 2010, by upholding the Judgment of the Municipal Court in Prishtina, C1. No. 575/2009, of 8 August 2009. The following is the reasoning of the Judgment:

> *"The Supreme Court of Kosovo, setting from such a situation, found that the second instance court, based on correct determination of the factual situation, has erroneously applied substantive law when rejecting the claimant's statement of claim. The Supreme Court of Kosovo, setting from such determined factual situation found that such a legal stance of the second instance court cannot be accepted as fair and lawful, because according to the findings of this court on determined factual situation, the substantive law was erroneously applied when found that the statement of claim of the claimant is ungrounded. It cannot accept as fair and lawful the finding of the second instance court that the employment of the claimant with the respondent was terminated upon expiration of the contract term, due to the fact that from the challenged decision of the respondent, it results that the claimant's employment contract was not extended due to lack of engagement and poor performance at work, and therefore, it is rightly stated in the revision that the second instance judgment was rendered based on an erroneous application of substantive law, and for these reasons, the Court approved the revision of the claimant as grounded, modified the challenged judgment, and upheld the first instance judgment.*
>
> *The Supreme Court of Kosovo finds that the first instance court has correctly applied the substantive law when finding that the decision of the respondent on non-extension of the employment contract is unlawful, because from evidence in case files, namely, the decision of the respondent, it does not result by which evidence were determined the facts charged upon the claimant, or in which proceedings. The challenged decision does not specify any period during which the claimant had not shown engagement or poor performance, while in the minutes of the labor committee of 28.12.2004, it is stated that it is about the lack of evidence and concrete results of the claimant in reclaiming bad loans for the period of 01.04.2003, and reduction of the number of employees. Despite the fact that the claimant was not performing satisfactorily*

during 2003, the respondent again decided to extend the employment contract even after this date, finally until 31.12.2004."

The reasons provided by the first instance court in approving the claim of the claimant are accepted as fair and lawful by this Court, due to the reason that the requirements as per Article 19.2 of the Rules of Procedures of the respondent have not been met, for the employment relationship of the claimant be taken as a temporary position, the working position Head of Loan Service still exists, it has never been terminated, and it is of permanent nature. The claimant has performed these works for a relatively extensive period, since 02.01.2001, and his contracts were continuously extended, until 31.12.2004, and on the other hand, there were no convincing arguments given on his lack of engagement in completing activities and duties assigned to him, and for the reasons mentioned, the Court assessed the first instance findings as fair, and that the failure to extend the contract is unlawful, and therefore, it decided as per enacting clause of the judgment."

Applicant's allegations

25. The Applicant alleges that the public authorities violated his rights guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution, by Article 6.1 of the ECHR and Article 24 [Equality before the Law] of the Constitution, in conjunction with Article 14 of the ECHR, due to the adjudication of the case by the Supreme Court in contradiction with the case law.

26. The Applicant, regarding the assumption that the Supreme Court ruled contrary to its own case law submitted to the Court the decisions as follows:

26.1 Decision Rev. no. 107/2006 of 17 April 2007; Judgment Rev. no. 138/2008, of 31 March 2009; Judgment Rev. no. 71/2008, of 24 December 2008 of the Supreme Court.

"The Supreme Court of Kosovo cannot accept the legal position of the lower instance courts for the moment, because due to erroneous application of substantive law, the determination of the factual situation has remained incomplete" [...] The contract of claimant's employment cannot be found in the case file, from which could be concluded the duration of the establishment of the respondent's employment relationship. [...] For these reasons, the court of first instance was obliged to determine whether the contract concluded

between the claimant and the respondent on the establishment of the fix-term employment relationship with expiration date on 31.12.2004 exists."

26.2 Judgment Rev. no. 71/2008 of 24 December 2008 of the Supreme Court. In this case, this court rejected the claimant's revision, due to following reasons:

"In the present case, the allegations filed in the revision that the claimant's employment relationship was terminated because of the elimination of the job position as a consequence of organizational changes in the bank (respondent) and not as a consequence of the expiration of the contract on employment, are ungrounded, because his employment relationship was terminated precisely on the date of expiration of the contract, therefore the conclusion of the second instance court in this respect is fair and lawful and as such is accepted by this court too."

26.3 Judgment Rev. no.138/2008 of 31 March 2009 of the Supreme Court. In this case the Supreme Court approved the respondent's revision due to following reasons:

"According to Article 11.1, item (e) of the Regulation 2001/27 on the Essential Labour Law in Kosovo, it is provided that the employment contract may be terminated by expiration of employment term. In the present case, the litigating parties had entered a fixed term employment contract from 01.06.2004 to 31.12.2004, and therefore, the claimant's contract was terminated upon the expiration of employment term. Therefore, according to this Court, the claimant is not entitled to rights from the employment relationship for the contested period, since he did not meet the abovementioned requirements, because the establishment of the employment relationship did not exist. There is no provision in the Regulation 2001/27 on the Essential Labour Law in Kosovo which provides that the employee would be recognized his employment rights after expiration of employment term, until the employee meets retirement conditions."

27. The Applicant also requests from the Constitutional Court to approve the request for imposition of interim measure regarding the suspension of execution of the Judgment C1.no. 575/2009 of the Municipal Court in Prishtina, on 8 August 2009. The Applicant alleges that the execution of

the judgment in question will cause irreparable material damage if it is implemented.

Admissibility of the Referral

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

29. The Court should first determine if the Applicant is an authorized party to submit a Referral with the Court pursuant to the requirements of Article 113 paragraph 1 and 7 of the Constitution. In the present case, the Applicant is legal person and he has proved that he is an authorized party, as it is provided by the abovementioned provisions of the Constitution and the Law.

30. The Court also determines if the Applicant has tried to meet the requirements of Article 113.7 of the Constitution and of Article 47.2 of the Law, regarding the exhaustion of effective legal remedies. The Applicant submitted sufficient evidence that he has met requirements of Article 113.7 of the Constitution, Article 47.2 of the Law and Rule 36.1 (a) of the Rules of Procedure.

31. The Applicant should also prove that he has met requirements of Article 49 of the Law and of Rule 36.1 (b) of the Rules of Procedure, concerning the timely submission of the Referral. It can be seen from the case file that the final decision on Applicant's case is the Judgment of the Supreme Court, Rev. no. 228/2012 of 12 May 2013. The Applicant submitted the Referral with the Court on 15 July 2013, meaning that the Referral was submitted within the four month deadline prescribed by the abovementioned provisions.

32. The Court also determines if the Applicant has specified and clarified in his Referral what rights and freedoms, have been allegedly violated, by what act and by what court or public authority. In his Referral the Applicant specified the alleged violations of the constitutional provisions. But, the Applicant should provide convincing arguments that the facts he alleges that have caused the violation of his rights and freedoms guaranteed by the Constitution incontestably constitute, in their essence, elements of violation of a right.

33. In this regard, the Court refers to the provisions of the Rule 36.1 (c) and Rule 36.2 (a) and (b) of the Rules of Procedures, which provide that*:*

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

(2) 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."

34. The Court reiterates that, one of the admissibility requirements of the Referral is, if the Applicant's Referral is manifestly founded in order that this Court goes into its merits.

35. Based on the case file, the Court notes that the Applicant complains, in particular, on the Judgment of the Supreme Court, Rev. no. 335/2012 of 2 May 2013, by which was quashed the second instance judgment, Ac. no. 542/2010, of 18 October 2010, and was upheld the judgment of the first instance court, C. no. 575/2009, of 8 August 2009. The Applicant maintains that the Supreme Court decided in a partial way regarding the contest, in violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR, as well as Article 24 in conjunction with Article 14 of the ECHR, due to adjudication of the case in contradiction with its case law.

As to the Applicant's allegation for violation of Article 24 [Equality before the Law] of the Constitution, in conjunction with Article 14 of ECHR

36. The Court notes that the Applicant in his Referral mentioned the Decision Rev. no. 107/2006 of 17 April 2007; Judgment no. 138/2008 of 31 March 2009 and Judgment Rev. no. 71/2008 of 24 December 2008 of the Supreme Court, alleging that his case is similar to the above cases

for which the Supreme Court decided in favor of the Applicant (former BRK, now NLB Prishtina).

37. As for the differences in treatment, the Court is referred to the ECtHR case law, which in some cases mentioned that the Applicant has an obligation to show and prove why his/her case is treated differently from other similar cases. Regarding this, the ECtHR *(see case Lithgow and others vs. United Kingdom)* stated that, "*Article 14 of the Convention protects persons [...] that are put in the analogue situations against discriminatory differences in treatment [...], but in order that the Applicant's appeal succeeds, it should be determined, among others, that the situation in which the alleged victim may be considered similar to the situation of persons who are treated better (See case Fredrin vs. Sweden).*

38. The Court notes that the Applicant alleges that his case is identical with other cases, in which the Supreme Court has decided in favour of the Applicant. As to the referred allegation, the Court, carefully analyzed individually the cases above and considers that the Applicant's case cannot be considered in a similar way with the abovementioned cases, because as it is noticed from the decisions, attached to this Referral, the Supreme Court, gave reasoning for each case individually, by being based on the basic issues referred in the claim and appeal by the parties themselves *(see the reasonings of the judgments in paragraph 26 item 1,2 and 3)*

39. On the other hand, the ECtHR emphasizes that it is the obligation of local courts or authorities to show and prove that treatment of a case differently from other cases with similar circumstances should be substantiated, convincing and reasoned properly. (See case Lithgow and others vs. United Kingdom), where the ECHR stated that: [...] for the purpose of Article 14, discriminatory difference in treatment is discriminatory if this difference has no objective or reasonable justification, or it does not pursue a legitimate aim.

40. In this regard, the Court considers that it is not proved by any evidence that the Supreme Court has decided in a partial or unlawful manner or that it has not sufficiently reasoned its judgment. It is not sufficient that the Applicant substantiates his allegation for "partial trial", by supporting his allegation in other cases for which the court has decided individually based on the light of the case. Such an allegation for violation of constitutional rights must be convincingly justified and referred based on the constitutional grounds, in order that the appeal has success to the benefit of the claiming party.

As to the Applicant's allegation for violation of the right to "fair and impartial trial"

41. The Court notes that the Applicant failed to substantiate by evidence his allegation for violation of the right to *"fair and impartial trial",* that is guaranteed by Article 31 of the Constitution and Article 6 of the European Convention on Human Rights. The allegations for violation of a constitutional right, in their essence, should contain indisputable elements of violation of fundamental rights, guaranteed by the Constitution and international instruments, in order that the Court goes into its merits.

42. The Supreme Court, in this case, has given sufficient reasons in its judgment, by examining and analyzing in entirety the circumstances of the case, on the basis of which has decided to quash the judgment of the second instance court and to uphold the judgment of the first instance court, which is full jurisdiction of the Supreme Court, to assess the legality of the court decisions rendered by the lower instance courts.

43. It is not, therefore, the task of the Constitutional Court to assess the legality and accuracy of decisions issued by competent court institutions, unless there is convincing evidence that such decisions have been rendered in an evidently unfair and unclear manner.

44. As far as alleged violations of constitutional rights are concerned, it is the task of the Court to analyze and assess if proceedings, in their entirety, have been fair and in compliance with the protection, explicitly provided by the Constitution. So, the Constitutional Court is not a court of fourth instance when considering the decisions rendered by the lower instance courts. It is the duty of the regular courts to interpret and apply pertinent rules of both substantive and procedural law. (See, *mutatis mutandis*, Garcia Ruiz v. Spain [GC], no. 30544/96, paragraph 28, European Court on Human Rights [ECHR] 1999-I).

45. In the present case, the Applicant has not provided any evidence which would indicate that the alleged violation, mentioned in the Referral, constitute indisputable elements of violation of the constitutional rights (see Vanek vs. Slovak Republic, ECHR decision on admissibility of Application no. 53363/99 of 31 May 2005)

46. Therefore, the Court cannot consider that the relevant proceedings, conducted in the Supreme Court were in any way unfair or arbitrary (*see mutatis mutandis, Shub v. Lithuania, ECtHR Decision on Admissibility of Application No. 17064/06 of 30 June 2009).*

47. Finally, the Court finds that the Applicant's Referral does not meet the admissibility requirements, either on the ground of admissibility, or on the merits of the Referral, because the Applicant failed to provide evidence that the challenged decision, violated his rights and freedoms, guaranteed by the Constitution.

48. From the reasons above, the Court concludes that the Applicant's Referral is considered as manifestly ill-founded and in compliance with Rule 36.2 (b) and (d) of the Rules of Procedure, is rejected as inadmissible.

Assessment of the request for Interim Measures

49. The Applicant also requests from the Court to impose interim measure on suspension of execution of the Judgment of the Municipal Court in Prishtina, C1. No. 575/2009, of 8 August 2009. The Applicant alleges that the execution of the judgment in question will cause him irreparable material damage.

50. In this respect, the Court refers to Article 116.2[Legal Effect of Decisions] of the Constitution which establishes: *"2.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".*

51. The Court also takes into account Article 27 of the Law, which provides:

> *"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."*

52. Furthermore, rule 54.1 of the Rules of Procedure, provides:

> "*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."*

53. Finally, the Rule 55.1 of the Rules of Procedure, provides:

> *"A request for interim measures shall be given expedited consideration by the Court and shall have priority over all other referrals."*

54. In order that the Court to imposes interim measure pursuant to Rule 55.4 of the Rules of Procedure, it must find that:

> *"(a) the party requesting interim measures has shown a prima facie case on the merits of the referral and, if admissibility has not yet been determined, a prima facie case on the admissibility of the referral;*
>
> *(b) the party requesting interim measures has shown that it would suffer unrecoverable damages if the interim relief is not granted; and*
>
> *(c) the interim measures are in the public interest.*
>
> *If the party requesting interim measures has not made this necessary showing, the Review Panel shall recommend denying the application.*

55. The Court further concludes that since the Applicant's Referral is manifestly ill-founded and is declared inadmissible, the request for interim measure can no longer be a subject of review, therefore, the request for imposition of interim measures should be rejected.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 46 and Article 27 of the Law and Rule 36.2(b) and (d) and Rule 55 and 56.2 of the Rules of Procedure, on 10 September 2013, unanimously,

DECIDES

I. TO REJECT the Referral as Inadmissible;

II. TO REJECT the request for interim measure;

III. TO NOTIFY this Decision to the Parties;

IV. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20.4 of the Law; and

V. This Decision is immediately effective.

Judge Rapporteur
Ivan Čukalović

President of the Constitutional Court
Prof. Dr. Enver Hasani

KI 127/13, Valdet Sutaj, date 11 October 2013 – Constitutional Review of the Decision of the Court of Appeal of Kosovo Ac. No. 3544/12 of 3 May 2013

KI127/13, Resolution on Inadmissibility, of 9 October 2013

Keywords: individual referral, property, request for interim measure, inadmissible referral, manifestly ill-founded

The Applicant alleges that the Decisions rendered by the Municipal Court in Deçan and the Court of Appeal of Kosovo violated Articles 19 [Applicability of International Law] and 121 [Property] of the Constitution, the provisions of the Law No. 02/L-33 on Foreign Investments, the provisions of the Agreement for the Promotion and Protection of Investments between the Republic of Kosovo and the Swiss Confederation of 27 October 2011, and the provisions of the Law No. 03/L-008 on Execution Procedure.

The aforementioned Courts, within the framework of the proposal for the execution procedure, in order to return the debt, owed by the Applicant, decided to handover the ownership of the immovable property of the Applicant to the creditor, *Compactherm AG* with its seat in Switzerland.

The Applicant also requested from the Constitutional Court to impose an interim measure, namely to prohibit the creditor, *Compactherm AG* from alienating the immovable property of the Applicant, until the completion of the procedure before the Constitutional Court.

The Court concluded that the facts presented by the Applicant did not in any way justify the allegation of a violation of the constitutional rights and the Applicant did not sufficiently substantiate his claims.

The Court notes that there is no *prima facie* case for the purpose of imposing interim measures and thus the request for interim measures is manifestly ill-founded.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI 127/13
Applicant
Valdet Sutaj
Constitutional Review
of the Decision of the Court of Appeal of Kosovo Ac. No. 3544/12 of 3 May 2013

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Enver Hasani, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Kadri Kryeziu, Judge and
Arta Rama-Hajrizi, Judge.

The Applicant

1 The Referral was submitted by Valdet Sutaj from Deçan, represented by Gazmend Nushi (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges the Decision of the Court of Appeal of Kosovo Ac. No. 3544/12 of 3 May 2013.

Subject matter

3. The Applicant alleges that the Decisions rendered by the Municipal Court in Deçan and the Court of Appeal of Kosovo violated Articles 19 [Applicability of International Law]and 121 [Property] of the Constitution, the provisions of the Law No. 02/L-33 on Foreign Investments, the provisions of the Agreement for the Promotion and Protection of Investments between the Republic of Kosovo and the Swiss Confederation of 27 October 2011, and the provisions of the Law No. 03/L-008 on Execution Procedure.

4. The aforementioned Courts, within the framework of the proposal for the execution procedure, in order to return the debt, owed by the Applicant, decided to handover the ownership of the immovable property of the Applicant to the creditor, *Compactherm AG* with its seat in Switzerland.

5. The Applicant also requests from the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) to impose an interim measure, namely to prohibit the creditor, *Compactherm AG* from alienating the immovable property of the Applicant until the completion of the procedure before the Constitutional Court.

Legal basis

6. The Referral is based on Articles 113.7 and 21.4 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(hereinafter: the Law), and Rules 54, 55 and 56 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 20 August 2013, the Applicant submitted the Referral to the Court.

8. On 28 August 2013, the President appointed Judge Robert Carolan as Judge Rapporteur and the Review Panel composed of Judges Snezhana Botusharova (presiding), Kadri Kryeziu (member) and Arta Rama-Hajrizi (member).

9. On 28 August 2013, the Constitutional Court informed the Applicant on the registration of the Referral and further requested to submit to the Court the copies of the Judgment of the Municipal Court in Deçan C. No. 227/07 of 1 April 2008, the Judgment of the District Court in Peja Ac. No. 277/08 of 12 April 2010, the Decision of the Municipal Court in Deçan E. No. 251/10 of 30 April 2010, and the Decision of the District Court in Peja Ac. no. 440/2010 of 6 June 2011.

10. On 2 September 2013, the Applicant provided the Court with the copies of the Judgment of the Municipal Court in Deçan C. No. 227/07 of 1 April 2008, the Judgment of the District Court in Peja Ac. No. 277/08 of 12 April 2010 and the Decision of the Municipal Court in Deçan E. No. 251/10 of 30 April 2010.

11. On 10 September 2013, the Review Panel considered the report of the Judge Rapporteur and deliberated on the matter and made a recommendation to the full Court on the inadmissibility of the Referral.

The facts of the case

12. On 30 April 2010, the creditor "*Compactherm AG",* with its seat in Switzerland, filed a proposal for the execution of the Judgment of the Municipal Court in Deçan (C. nr. 227/2007 of 1 April 2008) and the Judgment of the District Court in Peja (Ac. nr. 277/08 of 12 April 2010), namely the payment of the debt by the Applicant.

13. The aforementioned Courts, referring to the Contracts on Loan concluded between the Applicant and *Compactherm AG,* confirmed the establishment of a contractual relationship. In addition, the Municipal Court in Deçan (C. nr. 227/2007 of 1 April 2008) imposed an interim measure, namely prohibiting the Applicant from selling, alienating and encumbering with a mortgage his immovable property, until the completion of the contested and execution procedure.

14. On 21 July 2010, the Municipal Court in Deçan (Decision E.nr. 251/2010) approved the initiation of the execution procedure. The execution procedure was also confirmed by the Decision of the District Court in Peja (Ac. nr. 440/2010 of 6 June 2011).

15. The Municipal Court in Deçan, (Decision E. nr. 251/2010 of 15 July 2011), upon the recommendation of the expertise ordered by this Court determined the value of the immovable property of the Applicant to be at the amount of 1,708,972, 00 EUR.

16. On 2 December 2012 and 6 January 2012 respectively, with the purpose of the enforcement of the execution procedures and pursuant to the Conclusions of the Municipal Court in Deçan (E.nr. 251/2010 of 26 October 2011 and E.nr. 251/2010 of 2 December 2011), two public auctions for the sale of the immovable property of the Applicant took place. In both cases, there was no interested bidder.

17. In the third public auction, held on 8 February 2012, the interested bidding parties were Hamdi Sutaj, the father of the Applicant and the creditor, *Compactherm AG*, represented by his legal representative. The immovable property of the Applicant was sold to the most bidding party, namely to Hamdi Sutaj, whereby the Court decided to set a

deadline of thirty (30) days for the final payment of the amount of 1, 800,000, 00 EUR.

18. Considering the fact that the bidder, HamdiSutajdid not deposit the aforementioned amount within the required deadline, the Municipal Court in Deçan, pursuant to its Conclusion E. Nr. 251/2010 of 31 May 2012 declared the sale of the immovable property of 18 April 2012 null and void.

19. On 31 May 2012, the Municipal Court in Deçan, pursuant to its Conclusion, decided to handover the immovable property of the Applicant to the creditor as the second and only bidder for the amount of the debt owed to the creditor, namely 1,723,904,53 EUR.

20. On 15 June 2012, the Municipal Court in Deçan (Decision E. No. 251/2010) confirmed the sale of the immovable property of the Applicant to the creditor. Pursuant to this Decision, the Directorate for Municipal Geodesy in Deçan was further obliged to transfer the ownership rights of the immovable property in the name of the Creditor, *Compactherm AG* in Switzerland.

21. Against the Decision of the Municipal Court (E. No. 251/2010 of 15 June 2012), the Applicant filed an appeal with the Court of Appeal of Kosovo, alleging essential violation of the provisions of the execution procedures and erroneous and wrong determination of factual situation.

22. On 3 May 2013, the Court of Appeal of Kosovo (Decision AC. No. 3544/12) rejected the appeal of the Applicant as ungrounded and upheld the Decision of the Municipal Court in Deçan.

23. The Court of Appeal of Kosovo, held that the "*first instance court has correctly applied the provision of article 231, paragraph 1 of the Law on Execution Procedure, whereby by the appealed Decision decided to handover the immovable property, property of the Debtor, to the creditor, who although is a foreign legal person, according to Articles 3 and 4 of the Law on Foreign Investments, enjoys the rights, without discrimination, to the same extent as the national investors with regards to the right of acquisition of the property rights on the assets of the national persons*".

24. On 4 July 2013, the Applicant submitted a proposal for the request for the Protection of Legality to the State Prosecutor.

25. On 8 July 2013, the State Prosecutor notified the Applicant that there was no legal basis to proceed with a Request for Protection of Legality.

Applicant's Allegation

26. The Applicant alleges that the Decisions rendered by the Municipal Court in Deçan and the Court of Appeal of Kosovo violated Articles 19 and 121 of the Constitution, the provisions of the Law No. 02/L-33 on Foreign Investments, the provisions of the Agreement for the Promotion and Protection of Investments between the Republic of Kosovo and the Swiss Confederation of 27 October 2011, and the provisions of the Law No. 03/L-008 on Execution Procedure.

27. With reference to Article 121, paragraph 2 of the Constitution and Article 4, paragraph 1, of the Law on Foreign Investments, the Applicant argues that *[...]"Since the creditor did not have any legal presence in the territory of the Republic of Kosovo, the latter could not gain in any case the status of the "foreign investor" since it has not met any of requirements, provided by Article 2 of the Law on Foreign Investments - the definition of the "foreign investor". Consequently, the creditor did not have and does not have the legal right to be the holder of the property right over the property in the territory of Kosovo [...].*

28. Article 121, paragraph 2, of the Constitution states:

> *"Foreign natural persons and foreign organizations may acquire ownership rights over immovable property in accordance with such reasonable conditions as may be established by law or international agreement."*

29. The Applicantfurther states that[...] *"the foreign legal person, previously should be registered in the Kosovo Businesses Registration Agency (KBRA) to meet essential requirement to gain the right to be the holder of the property right over the immovable property in the territory of the Republic of Kosovo."*

30. The Applicant also requests from the Court to impose an interim measure, namely to prohibit the creditor, *Compactherm AG* from selling, alienating or encumbering with a mortgage the immovable property of the Applicant until the completion of the procedure before the Constitutional Court.

31. The Applicant concludes requesting the Constitutional Court:

"*TO DECLARE the Referral of Applicant Valdet Sutaj ADMISSIBLE.*

TO HOLD that the Decision of the Municipal Court in Decan, E.no.251/2010 of 15.06.2012 and the Decision of the Court of Appeal of Kosovo AC.no. 3544/12 of 03.05.2013, are not in compliance with Article 19 [Applicability of International Law] and Article 121 [Property] of the Constitution of the Republic of Kosovo.

TO HOLD that the Decision of the Municipal Court in Decan, E.no.251/2010 of 15.06.2012 and the Decision of the Court of Appeal of Kosovo AC.no. 3544/12 of 03.05.2013, are invalid.

TO DECLARE this Judgment effective immediately."

The provisions of the Law on Foreign Investments No. 02/L-33, as referred to by the Applicant

Article 2, paragraph 1 of the Law on Foreign Investments provides:

*"**Foreign Investor**" means a foreign person that has made an investment in Kosovo.*

*"**Foreign Person**" means and includes any of the following:*

a. a physical person who is a citizen of, or who has legal permanent resident status in, a foreign state or geographic territory outside Kosovo;

b. a business or other organization, entity or association - with or without legal personality - that has been established under the law of a foreign state or geographic territory outside Kosovo;

c. a governmental or public-administrative unit or agency of a foreign state or geographic territory outside Kosovo; and
d. an organization, entity or other association - with or without legal personality – that is established by treaty or other agreement between or among states or that is otherwise a subject of international law.

> *"**Investment**" and "**investment in Kosovo**" mean any asset that has (i) been contributed to a Kosovo business organization in return for an ownership interest in that business organization; (ii) been leased, loaned or otherwise temporarily provided under contract to a Kosovo business organization for use in its business activities in Kosovo; or (iii) been contributed to, or leased or otherwise temporarily provided under contract to, any other type of organization lawfully established in Kosovo for use in such organization's business or other activities in Kosovo"*
>
> Article 4.1 of the Law provides:
>
> *"Kosovo shall accord to foreign investors and their investments treatment no less favorable than the treatment it accords to any domestic investor and/or domestic investment, including - but not limited to - treatment with respect to: (i) the provision of protection and security, (ii) the establishment of an investment, (iii) the economic and other activities in which an investment may be made, and (iv) the acquisition, expansion, management and disposal of an investment."*

Assessment of the admissibility of the Referral

32. First of all, the Court examines whether the Applicant has fulfilled the Referral admissibility requirements.

33. Article 113.1 of the Constitution provides:

> *"The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties".*

34. Article 113.7 of the Constitution provides:

> *"Individuals are authorized to refer violations by public authorities of their individual rights and freedoms guaranteed by the Constitution, but only after exhausting all legal remedies provided by law".*

35. In the instant case, the Court notes that the Applicant has sought recourse to protect his rights before the Municipal and finally before the Court of Appeal of Kosovo. In addition, he also made use of the extra-ordinary legal remedy, by submitting a proposal to the State Prosecutor to request Protection of Legality.

36. Thus, the Applicant is an authorized party and has exhausted all legal remedies afforded to them by the applicable law in Kosovo.

37. Consequently, the Court concludes that the Applicant meets the admissibility requirement set up by Article 113.1 and 113.7 of the Constitution.

38. The Applicant must also prove that he has fulfilled the requirements of Article 49 of the Law in relation to submission of Referral within the legal time limit. It can be seen from the case filethat the Applicant was served with the Decision of the Court of Appeal of Kosovo on 28 June 2013, and filed his Referral with the Court on 20 August 2013. The Referral was submitted within the four month time limit, as prescribed by the Law and the Rules of Procedure.

39. However, the Court must also take into account Rule 36 of the Rules of Procedure, which provides:

> *"(1) The Court may review referrals only if: (c) The referral is not manifestly ill- founded."*
>
> *"(2) The Court shall reject a Referral as being manifestly ill-founded when it is satisfied that:*
>
> *[...], or*
>
> *(b) when the presented facts do not in any way justify the allegation of a violation of the constitutional rights, or*
>
> *[...], or*
>
> *(d) when the Applicant does not sufficiently substantiate his claim;"*

40. The Applicant challenged the Decision of the Municipal Court in Deçan (E. No. 251/2010 of 15 June 2012) because of *"essential violation of the provisions of the execution procedures and erroneous and wrong determination of factual situation"*.

41. The Court notes that, for a *prima facie* case on the merits of the request on interim measures and on the admissibility of the Referral,the Applicant must show that the proceedings in the regular courts, viewed in their entirety, have not been conducted in such a way that the

Applicant has had a fair trial or other violations have been committed by the regular courts.

42. The Court further notes that, the Court of Appeal of Kosovo reasoned its Decision holding that the challenged Decision of the Municipal Court is fair and that the applied execution procedure is in accordance with the Law.

43. In this connection, the Constitutional Court reiterates that it is not its task under the Constitution to act as a court of fourth instance, in respect of the decisions taken by the regular courts. It is the role of the latter to interpret and apply the pertinent rules of both procedural and substantive law (See, *mutatis mutandis*, *García Ruiz v. Spain*, No. 30544/96, ECtHR, Judgment of 21 January 1999, para. 28, see also case *No. KI 70/11, Applicants Faik Hima, Magbule Himaand Bestar Hima,* Resolution on Inadmissibility of 16 December 2011).

44. The Constitutional Court can only consider whether the evidence has been presented in such a manner and the proceedings in general, viewed in the entirety, have been conducted in such a way that the Applicants had a fair trial (See, *inter alia*, *Edwards v. United Kingdom,* No. 13071/87, Report of European Commission of Human Rights of 10 July 1991).

45. The Court considers that the proceedings before the regular courts, including before the Court of Appeal of Kosovo, have been fair and reasoned (See, *mutatis mutandis, Shub v. Lithuania,* No. 17064/06, ECtHR, Decision of 30 June 2009).

46. Thus, the Applicant has not submitted any *prima facie* evidence indicating a violation of his rights under the Constitution (See *Vanek v. Slovak Republic*, No. 53363/99, ECtHR, Decision of 31 May 2005), and did not specify how Articles 19 and 121, paragraph 2, of the Constitution support his claim, as required by Article 113.7 of the Constitution and Article 48 of the Law.

47. For all the aforementioned reasons, the Court concludes that the facts presented by the Applicant did not in any way justify the allegation of a violation of the constitutional rights and the Applicant did not sufficiently substantiate his claims.

48. Thus, in accordance with Rule 36. 1 (c) and 2 (b) and (d), the Referral is inadmissible.

Request for Interim Measures

49. The Applicant requests from the Court to impose an interim measure, namely to prohibit the creditor, *Compactherm AG* from alienating the immovable property of the Applicant until the completion of the procedure before the Constitutional Court.

50. The Applicant argues that [...]"*since there is real risk that the Creditor Compacterm AG with seat in Switzerland, will alienate the immovable property, which was object of the executive procedure and will change the existing situation."*

51. 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."*

52. In addition, in order for the Court to grant interim measure pursuant to Rule 55 (4) of the Rules of Procedure, it must find, namely, that:

> *"(a) the party requesting interim measures has shown a prima facie case on the merits of the referral and, if admissibility has not yet been determined, a prima facie case on the admissibility of the referral;*
>
> *(b) the party requesting interim measures has shown that it would suffer unrecoverable damages if the interim relief is not granted; and*

53. As concluded above, the Referral is inadmissible, and therefore there is no *prima facie* case for the purpose of imposing interim measures and thus the request for interim measures is manifestly ill-founded.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113, paragraphs 1 and 7 of the Constitution, Article 20 and 27 of the Law and Rules 36.2, 54, 55 and 56 of the Rules of Procedure, on 10 September 2013, unanimously:

DECIDES

I. TO REJECT the Referral as Inadmissible;

II. TO REJECT the Request for Interim Measures;

III. TO NOTIFY this Decision to the Parties;

IV. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20 (4) of the Law;

V. TO DECLARE this Decision effective immediately

Judge Rapporteur
Robert Carolan

President of the Constitutional Court
Prof. Dr. Enver Hasani

KI 129/13, Daut Çejku, date 11 October 2013 - Constitutional Review of the Judgment of the Supreme Court, Pml. No. 83/2013, dated 19 June 2013

Case KI129/13, Resolution on inadmissibility, of 9 October 2013

Keywords: individual referral, request for interim measures, right to fair and impartial trial, right to privacy, inadmissible referral, manifestly ill-founded

The Applicant alleges that the Judgment of the Supreme Court, rejecting his request for protection of legality against the Judgment of the District Court in Prishtina, violated his rights guaranteed by the Constitution, namely Articles 31 [Right to Fair and Impartial Trial] and 36.2 [Right to Privacy] of the Constitution, and Article 6.1 of the European Convention on Human Rights and Fundamental Freedoms (hereinafter, the ECHR).

In addition, the Applicant requests the Constitutional Court of the Republic of Kosovo to impose interim measures, namely to suspend the execution of the Judgment of the District Court in Prishtina until 31 December 2012, which sentenced the Applicant to imprisonment of 6 (six) months.

The Court found that the allegations of a violation of his constitutional rights to a fair and impartial trial (Article 31 of the Constitution and Article 6 of the ECHR) and right to privacy (Article 36. 2 of the Constitution and Article 8 of the ECHR), because, according to the Applicant, the appealed judgments are based on inadmissible evidence, are ungrounded and unsubstantiated and thus manifestly ill-founded.

The Court also decided that the Referral is inadmissible, and therefore there is no *prima facie* case for the purpose of imposing interim measures and thus the request for interim measures is manifestly ill-founded.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI129/13
Applicant
Daut Çejku
Constitutional review
of the Judgment of the Supreme Court Pml.No.83/2013, dated 19 June 2013

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of,

Enver Hasani, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Kadri Kryeziu, Judge and
Arta Rama-Hajrizi, Judge.

Applicant

1. The Referral was submitted by Daut Çejku from Prizren, represented by Hazër Susuri (the Applicant).

Challenged Decision

2. The Applicant challenges the Judgment of the Supreme Court of Kosovo Pml. No. 83/2013, dated 19 June 2013, which was served on him on 15 July 2013.

Subject Matter

3. The Applicant alleges that the Judgment of the Supreme Court, rejecting his request for protection of legality against the Judgment of the District Court in Prishtina (Ap. No. 388/2009 of 28 September 2012) violated his rights guaranteed by the Constitution, namely Articles 31 [Right to Fair and Impartial Trial] and 36. 2 [Right to Privacy] of the Constitution, and Article 6.1 of the European Convention on Human Rights (hereinafter, the ECHR).

4. In addition, the Applicant requests the Constitutional Court of the Republic of Kosovo (hereinafter, the Court) to impose interim measures pursuant to Article 27 of the Law, namely to suspend the execution of the Judgment of the District Court in Prishtina (Ap. No. 388/2009 of 28 September 2012) until 31 December 2012, which sentenced the Applicant to imprisonment of 6 (six) months.

Legal Basis

5. The Referral is based on Article 113.7 of the Constitution, in conjunction with Article 22 of the Law No. 03/L-121 on Constitutional Court and Rules 54, 55 and 56. 2 of the Rules of Procedure (hereinafter, the Rules).

Proceedings before the Court

6. On 21 August 2013, the Applicant submitted the Referral to the Court.

7. On 28 August 2013, the President appointed Judge Almiro Rodrigues as Judge Rapporteur. The Review Panel consists of Judges Altay Suroy (presiding), Ivan Čukalović and Kadri Kryeziu.

8. On 28 August 2013, the Constitutional Court informed the Applicant on the registration of the Referral and requested the full text of the Judgment of the Supreme Court (Pml.No.83/2013 of 19 June 2013). On the same date, the Court also informed the Supreme Court on the Referral.

9. On 30 August 2013, the Applicant provided the Court with the full text of the Judgment of the Supreme Court.

10. On 10 September 2013, the Review Panel considered the report of the Judge Rapporteur and deliberated on the matter and made a recommendation to the Court on the inadmissibility of the Referral.

Summary of the Facts

11. It appears that the Applicant is a medical doctor practising at the University Clinical Centre of Kosovo, a public health care facility. During July 2008 and on several occasions, the Applicant was consulted by the patient Mr. X, regarding a problem with the veins in his legs. At some point, the Applicant recommended to Mr. X to undergo surgery. Allegedly, the Applicant informed Mr. X that he could have this surgery

performed at a private clinic for 700 EUR or at University Clinical Centre of Kosovo for 300 EUR.

12. Mr. X subsequently reported to the police that the Applicant had requested a bribe of 300 EUR to perform an operation. The police made photocopies of 3 one hundred euro banknotes provided by Mr. X and noted the serial numbers on these banknotes.

13. On 12 August 2008, Mr. X appeared in the office of the Applicant and offered 3 one hundred euro banknotes to the Applicant. At some point, the Applicant placed the banknotes in his pocket. The Applicant referred Mr. X to an examination room. At that moment, two persons identified themselves as police officers and confronted the Applicant regarding the 300 euro. The Applicant produced the 3 one hundred euro banknotes from his pocket following a request by the two police officers, as reflected from the judgments of the regular courts and from the Applicants own statements, *inter alia,* from his submissions on appeal to the District Court. The Applicant was then arrested and subsequently indicted.

14. On 13 March 2009, the Municipal Court in Prishtina (Judgment P.No.2214/08) sentenced the Applicant to imprisonment of 8 (eight) months for having committed the criminal offence foreseen in Article 343.1 of the Criminal Code of Kosovo (Taking Bribes).

15. On 12 June 2009, the Applicant filed an appeal with the District Court in Prishtina against the Judgment of the Municipal Court in Prishtina, because of:

> *"Essential violation of CPCK (Article 403 paragraph 1 subparagraph 8 and 12)*
> *Violation of LCP (Article 404 paragraph 1 and 2)*
>
> *Erroneous assessment and incomplete confirmation of the factual situation (Article 405 paragraph 1 subparagraph 1 and 2), and*
>
> *For the decision on sentence (Article 406 paragraph 1)".*

16. On 28 September 2012, the District Court in Prishtina (Judgment Ap.No.388/2009) sentenced the Applicant to six (6) months imprisonment.

17. The District Court in Prishtina held that *"On the appeal of the defence council of the defendant it is alleged that the appealed Judgment*

consists of essential violations of provisions of the criminal procedures from Article 403 paragraph 1 item 8 and 12 of CPCK. However, specific reasons are not provided in the reasoning of the appeal as to what do these violations manifest, but it is only emphasized that the enacting clause of the Judgment is incomprehensible in the reasoning, alleging that this matter was prepared beforehand in order to blemish the name of a prominent doctor of vascular surgery, while the provided reasons mainly refer to the factual situation".

18. The District Court in Prishtina further held that [...]*"Judgment of the first instance Court doesn't contain any essential violations of provisions of the criminal procedures referred to by the appeal of the defence of the defendant. In absence of a genuine reasoning of this appeal, this Court assessed that the challenged Judgment is in compliance with Article 415 of CPCK [...]".*

19. The District Court in Prishtina also considered that the allegations of erroneous assessment and incomplete determination of factual situation were unfounded. In this regard, the District Court held that [...]" *accurately and in an undoubted manner it was determined that the defendant carried out incriminating actions mentioned in the enacting clause of the appealed Judgment"* and concluded that the allegation on the absence of elements of a criminal offence, for which the Applicant was found guilty, is unfounded.

20. On 10 May 2013, the Applicant filed a request for protection of legality with the Supreme Court of Kosovo, for the following reasons:

    1. *"Violation of the criminal law from Article 404 paragraph 1, subparagraph 1 of the CPCK in conjunction with Article 343.1 of the CCK; and*

    2. *Essential violation of provisions of the criminal procedures, from Article 403 paragraph 1, subparagraphs 8 and 12 of the CPCK".*

21. In sum, the Applicant concluded that *"the Judgment issued by the first instance Court and the one of second instance Court consist of essential violations of provisions of the criminal procedures provided by provisions of Article 403 paragraph 1 item 8 of CPCK, because the appealed Judgments are based on inadmissible evidence".*

22. On 19 June 2013, the Supreme Court (Judgment Pml.No.83/2013) decided to "deny as unfounded the request for protection of legality".

Allegations of the Applicant

23. The Applicant claims that "*the Courts rendered their Judgment based on inadmissible evidence and that in the case of the search by the police an order of the pre-trial Judge was missing. Thus, the Judgment of the Supreme violated his rights guaranteed by the Constitution, namely Article 31 [Right to Fair and Impartial Trial], 36. 2 [Right to Privacy] of the Constitution and Articles 6 [Right to Fair Trial] and 8 [Right to Private and Family Right] of the ECHR".*

24. The Applicant argues that the Judgments rendered by the regular courts violated his rights [...] "*because the case (...) was not heard fairly by the regular Courts, because the regular Courts rendered their judgments based on inadmissible evidence, respectively evidence collected in contradiction with the provisions as mentioned above and in violation of provisions of Article 31 of the Constitution of the Republic of Kosovo and Article 6 of ECHR and deprived the Applicant to be found innocent before a court [...] ".*

25. The Applicant further points out to "*unlawful actions of securing the evidence through covert measures and techniques of surveillance and investigation as foreseen by Article 258, paragraph 2, subparagraph 9 of CPCK (simulation of a corruption offence).* The Applicant alleges that *"we are facing a simulation of a corruption offence, which as such, (...) was done in an unconstitutional manner because the evidence provided and administered were taken on an unlawful manner, respectively unconstitutional manner".*

26. Thus, the Applicant concludes that, pursuant to Article 36. 2 [Right to Privacy] of the Constitution, *"the entry of the police in the premises of Dr. Çejku is conducted only to the necessary extent and only after approval by Court, after presenting the reasons why such a search is necessary, which in Applicants' case the Court Order is missing, namely the order of the Pre-trial Judge of the Municipal Court in Prishtina for the search of official premises and the private search of Dr. Çejku as a suspect".*

27. The Applicant concludes requesting the Constitutional Court:

    1. *"To declare the referral as admissible;*

2. *To conclude that there were violations of Article 36, paragraph 2 (The Right to Privacy) of the Constitution of the Republic of Kosovo, Article 8 of ECHR (The Right to Respect for Private and Family Life) and Article 31 of the Constitution of the Republic of Kosovo (The right to a fair and impartial trial) and Article 6 of ECHR (The Right to a Fair Trial);*

3. *To annul the Judgment Pml.nr.83/2013 of June 19th, 2013 of the Supreme Court of Kosovo;*

4. *To reverse for retrial the Judgment Pml.nr.83/2013 of June 19th, 2013 of the Supreme Court of Kosovo, in compliance with the Judgment of the Constitutional Court;*

5. *To grant the INTERIMMEASURE for the Applicant, Dr. Daut Çejku, in order not to execute the serving of imprisonment sentence until the time when the Supreme Court of Kosovo re-decides on the matter pursuant to ratio decidendi of the Constitutional Court".*

Admissibility of the Referral

28. First of all, the Court examines whether the Applicant has fulfilled the Referral admissibility requirements.

29. In that respect, Article 113 of the Constitution 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 exhausting all legal remedies provided by law".

30. In addition, Article 49 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".*

31. In the instant case, the Court notes that the Applicant has sought recourse to protect his rights before the Municipal and District Courts and, finally, before the Supreme Court of Kosovo. The Court also notes that the Applicant was served with the Supreme Court Judgment on 15 of July 2013 and filed his Referral with the Court on 21 August 2013.

32. Thus, the Court considers that the Applicant is an authorized party and has exhausted all legal remedies afforded to him by the applicable law and the Referral was submitted within the four months time limit.

33. Consequently, the Court concludes that the Referral meets the admissibility requirements set up by Article 113.1 and 113.7 of the Constitution and by Article 49 of the Law.

34. However, the Court also must take into account Rule 36 of the Rules, which provides:

> *"(1) The Court may review referrals only if: (c) The referral is not manifestly ill- founded."*
>
> *"(2) The Court shall reject a Referral as being manifestly ill-founded when it is satisfied that:*
>
> *[...], or*
>
> *(b) when the presented facts do not in any way justify the allegation of a violation of the constitutional rights, or*
> *[...], or*
> *(d) when the Applicant does not sufficiently substantiate his claim;"*

35. The Applicant, as said above, challenged the Judgment of the District Court, before the Supreme Court for violation of the criminal law and essential violation of provisions of the criminal procedure.

36. The Court notes that, for a prima facie case on the merits of the request on interim measures and on the admissibility of the Referral,the Applicant must show that the proceedings in the Supreme Court, viewed in their entirety, have not been conducted in such a way that the Applicant has had a fair trial or other violations have been committed by the Supreme Court.

37. 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

regular courts, unless and in so far as they may have infringed rights and freedoms protected by the Constitution (constitutionality).

38. The Court notes that no allegation on inadmissible evidence was made before the District Court and the allegations made by the Applicant before the Supreme Court are grounded on a violation of the criminal law and a violation of provisions of the criminal procedure.

39. However, the allegations made by the Applicant before the Constitutional Court are grounded on violations of his right to a fair and impartial trial (Article 31 of the Constitution and Articles 6 of the ECHR) and right to privacy (Article 36. 2 of the Constitution and Article 8 of the ECHR), mainly because the appealed Judgments are based on inadmissible evidence. The Applicant considers that the evidence is inadmissible because obtained by a search executed by the police without an order from a pre-trial judge.

Alleged violations of the right to a fair and impartial trial (Article 31 of the Constitution and Articles 6 of the ECHR)

40. On one hand, the Court notes that the Supreme Court reasoned its Judgment holding that "*despite the factthat the controlandseizure ofthemoney was completed without the order of the pre-trial Judge (As foreseen in Article 240, paragraph 1 of the CPCK) in the present case an oral order of the Public Prosecutor exists. However, considering the fact that the convicted has been caught in flagrante during the commission of the criminal offence, who was later arrested, in such cases the police can take actions without the order of the pre-trial judge, as foreseen in Article 245, paragraph 1, alinea 3 of the CPCK."*

41. The Court considers that the Supreme Court answered the allegation on inadmissible evidence, reasoning that not only an oral order of the Public Prosecutor exists, but also that the convicted has been caught in flagrante during the commission of the criminal offence and, in such cases, the police can take actions without the order of the pre-trial judge.

42. On the other hand, the Court also notes that the Supreme Court concluded that [...]*"it is the rightof thecourtto evaluatethe existenceornon-existence of facts, which is notassociated or limited to specialformalrules. According to Article 396, paragraph 7 of the Criminal Procedure Code, the Court is obligedto submitin a specific and full manner which facts and for what reasons to consider or not*

consider as evidence, as such assessing the accuracyofcontradictoryevidence. In the present case, the Courtshaveactedinaccordancewiththe provisionsofthe Criminal Procedure Code, meaning that the challenged Judgments are not based oninadmissibleevidence."

43. The Court considers that the justification provided by the Judgment of the Supreme Court in answering the allegations made by the Applicant is clear and well reasoned. Furthermore, the given justification covers the allegations made by the Applicant on the basis of the Criminal and Criminal Procedure Codes and the allegations made on violation of the Applicant's individual rights and freedoms guaranteed by the Constitution and the ECHR.

44. In this connection, the Constitutional Court reiterates that it is not its task under the Constitution to act as a court of fourth instance, in respect of the decisions taken by the regular courts. It is the role of the regular courts to interpret and apply the pertinent rules of both procedural and substantive law (See, *mutatis mutandis*, *García Ruiz v. Spain*, No. 30544/96, ECtHR, Judgment of 21 January 1999, para. 28, see also case *No. KI70/11, Applicants Faik Hima, Magbule Himaand Bestar Hima,* Resolution on Inadmissibility of 16 December 2011).

45. The Constitutional Court can only consider whether the evidence has been presented in such a manner and the proceedings in general and viewed in its entirety have been conducted in such a way that the Applicants had a fair trial (See, *inter alia*, Edwards v. United Kingdom,No. 13071/87, Report of European Commission of Human Rights of 10 July 1991).

46. The Court considers that the proceedings before the regular courts, including before the Supreme Court, have been fair and reasoned (See, *mutatis mutandis,* Shub v. Lithuania,No. 17064/06, ECtHR, Decision of 30 June 2009).

47. Thus, the Applicant has not submitted any *prima facie* evidence indicating a violation of his rights under the Constitution (See Vanek v. Slovak Republic, No. 53363/99, ECtHR, Decision of 31 May 2005) and did not specify how Articles 31 of the Constitution supports his claim, as required by Article 113.7 of the Constitution and Article 48 of the Law.

48. In fact, the Applicant has neither built a case nor brought evidence on that the police can conduct a search only with an order of the pre-trial

judge even more, and including, when a person is caught in flagrante, during the commission of the criminal offence.

49. In sum, the Court Considers that the Applicant has not justified that the evidence is also inadmissible when the police conducts a search when a perpetrator is caught in the act of committing a criminal offence.

50. Furthermore, the Court notes that the Applicant's conviction is not based exclusively on the evidence of the banknotes found in the Applicant's possession.

Alleged violation of the right to privacy (Article 36. 2 of the Constitution and Article 8 of the ECHR)

51. In addition, the Applicant complains of a violation of Article 36. 2 of the Constitution. The Applicant alleges that, on 12 August 2008, the police confronted him in his office regarding the receipt of the 3 one hundred euro banknotes and conducted a search without any authorization of a court, either prior to this search or retroactively following the search.

52. Article 32.2 of the Constitution establishes that:

> *"2. Searches of any private dwelling or establishment that are deemed necessary for the investigation of a crime may be conducted only to the extent necessary and only after approval by a court after showing the reasons why such a search is necessary. Derogation from this rule is permitted if it is necessary for a lawful arrest, to collect evidence which might be in danger of loss or to avoid direct and serious risk to humans and property as defined by law. A court must retroactively approve such actions".* (Emphasis added)

53. The Court notes that, when the police confronted the Applicant, in his office at the University Clinical Centre of Kosovo, regarding his receipt of a sum of money, the Applicant voluntarily produced the 3 one hundred euro banknotesfrom his pocket.

54. The Court further notes that the evidence was immediately seized from the person of the Applicant to prevent the danger of it being lost, the Applicant was not in a private dwelling or establishment when the evidence was seized, and the Applicant was then arrested and subsequently indicted.

55. Thus, the Court considers that Article 36. 2 of the Constitution generally establishes that the police needs to obtain the approval of a court to search and seize evidence from *any private dwelling or establishment*. However, the Constitution makes exception from this rule "……*if it is necessary for a lawful arrest, to collect evidence which might be in danger of loss*".

56. In these circumstances, the Court concludes that the event complained of does not come within the meaning of a 'search of a private dwelling or establishment', as provided by Article 36. 2 of the Constitution.

57. Therefore, the Court dismisses the Applicant's allegation on that his rights under Article 36. 2 of the Constitution have been violated.

58. In sum, the allegations of a violation of his constitutional rights to a fair and impartial trial (Article 31 of the Constitution and Article 6 of the ECHR) and right to privacy (Article 36. 2 of the Constitution and Article 8 of the ECHR), because the appealed judgments are based on inadmissible evidence, is ungrounded and unsubstantiated and thus manifestly ill-founded.

59. Thus, in accordance with Rule 36. 1 c) and 2 b) and d), the Referral is inadmissible.

Request for Interim Measures

60. The Applicant requests from the Court to impose the interim measures of *"suspending the Decision of the District Court in Prishtina Ap.No.388/2009 of September 28th, 2012 which orders the convicted to serve the imprisonment sentence for the period of 6 (six) months".*

61. The Applicant argues that "*Execution of Judgment Ap.nr.388/2009 of the District Court in Prishtina of September 28th, 2012 […] as unconstitutional would deprive the Applicant […] from freedom for 6 (six) months, thus inflicting irreversible and unavoidable damage […]".*

62. In this respect, the Court takes into account that, in accordance with Rule 55. 1 of the Rules, *"A request for interim measures shall be given expedited consideration by the Court and shall have priority over all other referrals."* and also Rule 55. 6 foreseeing that *"[…] The recommendation of the Review Panel on the application for interim measures shall become the decision of the Court unless one or more Judges submit an objection to the Secretary within three (3) days. […]".*

63. The Court also takes into account Article 116. 2 [Legal Effect of Decisions] of the Constitution which establishes:

> *"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".*

64. 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."*

65. In addition, in order for the Court to grant interim measure pursuant to Rule 55. 4 of the Rules, it must find, namely, that:

> *"(a) the party requesting interim measures has shown a prima facie case on the merits of the referral and, if admissibility has not yet been determined, a prima facie case on the admissibility of the referral;*
>
> *(b) the party requesting interim measures has shown that it would suffer unrecoverable damages if the interim relief is not granted; and*

66. As concluded above, the Referral is inadmissible, and therefore there is no *prima facie* case for the purpose of imposing interim measures and thus the request for interim measures is manifestly ill-founded.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113, paragraphs 1 and 7 of the Constitution, Articles 20 and 27 of the Law and Rules 36.2, 54, 55 and 56 of the Rules, on 12 September 2013, unanimously:

DECIDES

I. TO REJECT the Referral as Inadmissible;

II. TO REJECT the Request for Interim Measures;

III. TO NOTIFY this Decision to the Parties;

IV. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20 (4) of the Law;

V. TO DECLARE this Decision effective immediately

Judge Rapporteur
Almiro Rodrigues

President of the Constitutional Court
Prof. Dr. Enver Hasani

KI 53/13, NTH "Alba-Oil", date 18 October 2013- Constitutional Review of the Judgment of the Supreme Court of Kosovo, Ac. No. 160/2011 of 13 November 2012 and of the Notification of the State Prosecutor, KMLC. No. 139/12, of 25 January 2013

Case KI53/13, Resolution Inadmissibilty of 12 September 2013

Keywords: individual referral, manifestly ill-founded, resolution on inadmissibility

The Applicant claims that both the challenged Judgment and the Notification of the State Prosecutor have been rendered by violating Article 24 [Equality before the Law], Article 31 [Right to Fair and Impartial Trial] and Article 32 [Right to Legal Remedies] of the Constitution in conjunction with Article 6 [Right to a Fair Trial] of the European Convention on Human Rights.

The Court concluded that the Referral was not raised in a legal manner, in accordance with Article 113. 1 of the Constitution and Rule 36 (2) b) of the Rules of Procedure, and as such is inadmissible as manifestly ill-founded.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI53/13
Applicant
N.T.SH. "Alba-Oil"
Constitutional Review of the judgment of the Supreme Court of Kosovo, Ac. No. 160/2011 of 13 November 2012 and notification of State Prosecutor, KMLC. No. 139/12, of 25 January 2013

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

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

The Applicant

1. The Applicant is N.T.SH. "Alba-Oil", a private company from Hani i Elezit, represented by its owner Shemsedin Ramuka.

Challenged Decision

2. The Applicant challenges the judgment of the Supreme Court of Kosovo, Ac. No. 160/2011 of 13 November 2012 and notification of State Prosecutor, KMLC. No. 139/12, of 25 January 2013.

Subject Matter

3. The Applicant claims that the challenged judgment and the notification of the State Prosecutor were adopted in violation of Article 24 [Equality before Law], Article 31 [Right to Fair and Impartial Trial] and Article 32 [Right to Legal Remedies] of the Constitution in conjunction with Article 6 [Right to a Fair Trial] of the European Convention on Human Rights ("the Convention").

Legal basis

4. The Referral is based on Art. 113.7 of the Constitution; Articles 46, 47, 48 and 49 of 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 Constitutional Court

5. On 8 April 2013, the Applicant submitted the Referral to the Court.

6. On 16 April 2013, the President appointed Judge Snezhana Botusharova as Judge Rapporteur and the Review Panel composed of Judges Altay Suroy (Presiding), Almiro Rodrigues and Enver Hasani.

7. On 13 May 2013, the Court notified the Applicant that the referral had been registered with the Court. In addition, on 17 May 2013, the Applicant was asked to provid the challenged notification of the State Prosecutor to the Court.

8. On 13 May 2013, the Court notified the Office of the State Prosecutor of the referral.

9. On 22 May 2013, the Applicant submitted to the Court the challenged notification of the State Prosecutor.

10. On 12 September 2013, after having considered the Report of the Judge Rapporteur, the Review Panel made a recommendation to the Court on the inadmissibility of the Referral.

The facts of the case

11. On 4 July 2011, the company AXP submitted a petition to the District Commercial Court in Pristina requesting, *inter alia*, that the Applicant as the respondent party in the civil proceedings is obliged to pay a debt in the amount of 25,890 Euro.

12. Following that, on 24 August 2011, a preparatory hearing was scheduled before the District Commercial Court in Pristina, which the Applicant did not attend.

13. On the same date, the District Commercial Court issued the Default Judgment II.C. no. 200/2011 and approved the petition of AXP. In the reasoning of the Default Judgment was stated as follows: "*As the*

respondent party was duly summoned to the preparatory hearing in this legal matter, it did not respond to the summon and it not justify the absence, and even though within the meaning of Article 394 of LCP it was served with a resolution for replying to the lawsuit, it did not make use of the legal right under Article 395 of the LCP to submit a reply to the lawsuit, it did not challenge the claim by any submission…and there are no well- known circumstances that would lead to the conclusion that the respondent was prevented from attending the hearing due to good causes, the requirements from Article 151.1 of the LCP for issuing a Default Judgment have been met…"

14. On 21 September 2011, the Applicant submitted an appeal against the Default judgment to the Supreme Court. In the appeal the Applicant stated that there are new facts in the case that would be presented at the next hearing. Also, according to the Applicant, the summon for the hearing was served to a seasonal worker who did not inform the Applicant about the receipt of the summon.

15. On 13 November 2012,the Supreme Court of Kosovo issued the judgment Ac. No. 160/2011 rejecting the Applicant's appeal as unfounded and it confirmed the judgment of the District Commercial Court. In the reasoning the Supreme Court emphasized that *"[I]n the appeal the respondent does not deny the fact that one of his seasonal workers has received the court summon, but as he states, the worker did not give it to him the summon and he did not appear to the Court because he did not know about it. With regard to such justification of the respondent, the Supreme Court of Kosovo deemed that there are no well known circumstances from which one can conclude that the respondent was prevented with good cause from attending the session.*"

16. On 28 December 2012, the Applicant submitted a request for the protection of legality to the Chief Public Prosecutor.

17. On 25 January 2013, the State Prosecutor issued the notification KMLC no. 139/12 notifying the Applicant that "*after having reviewed that challenged judgment as well as other case files submitted by the Court, confirms that there are no legal grounds for filing a request for protection of legality*."

Applicable Law

18. Article 394 of the 2009/03-L-006 Law on Contested Procedure, provides the obligation of the Respondent party in the contested procedure to submit to the court a reply to the petition together with all relevant documents within fifteen days when from the receipt of the petition.

19. Article 151.1 of the 2009/03-L-006 Law on Contested Procedure provides when the Default Judgment may be issued. This relates in particular to the situation when a petition was sent together with an invitation for the preparatory hearing but respondent party did not come to the hearing although it was regularly invited.

Applicant's Allegation

20. In substance the Applicant alleges that there has been a violation of the right to a fair trial. In that respect the Applicant claims that there are several procedural principles that have been violated, such as "the principle of public hearing", "the principle of material truth" and "the principle of the use of procedural rights in good faith". The Applicant considers that the Supreme Court judgment that upheld the judgment of the District Commercial Court in Pristina violated his rights guaranteed by Articles 24, 31 and Article 32 of the Constitution in conjunction with Article 6 of the Convention.

Assessment of the admissibility of the Referral

21. In order to be able to adjudicate the Applicant's Referral, the Court needs to first 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.

22. In that respect, the Court refers to Article 113 (1) of the Constitution which provides that:

> *"The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties.*

In addition, the Court takes into consideration Rule 36 (2) b) of the Rules which 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."*

23. The Applicant complains that it has not received a fair trial complying with the guarantees of Article 6 para. 1 of the Convention, which provides, in particular:

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

24. In this regard, the Constitutional Court notes that the Applicant has used all available legal remedies prescribed by the Law on Contentious Procedure, by submitting the appeal against the Default Judgment of District Commercial Court in Pristina and that the Supreme Court in Pristina has taken into account and answered his appeals on the points of law.

25. The Court reiterates that Article 6 para 1 of the Convention enshrines the "right to a court", of which the right of access, that is the right to institute proceedings before courts in civil matters, constitutes one aspect. However, this right is not an absolute one: it may be subject to limitations, but these must not restrict or reduce the access left to the individual in such a way or to such an extent that the very essence of the right is impaired (see De Geouffre de la Pradelle v. France, the ECHR judgment of 16 December 1992, Series A no. 253-B, p. 41, para 28).

26. One of the elements of a fair hearing within the meaning of Article 6 para 1 is the right to adversarial proceedings; each party must in principle have the opportunity not only to make known any evidence needed for his claims to succeed, but also to have knowledge of and comment on all evidence adduced or observations filed with a view to influencing the court's decision (see, *inter alia*, the case Mantovanelli v. France, the ECHR judgment of 18 March 1997, Reports of Judgments and Decisions 1997-II, p. 436, para. 33).

27. The Court notes that the Applicant had an opportunity to submit the evidences both in its favor and against the Default Judgment of District Commercial Court in Pristina, but it did not use that opportunity.

28. In the present case, the Court observes that, after detailed consideration of the facts of the case, the Supreme Court found in a reasoned decision

that the Applicant had received the summon of the relevant proceedings, so that the Applicant's failure to appear before the District Commercial Court in Pristina was attributable to the Applicant's lack of diligence. In other words, if the Applicant acted diligently, it would have been able to take part in the public hearing (see, mutatis mutandis, the case of Cañete de Goñi v. Spain, Application no. 55782/00, the ECHR judgment of 15 January 2003).

29. In conclusion, the Applicant has neither built a case on a violation of any of his rights guaranteed by the Constitution nor has submitted any *prima facie* evidence of such a violation (see Vanek v. Slovak Republic, the ECHR Decision as to the Admissibility of Application no. 53363/99 of 31 May 2005).

30. Accordingly, the Court findsthat the Referral was not referred to the court in a legal manner, pursuant toArticle 113 (1) of the Constitution, and Rule 36 (2) b) of the Rules, and as such is inadmissible as *manifestly ill-founded*.

FOR THESE REASONS

The Constitutional Court pursuant to Article 113 (1) of the Constitution, Article 48 of the Law and Rule 36 (2) (d) of the Rules of the Procedure, unanimously:

DECIDES

I. TO REJECT the Referral as Inadmissible;

II. TO NOTIFY this Decision to the Parties;

III. TO PUBLISH this decision in the Official Gazette, in accordance with Article 20 (4) of the Law; and

IV. TO DECLARE this Decision immediately effective.

Judge Rapporteur	**President of the Constitutional Court**
Snezhana Botusharova	Prof. Dr. Enver Hasani

KI 25/13, Qazim Dragusha, date 18 October 2013- Constitutional review of the Decision on announcement of the final list of 20%, compiled by Privatization Agency of Kosovo

Case KI25/13, Resolution Inadmissibilty of 9 September 2013

Keywords: individual referral, manifestly ill-founded, resolution on inadmissibility

In his Referral, submitted on 1 March 2013, the Applicant alleges unreasonable length of the Civil Proceedings instituted by NTPN "Extradragusha" in 2001 before the Municipal Court in Prishtina.

The Court concludes that the Referral was not raised before the Court in a lawful manner, in accordance with Article 113. 1 of the Constitution, Article 48 of the Law and Rule 36 (2) of the Rules of Procedure, and as such is inadmissible as manifestly ill-founded because the Applicant has not substantiated sufficiently his claim.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI 25/13
Applicant
Qazim Dragusha
Request for review of the civil proceedings pending before the Municipal Court in Pristina C.no. 358/08 (delay of proceedings)

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

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

The Applicant

1. The Applicant is Qazim Dragusha from Pristina, represented by Bejtush Isufi, a lawyer practising in Pristina. The Applicant is the sole owner of NTPN 'Extradragusha', a private enterprise.

Subject matter

2. The subject matter of the Referral submitted to the Constitutional Court ("Court") is the alleged unreasonable length of the civil proceedings instituted by NTPN 'Extradragusha' in 2001 before the Municipal Court in Pristina.

Legal basis

3. The Referral is based on Art. 113.7 of the Constitution; Articles 46, 47, 48 and 49 of 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 Constitutional Court

4. On 1 March 2013, the Applicant's representative Bejtush Isufi, a lawyer practicing in Pristina submitted the Referral to the Court.

5. On 22 March 2013, the President appointed Judge Snezhana Botusharova as Judge Rapporteur and the Review Panel composed of Judges Robert Carolan (Presiding), Almiro Rodrigues and Enver Hasani

6. On 3 April 2013, the Court notified the Applicant personally that the referral had been registered with the Court. With the same letter, the Applicant was requested to submit to the Court the additional documents in support of the referral, including all decisions of the courts. The Court also asked to be provided with the written Power of Attorney that Mr Bejtush Isufi is the Applicant's authorized representative before the Constitutional Court.

7. Also on 3 April 2013, the Court notified the Basic Court in Pristina of the referral and requested it to provide a copy of the certificate of service showing the date when the Decision of the Municipal Court in Pristina C.no. 358/08 dated 6 April 2012 was served to the Applicant.

8. On 17 April 2013, Mr. Bejtush Isufi submitted to the Court a copy of the Power of Attorney given to him by the Applicant.

9. In addition to the Power of Attorney, only two documents, *i.e*. the decision of the District Court in Pristina Ac.no.699/2005 dated 26 February 2008 and the Decision of the Municipal Court in Pristina C.no.358/09 dated 6 April 2012 were attached to the written submission.

10. On 30 April 2013, the Basic Court in Pristina informed the Court that the civil case C.no. 358/08 was sent to the Basic Court in Pristina Department in Podujevo on 1 March 2013.

11. Furthermore on 8 May 2013, the Court received a letter from the Basic Court in the Pristina Department in Podujevo. With that letter the Court was informed that the Podujevo Department received the civil case C. no. 358/08 from the Basic Court in Pristina on 6 March 2013 and that the case was registered under new number C 98/13.

12. Also, the Podujevo Department of the Basic Court in Pristina provided the Court with a copy of the certificate of service, indicating that the Decision of the Municipal Court in Pristina C.no. 358/08 dated 6 April 2012, was served on the Applicant on 10 May 2012.

13. On 9 September 2013, after having considered the Report of the Judge Rapporteur, the Review Panel made a recommendation to the Court on the inadmissibility of the Referral.

The facts of the case

14. According to the Applicant's allegations, on 11 January 2001, the company NTPN Extradragusha submitted a petition to the Municipal Court in Pristina requesting, *inter alia*, recognition of its co-ownership rights in the amount of 55 % on the real estate (that is comprised of 72 commercial premises) of the shopping centre "Urimi" located in Podujevo.

15. While the Applicant did not provide the Court with a copy, it seems that on 19 October 2004, the Municipal Court in Pristina issued Decision C no.18/2001 and declared itself territorially incompetent to consider the petition of Extradragusha of 2001.

16. On an unspecified date, Extradragusha submitted an appeal against the decision on territorial incompetence of the Municipal Court in Pristina to the District Court in Pristina. The Court has not received a copy of that appeal.

17. On 26 February 2008, the District Court in Pristina issued Decision Ac. No 699/2005 and quashed the Decision C. no 18/2001 dated 19 October 2004 returning the case to the first instance Court. In the reasoning of the District Court Judgement it was stated that that the Municipal Court based its decision on territorial incompetence on the fact that the respondent party is a resident of Podujevo. However, the District Court in Pristina found that the "*appealed ruling is not just and lawful, for the reason that in Article 9 of the Contract for the conducting the works in premises …. it was agreed that in case of court dispute the territorial competent court would be the Municipal Court in Pristina*". Consequently, the District Court asserted "*the Court of the first instance shall consider the above-mentioned objections during the retrial….*"

18. On 6 April 2012, the Municipal Court in Pristina issued Decision C No.358/08 and declared itself again territorially incompetent to decide the case of Extradragusha. It stated that after the Decision became final, this matter with all the case-file documents would be submitted to the Municipal Court in Podujevo, the court with the territorial jurisdiction

for the case at hand.

19. In the reasoning, the Municipal Court referred to the reasoning of the District Court in Pristina in particular to Article 9 of the Contract on performance of work but added that in the Extradragusha's civil case the relevant provisions of the Law on Contentious Procedure (LCP) should be applied. Namely, the Municipal Court referred to Article 41.1 of the LCP according to which "*The court within whose territory is located the immovable property is exclusively competent to adjudicate the disputes that are related to the property and other property rights, disputes over obstruction to possession of immovable item, disputes over the lease of the immovable property or contracts for use of residence and working premises.*"

20. The Municipal Court in Pristina elaborated further that pursuant to Article 66.1 of the LCP, "*If the law does not determine the exclusive territorial jurisdiction of the court on the subject matter, parties may agree for the court with lack of territorial jurisdiction to proceed with first instance adjudication subject to courts jurisdiction on the subject matter.*" Finally the Municipal Court concluded that pursuant to Article 3.3 of the LCP"*The court may not approve the agreement of contesting parties that are in contradiction with the:…b) legal provisions*; …"

Applicant's Allegation

21. The Applicant alleges in the referral, and in particular in the written submission of 17 April 2013, the following *"It's been more than 12 years and the court has still not solved out the issue of who is competent to review and decide on this case. It's been almost a year and the case has not arrived yet in the Basic court in Pristine-the branch in Podujevo. It's been more than 12 years and the review of the case on merits has not yet begun and even single session has been scheduled….Even Qazim Dragusha has the right to a fair trial regarding the case with number C. No 358/2008.*"

22. The Applicant claims both in the referral and the written submission of 17 April 2013, that in the period from 2008 to 2012 he sent many letters to the Municipal Court in Pristina urging the review of the case. However, the Court did not receive any letters.

23. Consequently, the Applicant alleges that there has been a violation of Articles 22 and 31 of the Constitution as well as Article 6 of the European Convention on Human Rights.

24. The Applicant proposes to the Court "*to declare the Referral admissible and to confirm that there has been violation of Article 12 of the Constitution of the Republic of Kosovo and Article 6 of the European Convention on Human Rights and to allocate a certain amount of money for the compensation of damage.*"

Assessment of the admissibility of the Referral

25. In order to be able to adjudicate the Applicant's Referral the Court needs to first 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.

26. In this respect, the Court refers to Article 113 (1), which states that:

> *"Constitutional Court decides only on matters referred the court in a legal manner by authorized parties".*

27. The Court notes at the outset that both in the referral and in the written submission of 17 April 2013, it was clearly stated that the Applicant in the proceedings before the Constituional Court is Qazim Dragusha and not the company Extradragusha, the petitioner in the civil proceedings that is the subject of the referral.

28. The Court would like to recall that, 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*." (See also the Resolution in case No.KI.41/09 AAB-RIIVEST University of 27 January 2010)**.**

29. The Court recalls that the term "victim" in Article 34 of the Convention denotes the person directly affected by the act or omission which is at issue (see the case *Eckle v. Germany*, ECHR judgment of 15 July 1982, Series A no. 51, p. 30, para. 66). The Court further recalls that disregarding a company's legal personality as regards the question of being the "person" directly affected will be justified only in exceptional circumstances, in particular where it is clearly established that it is impossible for the company to apply to the Court through the organs set up under its articles of incorporation or – in the event of liquidation or bankruptcy – through its liquidators or trustees in bankruptcy (see the case *Agrotexim and Others v. Greece*, ECHR judgment of 24 October 1995, Series A no. 330, p. 25, para. 66).

30. The Court notes that the Applicant is the sole owner of the company Extradragusha and has, therefore, a direct personal interest in the subject - matter of the referral (see *G.J. v. Luxembourg*, no. 21156.93 para 24, 26 October 2000).

31. Therefore, the Court finds that in the circumstances of the present case the Applicant may claim to be a victim of the alleged violations of the Convention affecting the rights of Extradragusha.

Issue of alleged unreasonable length of civil proceedings before the Municipal Court in Pristina

32. For the purposes of the proceedings before the Constitutional Court the Court observes that the civil proceedings the Applicant complains of commenced on 11 January 2001. However, the period which falls within the Court's jurisdiction begins on 15 June 2008 when the Constitution entered into force (see, mutatis mutandis, Horvat v. Croatia, no. 51585/89 para 50, ECHR - 2001-VIII). The proceedings before the Municipal Court in Pristina that the Applicant's complains ended on 1 March 2013. Therefore a period of four years, eight months and fifteen days falls to be examined by the Court.

33. The Court reiterates that in order to determine the reasonableness of the length of time in question, regard must be had to the state of the case on 14 June 2008 (see, among other authorities, the case Styranowski v. Poland, no. 28616/95, § 46, ECHR 1998-VIII).

34. The Court further reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the criteria established by its case-law, particularly the complexity of the case, the conduct of the Applicant and of the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, Frydlender v. France [GC], no. 30979/96 para 43, ECHR 2000-VII).

35. The Court notes that in the period to be taken into account one decision was issued in the Extradragusha case, i.e. decision of the Municipal Court in Pristina on 6 April 2012, and that after it was finalised together with all court case- file was sent to the Municipal Court in Pristina Branch Podujevo as the territorial competent on 1 March 2013, i.e. the same date when the referral was lodged to the Constitutional Court.

36. The Court notes at the outset that there is appears to be a delay in deciding on issue of territorial jurisdiction by the Municipal Court in Pristina.

37. The Court reiterates that Article 6 para 1 imposes on the Contracting States the duty to organise their judicial systems in such a way that their courts can meet each of its requirements, including the obligation to hear cases within a reasonable time (Frydlender v. France, op. cit., para 45).

38. As to Extradragusha's conduct, the Court refers to its jurisprudence established in the case Vasic (see the Resolution on Inadmissibility of 13 July 2012) that referred case-law of the European Court on Human Rights as follows, " *However, even if the national court itself is responsible for the delays in proceedings, the Applicant has to have objected thereto in order to prove undue delay... and that he would not be held responsible for the undue delay*".

38. The Court notes that while the Applicant claims that he objected to the delay related to the period from 2008-2012, he has not showed the Court that he has exhausted all effective legal remedies available under applicable law pursuant to Article 113.7 of the Constitution .

39. The Court also notes that the whole dispute of territorial jurisdiction was initiated by the Applicant and was eventually solved on 6 April 2012.

40. Having regard to all circumstances of the case, the Court concludes that the Applicant did not substantiate violation of his right to fair trial due to unreasonable time as regards to the civil court proceedings before the Municipal Court in Pristina.

41. 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.*"

42. Accordingly, the Court finds that the Referral was not referred to the Court in a legal manner, pursuant toArticle 113 (1) of the Constitution, Article 48 of the Law and Rule 36 (2) (d) of the Rules, and as such is inadmissible as *manifestly ill-founded* since the Applicant did not sufficiently substantiate his claim.

FOR THESE REASONS

The Constitutional Court pursuant to Article 113 (1) of the Constitution, Article 48 of the Law and Rule 36 (2) (d) of the Rules of the Procedure, unanimously:

DECIDES

I. TO REJECT the Referral as Inadmissible;

II. TO NOTIFY this Decision to the Parties;

III. TO PUBLISH this decision in the Official Gazette, in accordance with Article 20 (4) of the Law; and

IV. TO DECLARE this Decision immediately effective.

Judge Rapporteur	**President of the Constitutional Court**
Snezhana Botusharova	Prof. Dr. Enver Hasani

KI 87/13, Fatmire Azemi, date 18 October 2013 - Constitutional Review of the Decision of the Supreme Court of the Republic of Kosovo, Rev.nr.13/2010, dated 4 February 2013

Case KI87/13, Resolution on Inadmissibility, 13 September 2013.

Keywords: Individual Referral, non-exhaustion of ordinary legal remedies

The Applicant, Ms. Fatmire Azemi, filed the Referral based on Article 113.7 of the Constitution of Kosovo, challenging the Judgment of the Supreme Court of the Republic of Kosovo, Rev. no. 13/2010, of 4 February 2013, by which her rights have allegedly been violated but does not mention any specific Article of the Constitution with regards to the alleged violations.

The Court concluded that the Referral does not meet the admissibility criteria because the Applicant has not exhausted all legal remedies since the case, at the time of rendering this resolution, was still in progress in the regular courts. Therefore, the Court decided that the Applicant has not exhausted all legal remedies in compliance with Rule 36 (1) (a) of the Rules of Procedure, and the Referral as such is inadmissible.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI 87/13
Applicant
Fatmire Azemi
Constitutional Review of the Decision of the Supreme Court of the Republic of Kosovo, Rev.nr.13/2010, dated 4 February 2013

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Enver Hasani, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Kadri Kryeziu, Judge and
Arta Rama-Hajrizi, Judge.

The Applicant

1. The referral was filed by Ms. Fatmire Azemi resident in Podujevo. The Applicant is not represented.

Challenged decisions

2. The Applicant challenges the decision of the Supreme Court of Kosovo, Rev.nr.13/2010, dated 4 February 2013.

3. This decision was notified to the Applicant on 29 April 2013.

Subject matter

4. The Applicant complains that she received an award of one half of the joint property by the regular courts in first and second instance but that the courts refuse to execute these judicial decisions. The Referral does not mention any specific Article of the Constitution with regards to the alleged violations.

Legal basis

5. The Referral is based on Article 113.7 of Constitution, and Articles 46, 47, 48, 49 and 50 of the Law

Proceedings before the Court

6. On 18 June 2013, the Applicant submitted the Referral to the Court.

7. On 19 June 2013, the President appointed Judge Snezhana Botusharova as Judge Rapporteur and the Review Panel composed of Judges Altay Suroy (Presiding), Kadri Kryeziu and Arta Rama.

8. On 9 July 2013, the Secretariat notified the Applicant and the Supreme Court of the Referral.

9. On 13 September 2013, the Review Panel considered the report of Judge Rapporteur and made a recommendation to full Court on the inadmissibility of the Referral.

Summary of facts

10. Between 1992 and 2004, the Applicant lived in a 'factual relationship' with I.G. The couple had two children. At some point in 2004 the 'factual relationship' broke down. The Applicant retained custody of the two children.

11. On 27 December 2006, the Applicant filed a claim with the Municipal Court of Prishtina against Respondent, I.G., requesting half of the joint property acquired during their 'factual relationship' from 1992 to 2004.

12. The Applicant claimed that based on her contribution to their 'factual relationship', she was entitled to one-half of the profits of the business enterprises of her husband, and one-half of the value of the immovable properties purchased during that time. The Applicant based her claim on the fact that during their relationship the Applicant took care of the parents of the respondent and of the respondent himself, while leaving the Respondent free to establish two business enterprises, "Deluxe Commerce" and "Kristal Glass".

13. On 15 November 2007, by Judgment C.nr.2787/06, the Municipal Court rendered a Judgement approving partially the Applicant's claims. The

Municipal Court had conducted a hearing at which the Respondent did not appear. The Municipal Court based its Judgment on a financial expertise prepared at the behest of the Municipal Court.

14. In its Judgment, the Municipal Court awarded the Applicant *"[...] one-half of the profit acquired in the activity of the NTP "Deluxe Commerce", established by the Respondent, to the amount of 118,269.89 Euros"*. The Municipal Court ordered the Respondent *"to pay the allocated amount and procedural costs of 556.60 Euros within a deadline of 15 days from rendering of judgment under the liability of forced execution"*. The Municipal Court rejected as ungrounded the Applicant's claims to a one-half share of the immovable property of 50 ares (100 m2), located in the village of Doberdol, Municipality of Podujevo, one-half share of the property in Llapnaselle of 53 ares, as well as one-half share of the value of a truck, and one-half share of the value of a vehicle "Volkswagen Passat".

15. Against this Judgment of the Municipal Court, the Respondent, I.G., filed an appeal with the District Court in Prishtina, claiming that the Municipal Court Judgment had been taken on the basis of an erroneous and incomplete ascertainment of the factual situation, and an erroneous application of substantive law.

16. On 30 October 2009, the District Court, by Judgement Ac.nr.230/2008, rejected the appeal as ungrounded and confirmed the Judgment of the Municipal Court.

17. On 24 November 2009, the Applicant filed execution proceedings with the Municipal Court of Prishtina requesting it to order the Respondent, I.G., *"to pay the amount of 118,269.89 Euros, and the contested procedure costs to the amount of 556.50 Euros, and the executive procedure costs as calculated by the Court, all under the liability of forced execution"*.

18. The Respondent party, I.G., submitted a request for Revision with the Supreme Court against the Judgement of the District Court. The Respondent claimed that the District Court had committed substantial violations of contested procedure provisions, and had erroneously applied the substantive law. The Respondent requested that both judgments be quashed and that the case be reopened at the first instance court.

19. On 4 February 2013, the Supreme Court, by decision Rev.nr.13/2010, *"approved the revision of the respondent and quashed the Judgement*

of the District Court in Prishtina, Ac.nr.230/2008, of 20 October 2009 and the Judgment of the Municipal Court in Prishtina, C.nr.2787/06, of 15 November 2007, and reopened the case at first instance". The Supreme Court reasoned that the factual situation had not been correctly ascertained due to substantial violations of contested procedure provisions and the erroneous application of substantive law.

20. The Supreme Court reasoned that:

"Pursuant to Article 307, paragraphs 1 and 2 of the Law on Marriage and Family Relations, the property and assets acquired by work during the marriage, and the incomes from such assets and properties, are joint property of both members. Joint property is composed of all real rights and liabilities. Article 325 of the Law provides that legal provisions related to joint property of spouses in a marriage equally apply to factual relations. According to these provisions, two conditions must be met for the existence of joint property of spouses: (a) labour, and (b) marriage. The labour may be joint and individual, and it can also be direct and indirect. In ascertaining the contribution of spouses, all circumstances must be considered, such as personal incomes, assistance of one spouse to the other, managing home works, care for the children and maintenance of assets. The first instance court has assessed that the contribution to the joint property was equal between spouses, and not by contribution. In assessing the contribution of the spouses, all circumstances must be considered, such as personal incomes, assistance of one spouse to the other, managing home works, care for the children and maintenance of assets, and these are not assessed comprehensively by the lower instance court, why is the contribution of the plaintiff equal. In this sense, the first instance court does not evaluate, and fails to provide any convincing reason on what it has considered to be the contribution of the plaintiff in the profits of the business lead by the respondent, but it finds that the contribution is equal, and not by the contribution itself. Therefore, the lower instance court must assess all circumstances in defining the contribution of the plaintiff in the profits of the business registered and lead by the respondent, in a repeated procedure for the case, and it must take into account the fact that the respondent had lead the business of "Deluxe Commerce", and how much has the plaintiff assisted in acquiring the revenues from the business, what was the contribution of the plaintiff on the incomes of the company, house works, care for the children and maintenance of the assets, and then designate the contribution of the plaintiff based on her work."

Applicants' allegations

21. The Applicant alleges that, although the Municipal Court in Prishtina rendered its Judgment (C.nr.2787/06) on 15 November 2007 approving partially her claims, and although this judgment was confirmed on 20 October 2009 (Ac.nr.230/2008)by the District Court in Prishtina, the execution never took place despite her consistent requests for information from the court.

22. The Applicant further alleges that the Supreme Court quashed the Judgments of the Municipal Court (C.nr.2787/06) and of the District Court (Ac.nr.230/2008), respectively, 5 years after the original Judgment.

23. The Applicant complains that: *"Against me and two minor girls, physical and psychological violence has been inflicted, we have no food or home to live in, and our basic rights were violated, the human right to live was violated, and the part that belonged to me, as a wife, and two of my daughters, was taken."*

Assessment of the Admissibility of the Referral

24. 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.

25. Article 113 (1) and (7) of the Constitution determine the general framework in order for the Referral to be deemed admissible:

> *"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."*

26. Article 47 (2) of the Law also provides that:

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

27. Furthermore, Rule 36 (1) of the Rules 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. The Court wishes to emphasize that the rationale for the exhaustion rule, as interpreted by the European Court of Human Rights (see Article 53 of the Constitution) is to afford the authorities concerned, including the Court, 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 effective remedy of the violation of constitutional rights. This is an important aspect of the subsidiary character of the Constitution (see case KI 41/09, Applicant AAB-RIINVEST University L.L.C., Prishtina, Resolution of 27 January 2010; also, *mutatis mutandis*, Selmouni v. France, no. 25803/94, ECtHR Judgment of 28 July 1999).

29. As to the present case, the Applicant submitted her Referral challenging the failure to execute the Judgment of the Municipal Court in Prishtina (C.nr.2787/06), arguing that her right to live and to benefit from one-half share in the joint property that belonged to her and her two daughters was taken. The Applicant has not invoked any Article of the Constitution or of the ECHR.

30. The Court notes that the decision of the Supreme Court (Rev.nr.13/2010) found defects in the application of law and the identification of the facts in the Judgments of the first and second instance courts. The Supreme Court sent the entire case back to the first instance court for a complete re-hearing.

31. In these circumstances, the Court finds that the matter is still in progress in the regular courts. The Applicant's claims remain to be addressed in this re-opened proceeding before the regular courts.

32. It follows that the Applicant has not exhausted all legal remedies in compliance with the Rule 36 (1) (a) of the Rules, 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 Rules 36.1 (a) and 56.2 of the Rules of Procedure, on 13 September 2013, 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
Snezhana Botusharova

President of the Constitutional Court
Prof. dr. Enver Hasani

KI 24/13, Gani Visoka and Ismail Zhitia, date 21 October 2013- Constitutional review of the Decision of the Appellate Panel of the Special Chamber of the Supreme CourtASC-11-0035, dated 23 November 2012

KI24/13, Resolution on Inadmissibility of 18 October 2013

Keywords: Individual referral, manifestly ill-founded

The Applicants allege that the Appellate Panel of the Special Chamber of the Supreme Court violated their rights to a fair and impartial trial as guaranteed by Article 31 of the Constitution and Article 6 (1) of ECHR.

The Applicants allege that the Appellate Panel of the SCSC had denied them a fair hearing on the merits of their complaint, because their complaints regarding the workers list had been declared inadmissible because out of time.

The Applicants argue that, when the original list, as published on 4, 5 and 7 March 2009, had been declared null and invalidated by the Trial Panel of the SCSC, thereby the deadline for submission of complaints against this list had also become null and invalid. When the PAK informed the Special Chamber on 15 October 2009 that a revised list had been adopted, automatically a new deadline should have come into effect for the submission of complaints. It should be considered irrelevant that the revised list was identical to the original list.

The Applicants further argue that the Special Chamber of the Supreme Court, by reverting back to the original deadline for the submission of complaints against the original list, had invalidated their complaints, and thereby denied them a hearing on the merits of their claims.

The Constitutional Court finds that the Applicants' claims have not been substantiated and must be rejected as manifestly ill-founded.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI24/13
Applicants
Gani Visoka and Ismajl Zhitia
Constitutional review
of the Decision of the Appellate Panel of the Special Chamber
of the Supreme Court ASC-11-0035,
dated 23 November 2012

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Enver Hasani, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Kadri Kryeziu, Judge, and
Arta Rama-Hajrizi, Judge.

The Applicants

1. The Referral was submitted by Gani Visoka and Ismajl Zhitia, both residents of the village of Konushec, Podujevo Municipality.

Challenged decision

2. The Applicants challenge the Decision of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo (ASC-11-0035), dated 23 November 2012. This Decision was served on each applicant individually on 09 January 2013.

Subject matter

3. The Applicants allege that the Decision of the Appellate Panel of the Special Chamber of the Supreme Court, rejecting the Applicants' requests for recognition as workers of the privatized Socially Owned Enterprise *Ramiz Sadiku*, violated their rights to a fair and impartial trial as guaranteed by Article 31 of the Constitution and Article 6 (1) of the European Convention on Human Rights (hereinafter, the ECHR).

Legal basis

4. The Referral is based on Article 113 (7) of the Constitution, Articles 47, 48 and 49 of Law No. 03/L-121 on the Constitutional Court (hereinafter, the Law), and Rules 28, 29 and 30 of the Rules of Procedure of the Constitutional Court (hereinafter, the Rules).

Proceedings before the Court

5. On 28 February 2013, the Applicants submitted the Referral to the Court.

6. On 01 March 2013, the President appointed Judge Almiro Rodrigues as Judge Rapporteur and the Review Panel composed of Judges Altay Suroy (presiding), Kadri Kryeziu and Arta Rama-Hajrizi.

7. On 05 March 2013, each Applicant submitted additional documentation to the Court.

8. On 26 March 2013, the Constitutional Court informed the Applicants, the Privatization Agency of Kosovo (PAK) and the Special Chamber of the Supreme Court of Kosovo of the registration of the Referral. The Court requested the Special Chamber of the Supreme Court to provide copies of the return receipt of service of the Decision of the Appellate Panel of the Special Chamber of the Supreme Court.

9. On 29 March 2013, the Special Chamber of the Supreme Court provided the Court with copies of the return receipts indicating the date of service on the Applicants of the Appellate Panel Decision.

10. On 09 September 2013, the Review Panel considered the Report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

The facts of the case

11. At some point in time, the Applicants were employed as workers of the Socially Owned Enterprise *Ramiz Sadiku*, in Pristina.

12. On 27 June 2006, the Socially Owned Enterprise *Ramiz Sadiku* was privatized.

13. On 4, 5 and 7 March 2009, the PAK published a final list of eligible employees entitled to share in the benefit from the fund of 20% of the proceeds of the privatization. The final deadline for filing a complaint against this list was 27 March 2009.

14. On 11 June 2009, the Trial Panel of the Special Chamber of the Supreme Court (SCSC) declared this list to be 'null and invalidated', because the Review Committee compiling this list was not lawfully composed. The Trial Panel instructed the PAK to compose a new Review Committee which should compile a new list of eligible workers. However, if the new list would be identical to the original list, the PAK would not be required to publish the new list, but merely to inform the SCSC.

15. The Decision of the Trial Panel of the SCSC further specified that:

> *"Any complainant aggrieved by his/her non-inclusion in the published list and who has already filed a complaint in this matter with the Special Chamber does not need to file a new complaint with the Chamber."*

16. On 18 June 2009, this Decision of the Trial Panel of the SCSC was published in the daily newspaper *Koha Ditore*, accompanied by the abovementioned informative text.

17. On 22 July 2009, Applicant Gani Visoka filed a complaint with the SCSC regarding his non-inclusion in the original list of eligible employees.

18. On 29 September 2009, the PAK, in accordance with the Decision of the Trial Panel of the SCSC, apparently composed a new Review Committee, which proceeded to adopt a revision of the list of eligible workers.

19. On 13 October 2009, Applicant Ismajl Zhitia filed a complaint with the SCSC regarding his non-inclusion in the original list of eligible employees.

20. On 15 October 2009, the PAK informed the SCSC that the new Review Committee had adopted a revised list and that there were no variations to the original published list of eligible workers.

21. The revised list was not published, in accordance with the Decision of the Trial Panel of the SCSC of 11 June 2009. However, a notification of the adoption of a revised list was published. The published notification further specified:

> *"Any complainant aggrieved by his/her non-inclusion in the published list and who has already filed a complaint in this matter with the Special Chamber does not need to file a new complaint with the Chamber."*

22. On 22 March 2010, the Trial Panel of the SCSC issued an order to all complainants who had filed a complaint outside of the legal deadline, to provide the Trial Panel with explanations giving the reasons for missing the deadline.

23. On 24 February 2011, the Trial Panel of the SCSC (SCEL-09-0001) dismissed the Applicants' complaints (along with the complaints of 181 other persons) as having been submitted out of the established deadline of 27 March2009. The Trial Panel considered that claimants who showed valid reasons could still be considered to have submitted their complaints on time, by application of the relevant rules contained in Articles 117 and 118 of the Law on Contested Proceedings (Official Gazette 4/77-1478) for the claimants to be 'restored to the previous position'.

24. The Trial Panel specifically did not consider the merits of the Applicants' complaints, reasoning that:

> *"Takinginto accountthat the complaintwasfiledthreemonthsafter theexpiration ofthe deadlineforfiling a complaint(the deadlineforfiling a complainthadexpiredon 27 March2009), based on the reasons mentionedabove inparagraphs(2) and(4) of the "legal reasoning" of thisdecision, the claim forrestorationto the previous position cannot be approved and the complaint is consideredas out of time, therefore, the complaint is dismissedas inadmissible."*

25. The Applicants both submitted appeals to the Appellate Panel of the SCSC, arguing that, as the original list of 4, 5 and 7 March 2009 had been declared 'null and invalidated', the deadline of 27 March 2009 had also become null and invalid. Following the communication, on 15 October 2009, by the PAK to the SCSC of the revised list, a new deadline should come into effect based on this date.

26. On 23 November 2012, the Appellate Panel of the SCSC (ASC-11-0035) declared the Applicants' appeals admissible but ungrounded, reasoning that:

> *"The Trial panel correctly assessed that the complaint against the final list, which [the Applicant] filed after 27 March 2009, was untimely. As the Appellant did not submit a motion for restitution to the Trial Panel it is of no relevance whether he missed the deadline by his fault or not."*

27. The Appellate Panel further reasoned that:

> *"The Trial Panel clarified in the decision on 24 February 2011 that it would only examine the justifications alleged by Complainants filed with the Trial Panel until 27 June 2009 and only in case the Complainants replied timely to the order for clarification. The Trial Panel explained that all complaints filed after 27 June 2009 should be considered definitely untimely and inadmissible. The Trial panel also came to the conclusion that the untimely complaints cannot be implied as requests for restitution to the previous position, based on Articles 117 and 118 of the Law on Contested Procedure (published in the Official Gazette 4/77-1478, as amended, LCP) and on Section 70.3 of UNMIK Administrative Direction (AD) 2008/6, given that they were submitted with a delay of more than three months from the omission to complain against the list. A restoration to the previous position cannot, according to the Trial Panel, be requested any more after that time. The Complainants who complained after 27 June 2009 were not issued any sort of order to provide clarifications for the reasons of missing the legal deadline."*

The legal arguments presented by the Applicant

28. The Applicants claim that the Appellate Panel of the Special Chamber of the Supreme Court violated their rights to a fair and impartial trial as guaranteed by Article 31 of the Constitution and Article 6(1) of the ECHR.

29. The Applicants contend that the Appellate Panel of the SCSC had denied them a fair hearing on the merits of their complaints, because their complaints regarding the workers list had been declared inadmissible because out of time,.

30. The Applicants argue that, when the original list, as published on 4, 5 and 7 March 2009, had been declared null and invalidated by the Trial Panel of the SCSC, thereby the deadline for submission of complaints against this list had also become null and invalid. When the PAK informed the Special Chamber on 15 October 2009 that a revised list

had been adopted, automatically a new deadline should have come into effect for the submission of complaints. It should be considered irrelevant that the revised list was identical to the original list.

31. The Applicants further argue that the Special Chamber of the Supreme Court, by reverting back to the original deadline for the submission of complaints against the original list, had invalidated their complaints, and thereby denied them a hearing on the merits of their claims.

Admissibility of the Referral

32. The Court examines whether the Applicants have fulfilled the admissibility requirements set out in the Constitution, and as further specified in the Law and the Rules.

33. In the case, the Court has specifically to determine whether the Applicants have met the requirements of Article 113 (1) of the Constitution and Article 49 of the Law and of Rule 36 (1) (b) of the Rules.

34. The Court refers to Article 113 of the Constitution, which establishes:

> *58. "The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties.*
>
> [...]
>
> *9. 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."*

35. The Applicants are authorized parties and have exhausted all legal remedies provided by law.

36. Article 48 of the Law on the Constitutional Court also establishes that,

> *"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 a public authority is subject to challenge".*

37. In addition, Rule 36 (2) of the Rules provides that,

"The Court shall reject a Referral as being manifestly ill-founded when it is satisfied that:

[...], or

(b) when the presented facts do not in any way justify the allegation of a violation of the constitutional rights, or

[...], or

(d) when the Applicant does not sufficiently substantiate his claim;"

38. As seen above, the Applicants allege that their right to a fair trial has been violated because the Appellate Panel of the SCSC rejected as ungrounded their complaints as being out of time.

39. However, the Court considers that the Applicants have not shown why and how their right to a fair trial was violated nor have they substantiated their allegation on that violation.

40. On the other hand, the Court notes that the Trial and Appelate Panels of the SCSC thoroughly and reasonably explained why the Applicants' complaints were rejected as inadmissible because out of time.

41. The mere fact that the Applicants are dissatisfied with the outcome of the case cannot raise an arguable claim of a breach of Article 31 of the Constitution or of Article 6 (1) of the European Convention on Human Rights (see Memetoviq v. Supreme Court of Kosovo, KI 50/10, 21 March 2011; see, *mutatis mutandis,* Mezotur-Tiszazugi Tarsulat v. Hungary, ECtHR App. No. 5503/02, 26 July 2005).

42. In this connection, 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 the regular courts. It is the role of the regular courts to interpret and apply the pertinent rules of both procedural and substantive law (see Avdyli v. Supreme Court of Kosovo, KI 13/09, 18 June 2010; see *mutatis mutandis* García Ruiz v. Spain [GC], no. 30544/96, para. 28, European Court of Human Rights 1999-1).

43. The Constitutional Court can only consider whether the evidence has been presented in such a manner that the proceedings in general, viewed in the entirety, have been conducted in such a way that the Applicants

had a fair trial (see, *inter alia*, European Commission of Human Rights, Edwards v. United Kingdom, App. No. 13071/87, 10 July 1991).

44. In the present case, the Applicants were afforded ample opportunities to present their case and to contest the interpretation of the law which they considered incorrect, before the Trial Panel and the Appellate Panel of the Special Chamber of the Supreme Court. The interpretation of the legal deadline for the filing of a complaint against the list of eligible workers to benefit from the proceeds of the privatization of a Socially Owned Enterprise is a matter for the Special Chamber to determine, and falls outside the scope of constitutional review of the right to a fair and impartial trial by the Court.

45. The Constitutional Court finds that the relevant proceedings were fair and not tainted by arbitrariness (see *mutatis mutandis*, Shub v. Lithuania, ECtHR App. No. 17064/06, 30 June 2009). In addition, nothing is found in the Referral indicating that the Trial and Appelate Panels of the SCSC lacked impartiality or that the proceedings were otherwise unfair.

46. Therefore, the Constitutional Court finds that the Applicants' claims have not been substantiated and must be dismissed as manifestly ill-founded.

FOR THESE REASONS,

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 46 of the Law and Rule 36.2 (b) of the Rules of Procedure, on 9 September 2013, unanimously

DECIDES

I. TO REJECT the Referral as Inadmissible;

II. TO NOTIFY this Decision to the Parties;

III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20 (4) of the Law;

IV. TO DECLARE this Decision effective immediately.

Judge Rapporteur
Almiro Rodrigues

President of the Constitutional Court
Prof. Dr. Enver Hasani

KI 36/13, Mursel Kosumi, date 21 October 2013- Constitutional review of the Decision of the Supreme Court of Kosovo, Pkl.no.120/2012, dated 29 November 2012

Case KI 36/13, Resolution on Inadmissibility of 12 September 2013

Keywords: Individual referral, manifestly ill-founded, Resolution on inadmissibility

The Applicant alleges that the District Court on appeal, and the Supreme Court of Kosovo on the request for protection of legality, violated his right to judicial protection of his rights as guaranteed by Article 54 of the Constitution.

The Applicant alleges that the courts are required to review and assess all evidence submitted by the parties, and to include reasons in their judgments as to how the evidence has been evaluated.

The Applicant argues that the new evidence that he submitted at the District Court, namely the contract with the co-accused and the statement of the co accused, were crucial new facts that neither the District Court nor the Supreme Court took into account in their decisions. The Applicant asserts that this constitutes a denial of justice.

Furthermore, the Applicant insists that the evidence shows that he had neither the required intent to commit fraud, nor did he gain any material benefit from the alleged fraud, and that, therefore, he could not reasonably have been found guilty of this offence.

The Constitutional Court finds that the Applicant's claims have not been substantiated by evidence and must be rejected as manifestly ill-founded.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI36/13
Applicant
Mursel Kosumi
Constitutional Review
of the Decision of the Supreme Court of Kosovo, Pkl.no.120/2012, dated 29 November 2012

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

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

The Applicant

1. The Applicant is Mursel Kosumi, resident of Podujevo.

Challenged decision

2. The Applicant challenges the Decision of the Supreme Court, Pkl.no.120/2012, dated 29 November 2012.

Subject matter

3. The Applicant alleges that the aforementioned Decisionviolated his rights guaranteed by the Constitution, namely Article 32 [Right to Legal Remedies], Article 53 [Interpretation of Human Rights Provisions], and Article 54 [Judicial Protection of Rights].

Legal basis

4. The Referral is based on 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: the Law), and Rule 56, paragraph 2, of the Rules of Procedure (hereinafter: the Rules).

Proceedings before the Constitutional Court

5. On 12 March 2013, the Applicant submitted the Referral to the Court.

6. On 25 March 2013, the President appointed Judge Robert Carolan as Judge Rapporteur and the Review Panel composed of Judges Snezhana Botusharova (presiding), Kadri Kryeziu and Arta Rama-Hajrizi.

7. On 29 March 2013, the Referral was communicated to the Supreme Court, which to this date has not submitted any comments.

8. On 12 September 2013, the Review Panel considered the Report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

The facts of the case

9. It appears from the file that, on or around 09 August 2011, the Applicant introduced FB to BB, of the construction supply company N.P.SH. "Zhitija com" of Obiliq. The Applicant claimed, or supported the claim, that FB was a foreign resident and the owner of a hotel in Podujevo, and that FB wished to purchase cement paving tiles for his hotel.

10. On 09 August 2011, FB signed a contract with BB for the purchase of 1,500 square meters of cement tiles, at a total price of 9,000.— EUR. The Applicant gave to BB a verbal guarantee for the payment of the purchase price in the event that FB failed to pay. BB had done business with the Applicant before, and therefore trusted him at his word.

11. The cement tiles were subsequently delivered to the Applicant, who used them to pave the grounds around the hotel and house owned by MI of Podujevo. The paving of the grounds around the hotel with cement tiles was the result of an earlier agreement between the Applicant and MI, and intended as compensation for the transfer to the Applicant of six vehicles belonging to MI, at a value of 11,600.—EUR.

12. On 26 August 2011, FB approached BB with a request to purchase an excavator. BB asked the Applicant if FB could be trusted to pay, and the Applicant apparently responded that FB had money and would pay. BB signed a contract with FB for the purchase of an excavator at a price of

12,000.— EUR. Thereupon, FB paid an initial 2,000.— EUR and took delivery of the excavator.

13. On 04 September 2011, FB sold the excavator to a scrap metal company in Fushe Kosove for 4,200.—EUR.

14. At some point, BB asked the Applicant when he would be paid for the cement tiles. Allegedly, the Applicant replied that FB had fled the country. BB then went to visit the location where the cement tiles had been delivered. There, he met MI and discovered that FB was not the owner of a hotel. At this point, BB apparently reported the Applicant and FB to the proper authorities, accusing them of fraud.

15. On 29 September 2011, the Municipal Public Prosecution Office in Pristina submitted an indictment against the Applicant and FB as co-perpetrators of the crime of fraud.

16. On 14 October 2011, the Municipal Court in Pristina confirmed the indictment against the Applicant.

17. On 05 December 2011, the Municipal Court of Pristina (P.no.2840/11) convicted the Applicant as co-perpetrator of the crime of fraud. The Applicant was sentenced to one (1) year of imprisonment, but execution of this sentence was suspended provided that the Applicant pays the sum of 9,000.—EUR to the victim (BB) within six months of this verdict becoming final, and provided that the Applicant does not commit any new criminal offences within two (2) years from the day this verdict becomes final.

18. The Applicant submitted an appeal against both the conviction and sentence to the District Court in Pristina. The appeal alleged that the first instance court had committed substantive violations of law, *inter alia*, in relation to the criminal offence, and had not correctly determined the facts. The Applicant claimed that he had been engaged in regular business transactions and had not had the required intent to commit fraud. He also claimed that he had not benefitted from the alleged fraud.

19. In support of his claim the Applicant filed new evidence, namely a contract, signed on 10 August 2011, between himself and co-accused FB. This contract provides that the Applicant has possession of five (5) vehicles, which shall be given in exchange for the 1,500 square meters of concrete tiles possessed by FB. The agreement is accompanied by a declaration, signed by FB and dated 20 December 2011. This declaration

states that the value of the exchanged items was jointly assessed at 9,000.—EUR, and that the terms of the agreement have been fulfilled in full by the parties. Both the contract and the declaration were witnessed by an attorney.

20. On 10 May 2012, the District Court of Pristina (AP.no.15/2012) declared the Applicant's appeal ungrounded and confirmed in full the decision on conviction and sentence of the Municipal Court (P.no.2840/11). Regarding the alleged violations of the provisions of criminal law, the Court stated:

> *"[...] the challenged judgment is concrete and clear, does not contain internal contradictions, nor with respect to the reasoning given in the judgment. [...] the court of first instance has described the factual situation, which is upheld [by this court], and gave clear and convincing reasons for such a determination of the facts, gave its evaluation on the elaborated evidence by justifying why it takes some facts as certified, it evaluated the arguments of the accused and then justified clearly why it does not accept the version of their defence, and this reasoning is also accepted by this court. [...]*
>
> *In evaluating the grounds of appeal [of the accused], that the challenged judgment made an erroneous and incomplete evaluation of the factual situation, this court finds these claims to be ungrounded. The approach of the first instance court towards the administered evidence, as well as regarding crucial facts, was correct and lawful, and is accepted by this court. [...]"*

21. The Applicant submitted a request for protection of legality with the Supreme Court against the final judgment of the Municipal Court (P.no.2840/11) and against the judgment of the District Court (AP.no.15/2012). The Applicant claimed, *inter* alia, that the decisions of the first and second instance courts had violated substantive provisions of the criminal code. In particular, the Applicant claimed that the District Court had failed to take into consideration the new evidence demonstrating his innocence which he had submitted.

22. On 29 November 2012, the Supreme Court (Pkl.no.120/2012) rejected as ungrounded the Applicant's request for protection of legality. The Supreme Court considered that the request did not present any reasons justifying his allegation of a violation of criminal law provisions, but instead it found that *"[...] the entire text of the request is oriented more*

in relation to segments of facts that the adjudicated party has not undertaken any action to deceive the injured party."

23. In this regard, the Supreme Court stated:

> *"In this legal-criminal matter the court of first instance, and also the court of second instance, correctly and completely evaluated all incriminating offences of the adjudicated and correctly assessed that in his actions are constituted the elements of the criminal offence for which he was found guilty, and this court admits them as correct and well-grounded. The element of will in actions of the adjudicated are manifested that now the adjudicated [party] [...], by previous agreement agreed to deceive and induce the injured [party] to act to the detriment of his property, by representing falsely FB as the owner of a hotel.., who by trusting [the adjudicated party], whom he knew previously, signs a contract with FB to sell the cement tiles at the amount of 1,500 m2 (one thousand and five hundred square meters) in the value of €9,000, and which tiles [the adjudicated party] paves in front of hotel of MI, and for this signs a contract with MI for purchasing of six vehicles at the amount of €11,600 (eleven thousand and six hundred Euros), in which case caused damage to the injured [party] to the amount of €9,000 (nine thousand Euros).*
>
> *The Supreme Court of Kosovo admits in entirety the legal stance of the court of first instance and the second instance, as expressed in their judgments, with regard to criminal responsibility of the accused and that through his actions constitute objective and subjective elements of the criminal offence of fraud pursuant to Article 261 paragraph 1 in conjunction with Article 23 of the CCK, since the actions he undertook clearly had a deceiving purpose in relation to the injured [party]."*

The legal arguments presented by the Applicant

24. The Applicant alleges that the District Court on appeal, and the Supreme Court of Kosovo on the request for protection of legality, violated his right to judicial protection of his rights as guaranteed by Article 54 of the Constitution.

25. The Applicant contends that the courts are required to review and assess all evidence submitted by the parties, and to include reasons in their judgments as to how the evidence has been evaluated.

26. The Applicant argues that the new evidence that he submitted at the District Court, namely the contract with the co-accused and the declaration of the co-accused, were crucial new facts that neither the District Court nor the Supreme Court took into account in their decisions. The Applicant asserts that this constitutes a denial of justice.

27. Furthermore, the Applicant insists that the evidence shows that he had neither the required intent to commit fraud, nor did he gain any material benefit from the alleged fraud, and that, therefore, he could not reasonably have been found guilty of this offence.

Admissibility of the Referral

28. The Court notes that the Applicant alleges a violation of his right to judicial protection of his rights, and he cites Articles 32, 53 and 54 of the Constitution. Based on the substance of his allegations, however, the Court finds that the Applicant is, in fact, complaining of a violation of his right to a fair and impartial trial as guaranteed by Article 31 of the Constitution. Consequently, the Court will review this Referral under that provision.

29. First of all, in order to be able to adjudicate the Applicant's Referral, the Court has to examine whether the Applicant has met all the requirements of admissibility, which are foreseen by the Constitution and further specified by the Law and the Rules.

30. Article 113 of the Constitution establishes the general frame of legal requirements for a Referral being admissible. 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."*

31. Article 48 of the Law on the Constitutional Court also establishes that

"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 a public authority is subject to challenge".

32. In addition, Rule 36 (2) of the Rules provides 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

[...], or

(d) [...] the Applicant does not sufficiently substantiate his claim;"

33. In this connection, 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 the regular courts. It is the role of the latter to interpret and apply the pertinent rules of both procedural and substantive law (see Avdyli v. Supreme Court of Kosovo, KI 13/09, 18 June 2010; see *mutatis mutandis* García Ruiz v. Spain [GC], no. 30544/96, para. 28, European Court of Human Rights 1999-1).

34. 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, *inter alia*, European Commission of Human Rights, Edwards v. United Kingdom, App. No. 13071/87, 10 July 1991).

35. In the present case, the Applicant was afforded ample opportunities to present his case and to contest the interpretation of the facts and the law which he considered incorrect, before the District Court and the Supreme Court. The Court notes that the text of the decisions of the District Court on his appeal, and the Supreme Court on his request for protection of legality, do not explicitly mention the pieces of evidence on which the Applicant bases his Referral. However, the Court finds that the decisions of both courts are reasoned and adequately address the Applicant's allegations in substance.

36. Having examined all of the criminal proceedings 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, ECtHR App. No. 17064/06, 30 June 2009).

37. The Court considers that there is nothing in the Referral which indicates that the courts hearing the case lacked impartiality or that the proceedings were otherwise unfair. The mere fact that the Applicant is dissatisfied with the outcome of the case cannot raise an arguable claim of a breach of Article 31 of the Constitution (see Memetoviq v. Supreme Court of Kosovo, KI 50/10, 21 March 2011; see *mutatis mutandis* Mezotur-Tiszazugi Tarsulat v. Hungary, ECtHR App. No. 5503/02, 26 July 2005).

38. Based on these considerations, the Court finds that the Applicant has not been a victim of a denial of judicial protection of his rights.

39. Therefore, the Constitutional Court finds that the Applicant's claims have not been substantiated and must be dismissed as manifestly ill-founded.

40. Consequently, for the reasons outlined above, the Referral is inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113 (7) of the Constitution, Article 46 of the Law and Rule 36 (2) of the Rules, on 12 September 2013, unanimously,

DECIDES

I. TO REJECT the Referral as Inadmissible;

II. TO NOTIFY this Decision to the Parties;

III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20 (4) of the Law;

IV. TO DECLARE this Decision effective immediately.

Judge Rapporteur
Robert Carolan

President of the Constitutional Court
Prof. Dr. Enver Hasani

KI 135/12, Svetozar Nikolić, date 21 October 2013- Constitutional Review of the Judgment of the Supreme Court of Kosovo, Rev. No. 36/2010 dated 12 September 2012

Case KI135/12, Resolution Inadmissibilty of 9 September 2013

Keywords: individual referral, *ratione temporis*, resolution on inadmissibility

In his Referral submitted on 27 December 2012, the Applicant requests constitutional review of the Judgment of the Supreme Court of Kosovo, Rev. No. 36/2010, of 12 September 2012, in which the Applicant requested a revision of the Judgment of the District Court in Pristina,Gz. No. 993/2008, of 2 July 2009, which was rejected.

The matter concerns the compensation of material damages to the Applicant suffered during the March 2004 events in Kosovo. Due to this, the Applicant sued the Government of Kosovo.

The Court finds that the Referral was not raised before the Court in a lawful manner, and in accordance with Article 113. 1 of the Constitution, Article 48 of the Law and Rule 36 of the Rules of Procedure, and the same is inadmissible.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI135/12
Applicant
Svetozar Nikolić
Constitutional Review of the Judgment of the Supreme Court of Kosovo,
Rev. No. 36/2010 dated 12 September 2012

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

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

Applicant

1. The Applicant is Svetozar Nikolić residing in Kraljevo, Republic of Serbia.

Challenged decision

2. The Applicant challenges the Judgment of the Supreme Court of Kosovo, Rev. No. 36/2010 dated 12 September 2012, that he received on an unspecified date in September 2012.

Subject matter

3. The subject matter of the Referral is the assessment by the Constitutional Court of the Judgment of the Supreme Court of Kosovo, Rev. No. 36/2010 dated 12 September 2012, in which the Applicant's requested a revision of the Pristina District Court Judgment Gz No. 993/2008 dated 2 July 2009, which was rejected.

4. The case concerns the compensation of material damages to the Applicant suffered during the March 2004 events in Kosovo. Due to this the Applicant sued the Government of Kosovo.

Legal Basis

5. The Referral is based on Art. 113.7 of the Constitution; Articles 46, 47, 48 and 49 of 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 27 December 2012, the Applicant submitted a referral to the Constitutional Court.

7. On 10 January 2013, the President of the Court appointed Judge Robert Carolan as Judge Rapporteur and a Review Panel composed of Judges Altay Suroy(Presiding), Almiro Rodrigues and Arta Rama-Hajrizi.

8. On 21 January 2013, the Court notified the Applicant and the Supreme Court with the registration of the referral.

9. On 6 June 2013, the Applicant submitted to the Court the 31-page written submission entitled "*Clarification of Referral Svetozar Nikolić…*".

10. On 9 September 2013, after having considered the Report of the Judge Rapporteur, the Review Panel made a recommendation to the Court on the inadmissibility of the Referral.

Summary of Facts

11. The Applicant was the owner of two houses located in the street called Vojvoda Bojović in Kosovo Polje.

12. According to the Applicant, "*during the night between the 17th and the 18th of March 2004, he was forced to leave his house due to threats of violence and terror. Immediately after the Applicant's departure, the house was looted by organized groups of assaulters and was set on fire until it burnt to its foundations, although at that time, the KFOR troops and other international factors, including the local authorities were present and responsible for security in Kosovo*."

13. Following that event, the Applicant initiated two different sets of civil proceedings to receive compensation for the damage he suffered.

14. The first set of the proceedings was finalized by the Judgment of the Supreme Court of Kosovo (Rev. No. 36/2010) on 12 September 2012. It is the constitutionality of this case that the Applicant is challenging before the Constitutional Court.

The proceedings can be summarized as follows:

15. On 14 June 2004, the Applicant submitted a claim to the Municipal Court in Pristina for the compensation of damage, against the Municipality of Pristina and the Government of Kosovo. During this proceeding, the Applicant specified his claim and requested the Municipal Court in Pristina to oblige the Government of Kosovo to compensate him the damage he suffered in the amount of 377,850 Euro with interest from the date 14 June 2004.

16. On 16 April 2008, the Municipal Court in Pristina issued judgment No. P 1295/04 and rejected the Applicant's claim as ungrounded. In the reasoning of the judgment, it was stated that "*it is view of the Court that the Government of Kosovo does not have civil law liability for damage occurred by the acts of violence that happened in Kosovo on 17 March 2004, since in this case the damage did not occur by unlawful or inappropriate work exercised by its bodies in exercising of their function.*"

17. It was further argued by the Applicant that on 17 March 2004 in Kosovo, "*KFOR and UNMIK were obliged to prevent such acts from happening. Taking into account that in accordance with Article 8 (a) of the Constitutional Framework for Kosovo issues of security and public order were under reserved powers of the SRSG, what means that KFOR and UNMIK were obliged to prevent dangers against citizens and their properties".*

18. On 17 June 2009, the Applicant submitted an appeal challenging, *inter alia*, the absence of passive legitimacy of the Government of Kosovo. The Applicant recalled that Article 180 of the Law on Obligations and Article 6 of the Constitutional Framework were applicable in the case at hand.

19. On 2 July 2009, the District Court in Kosovo rejected the Applicant's appeal as ungrounded.

20. On 30 November 2009, the Applicant submitted a revision to the Supreme Court of Kosovo and reiterated the legal arguments he raised

in his appeal to the District Court. He also added that District Court wrongly cited and interpreted the Article 8.1 (a) of the Constitutional Framework.

21. On 20 December 2010, the Applicant submitted a request for urgency to the President and Administrator of the Supreme Court in order to speed up the proceedings pending before the Supreme Court.

22. On 8 March 2011, the Applicant reiterated his request to the President and Administrator of the Supreme Court.

23. On 21 March 2011, the Administrator of the Supreme Court replied to the Applicant's request from 8 March 2011. He also informed him that the Supreme Court had received his request for urgency and revision on 28 May 2010. It was further stated by the Supreme Court Administrator that the Supreme Court "*is overburdened with cases of all subject matters, including the civil law matters. In this situation in accordance with the rules on deciding cases with priority in deciding, we strive to decide the cases of the same level of urgency following the date we receive the case. Therefore your case will be decided in accordance with these rules*."

24. On 12 September 2012, the Supreme Court issued the Judgment Rev.br 36/2010 and rejected the revision of the Applicant as ungrounded.

25. The Supreme Court found the Applicant's arguments unfounded and added that "*by the UN Resolution of Security Council 1244 …in Article 9 (d) of the Resolution it was decided that responsibility for international security presence…will be exercised by the international community.*"

26. The Supreme Court further recalled that both Article 8 of the Provisional Constitional Framework and the provisions of the Kumanovo Military Agreement, that is part of the UN Resolution 1244, provide that the United Nations and KFOR are liable for, among other things, the compensation of damages.

27. In his referral the Applicant also mentioned the second set of proceedings he initiated before the Municipal Court in Pristina also on 14 June 2004. In this case the Applicant sued for the compensation of the damage caused by the same events in 2004. However, in this case the Applicant sued UNMIK and KFOR.

28. These proceedings were finalized by the judgment of the District Court in Pristina GZ. No 176/2008 on 5 March 2010. The Applicant's appeal was rejected as ungrounded based on the UNMIK Regulation 2000/47 on the Status and Privileges and Immunities of KFOR and UNMIK and their Personnel in Kosovo which provides that for both KFOR and UNMIKtheir property, funds and assets are immune from any legal process.

Applicant's allegations

29. In his referral and the subsequent written submission of 6 June 2013, the Applicant provides a detailed account of the human rights violations that he alleged to have taken place.

30. The Applicant emphasized that "*the conduct of the court in the Republic of Kosovo has caused violation of my rights to enjoy personal property and rights to safety, because there is a duality of judicial and administrative decisions. The State has taken the responsibility of protecting the properties of citizens, and simultaneously is legal heir of international institutions of Kosovo, and legally there is no possibility of a situation in which no institution is held liable for the damage caused to my property in the 2004 riots.*"

31. The Applicant claims that from the facts of the case it appears that there has been a violation of Articles 3 and 24 [Equality before law] since "*the same court first decides and reasons that UNMIK and KFOR are liable for the damage caused, while in the second case, it negates their liability and transfers the liability to the Government of Kosovo.*

32. The Applicant also claims that his right to a fair and impartial trial, guaranteed by Article 24 of the Constitution, has also been violated. He alleges that "*two judgments of the same Court, on the same case, are in collision with each other-if there was a regular hearing that would not be allowed.*"

33. The Applicant further claims that the facts of the case proves that "*procedure held on compensation of material damage on the basis of destroyed property by terrorist acts, are left aside selectively- only for Serbian nationals.*" He therefore considers that there has been a violation of Article 32 of the Constitution, the Right to Legal Remedies .

34. In addition to this, the Applicant claims that there has been violation of Article 46 [Protection of Property] of the Constitution since he has never

realized any compensation for the damage he suffered in 2004 and since he and his family have been left without a home.

35. The Applicant further listed the following Articles of the Constitution that he considered to be violated: Article 54 (Judicial Protection of Rights), Article 56 (Fundamental Rights and Freedoms), Article 102 (General Principles of Judicial System), Article 156 (Refugees and Internally Displaced Persons), Article 19 (Applicability of International Law) and Article 53 (Interpretation of Human Rights Provisions) of the Constitution.

36. The Applicant requests the Constitutional Court to adopt a decision on the compensation of his material damage, and further to award him in the amount of 377,850 Euro as well as for immaterial damage in the amount of 33,000 Euro.

37. Consequently, the Applicant requested the Court to adjudicate his referral on the basis of the Court's judgment in the case KI 72/12 Applicants Veton Berisha and Ilfete Haziri dated 17 December 2012.

38. In his written submission of 6 June 2013, the Applicant mainly reiterated his initial allegations. He emphasized that he wants "*to complete the amendment to his referral... with new evidences on the violation of my constitutional rights, as well as the rights guaranteed by the European Convention on Human Rights...*"

39. Thus, the Applicant reiterated that the civil proceedings he initiated on 14 June 2004 were finalized only after 8 years, i.e. on 12 September 2012, when the Supreme Court issued challenged judgment the Rev. No. 36/2010. He therefore considers that there has been violation of Article 6 of the European Convention on Human Rights

40. In this respect, the Applicant submitted a detailed account of urgencies he submitted to the respective courts requesting them to speed up of the procedure at issue.

Assessment of the Admissibility of the Referral

Preliminary Issue:

41. As the preliminary issue the Court recalls the Applicant's request to adjudicate his referral based on the Court's judgement in the Case No

72/12 of the Applicants Veton Berisha and Ilfete Haziri (Constitutional review of the Supreme Court judgment A.nr.1053/2008, dated 31 May 2012). The Court notes that this case is factually and legally distinguishable from the Applicant's case.

42. With regard to the facts of the case in the Berisha and Haziri case, the Court notes that this was a specific decision of a public authority, not an unidentifiable mob, to destroy the Applicant's property.

43. The Court further notes that the decision to destroy the property in the Berisha and Haziri case was made on 20 June 2008, 5 days after the Constitution entered into force on 15 June 2008, not 17 March 2004; 4 years and 3 months before the Constitution entered into force.

44. Furthermore, the Applicant's case is distinguishable from the Berisha and Haziri case because in their case the Court found that *"the reasoning of the Supreme Court is not sufficiently expressed and elaborated, as the relationship between pertinent evidence, relevant assessment of applicable legal provisions and merit findings is not clearly and completely established"* and there is "*the failure of the Supreme Court to provide clear and complete answers vis-a-vis crucial property submissions" (see paras. 62 and 63 of the Berisha and Haziri judgment quoted above)*. None of these issues are applicable to the Applicant's case.

45. The Court does however note that the Applicant's case is more similar to the case KI 01/11, in which the Applicant was a Private Enterprise Gradjevinar (see Resolution on Inadmissibility of 4 October 2011). In that case, the Applicant complained against a judgment of the Supreme Court. The applicant had requested the compensation of damage that occurred in the second part of 1999, but this was rejected.

46. In that case, the Applicant claimed that there had been a "legal vacuum" with regard to the passive legitimacy of KFOR, UNMIK and the Government of Kosovo. However, the Court observed that "*it is clear that this legal vacuum does not exist because the Regulation sets…the UNMIK …as the sole responsible authority*." The Court also referred to UNMIK Regulation 2000/47 on the status, privileges and immunities of KFOR and UNMIK and their personnel in Kosovo, which prescribes immunity from any legal process for KFOR and UNMIK. Consequently, the Applicant's referral was rejected as inadmissible.

47. In the case of Behrami and Saramati against France, Germany and Norway,(Nos. 71412/01 and 78166/01, 2 May 2007), Grand Chemebr of

the European Court of Human Rights addressed the claim of several individuals who were injured by unexploded bombs or illegal detention during the period in Kosovo under the administration of KFOR and UNMIK. In deciding that their claims were inadmissible the European Court on Human Rights reasoned:

> *"... UNMIK was a subsidiary organ of the UN created under Chapter VII and KFOR was exercising powers lawfully delegated uner Chapter VII of the Charter by the UNSC. As such, their actions were directly attributable to the UN, an organization of universal jurisdiction fulfilling its imperative collective security objective."*(*See* Paragraph 151 of the Decision as of to the Admissibility).

48. The European Court on Human Rights then concluded that in these circumstances the Applicants' complaints must be declared incompatible *ratione personae* with the provisions of the European Convention on Human Rights. The Court concluded that it did not have jurisdiction to hear the claim because of the international persons involved.

Admissibility

49. The Court first examines whether the Applicant has fulfilled the admissibility requirements set out in the Constitution, and further specified in the Law and the Rules of Procedure.

50. The Court refers to Article 113 (1) of the Constitution which establishes that:

> *"The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties".*

51. The Court takes into account Article 48 of the Law on the Constitutional Court which provides that:

> *"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 a public authority is subject to challenge".*

52. In connection with this, the Court notes that the substance of the Applicant's complaints relate to the alleged violation of his right to fair

trial (including his right to trial within a reasonable time) and right to property both guaranteed by the Constitution.

53. The Court also notes that while the Applicant challenges Judgment of the Supreme Court of Kosovo, Rev. No. 36/2010 of 12 September 2012, the crux of his complaint is with regard to the "*duality of judicial and administrative decisions",* arguing that his above mentioned rights have been violated since "*no institution is held liable for the damage caused to my property in the 2004 riots"* (see above paragraph 28). In this respect he also elaborates the second set of the proceedings he initiated against UNMIK and KFOR (see above paragraph 26).

54. With regard to the Applicant's complaints, the Court recalls that Article 31.1 and 2[Right to Fair and Impartial Trial] of the Constitution, insofar relevant reads as follows:

> *"Everyone shall be guaranteed equal protection of rights in the proceedings before courts…".*
> *"2. Everyone is entitled to a fair and impartial public hearing as to the determination of one's rights and obligations … within a reasonable time …"*

55. The Court also takes into consideration Rule 36 (2) of the Rules which foresees that:

> *"The Court shall reject a Referral as being manifestly ill-founded when it is satisfied that:*
> *(d) when the Applicant does not sufficiently substantiate his claim".*

56. The Constitutional Court recalls that, under the Constitution, it is not the task of the Constitutional Court to deal with errors of fact or of 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).

57. 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,* Garcia Ruiz v. Spain [GC], no. 30544/96, para. 28, European Court on Human Rights [ECHR] 1999-I, see also Resolution on Inadmissibility in case no 70/11, Applicants Faik Hima, Magbule Hima and Bestar Hima, Constitutional review of the Judgment of the Supreme Court, A. No 983/08 dated 7 February 2011).

58. In this regard, the Constitutional Court notes that the Applicant has used all legal remedies prescribed by the Law on Contentious Procedure, by submitting the revision against the Judgment of the District Court in Pristina and that the Supreme Court took this into account and indeed answered his appeals on the points of law.

59. The Court notes that the findings of the Supreme Court related to the lack of passive legitimacy on the side of the Government of Kosovo, for the damage the Applicant's suffered during the riots in 2004 coincides with the findings of the International Court of Justice (ICJ) in its Advisory Opinion of 22 July 2010 (Accordance with International Law on Unilateral Declaration of Independence in respect of Kosovo).

60. In that Opinion, ICJ stated, *inter alia, "that on 25 July 1999, the Special Representative of the Secretary-General promulgated UNMIK regulation 1999/1,... Under this regulation, "[a]ll legislative and executive authority with respect to Kosovo, including the administration of the judiciary", was vested in UNMIK and exercised by the Special Representative. Viewed together, resolution 1244 (1999) and UNMIK regulation 1999/1 therefore had the effect of superseding the legal order in force at that time in the territory of Kosovo and setting up an international territorial administration*.

61. Therefore, the Court considers that there is nothing in the Referral indicating that the case lacked impartiality or that proceedings were otherwise unfair (see *mutatis mutandis*, Shub v. Lithuania, ECHR Decision on Admissibility of Application No. 17064/06 of 30 June 2009).

62. As regards the Applicant's complaints with regard to the alleged unreasonable length of his civil proceedings, the Court observes that the civil proceedings the Applicant complains of commenced on 14 June 2004.

63. However, the period which falls within the Court's jurisdiction did not begin on that date, but on 15 June 2008 when the Constitution entered into force (see, *mutatis mutandis*, Horvat v. Croatia, no. 51585/99 § 50, ECHR - 2001-VIII). The proceedings were concluded on 12 September 2012. They therefore lasted for eight years, two months and twenty-seven days of which a period of four years, two months and twenty six days is to be examined by the Court.

64. The Court reiterates that in order to determine the reasonableness of the length of time in question, regard must be had to the state of the case on 14 June 2008. In connection with this, the Court notes that at the time of the entry into force of the Constitution the proceedings had lasted for four years.

65. The Court further reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the criteria established by its case-law, particularly the complexity of the case, the conduct of the applicant and of the relevant authorities and what was at stake for the applicant in the dispute (see, Frydlender v. France [GC], no.30979/96, § 43, ECHR 2000-VII).

66. The Court notes that in the period to be taken into account two judgments were issued in the Applicant's case, i.e. judgment of the District Court in Pristina on 5 March 2010 and the Supreme Court judgment of 12 September 2012.

67. Having regard to all the circumstances of the case, the Court concludes that the Applicant did not substantiate a violation of his right to fair trial due to the unreasonable time as regards to the civil court proceedings after 15 June 2008.

68. Therefore, this part of the referral is manifestly-ill-founded in accordance with Rule 36 of the Rules of Procedure.

69. Concerning, the Applicant's complaints with regard to his allegation of the alleged violation of his property rights guaranteed by Article 46 of the Constitution related to the events occurred in 2004, the Court recalls that the relevant parts of Article 46 of the Constitution read as follows:

> *"The right to own property is guaranteed.*
> *Use of property is regulated by law in accordance with the public interest.*
> *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."*

70. The Court notes that from the facts of the case it is evident that the Applicant's property was destroyed in March 2004.

71. The Court's temporal jurisdiction is to be determined in relation to the facts constitutive of the alleged interference.

72. Pursuant to Rule 36 of the Court's Rules of the Procedure "*Referral may also be deemed inadmissible in any of the following cases: h) the Referral is incompatible ratione temporis with the Constitution".*

73. Similar admissibility criterion is applied by the European Court on Human Rights.

74. The European Convention on Human Rights imposes no specific obligation on the Contracting States to provide redress for wrongs or damage caused prior to that date (see Kopecký v. Slovakia [GC], § 38, ECHR 2004‑IX)As the European Court stated in the Kopecky judgment *"Any other approach would undermine both the principle of non-retroactivity in the law of treaties and the fundamental distinction between violation and reparation that underlies the law of State responsibility".*

75. Based on all above Applicant's referral with regard to the alleged violation of his property rights related to the events that occurred prior 15 June 2008 is incompatible "*ratione temporis*" with the provisions of the Constitution.

76. Accordingly, the Court finds that the Referral was not referred to the court in a legal manner, pursuant toArticle 113 (1) of the Constitution, Article 48 of the Law and Rule 36 inadmissible.

FOR THESE REASONS

The Constitutional Court pursuant to Article 113 (1) of the Constitution, Article 48 of the Law and Rule 36 of the Rules of the Procedure, unanimously:

DECIDES

I. TO REJECT the Referral as Inadmissible;

II. TO NOTIFY this Decision to the Parties;

III. TO PUBLISH this decision in the Official Gazette, in accordance with Article 20 (4) of the Law; and

IV. TO DECLARE this Decision immediately effective.

Judge Rapporteur
Robert Carolan

President of the Constitutional Court
Prof. Dr. Enver Hasani

KI 74/13, Shefqet Hasimi, date 05 November 2013- Constitutional review of the Supreme Court Judgment Mlc.no.6/2012 dated 16 April 2013

Case KI 74/13, Resolution Inadmissibilty of 28 October 2013

Keywords: individual referral, inadmissible referral, unauthorized party, constitutionality, legality

The Referral is based on Article 113.7 of the Constitution, Article 20, 22.7 of the Law and Rule 56 (2) of the Rules of Procedure. The Applicant, among others, requested from the Court to review the constitutionality and legality of the Decision of the Supreme Court of Kosovo with respect to a work dispute between the Government of Kosovo and its employees.

The Court concluded that the Applicant represented the Government of Kosovo in the proceedings; however he himself had no direct interest in the dispute. Therefore, the Court concluded that the Applicant was not an authorized person. Due to the mentioned reasons, the Court, based on Article 113.1 of the Constitution, Article 47 of the Law and Rule 36 (3) c) of the Rules of Procedure, decided to reject the Referral as inadmissible.

RESOLUTION ON INADMISSIBILITY
in
Case No.KI74/13
Applicant
Shefqet Hasimi
Constitutional review of the Supreme Court Judgment
Mlc.no.6/2012 dated 16 April 2013

CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

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

Applicant

1. The Applicant is Mr. Shefqet Hasimi, a legal officer in the Ministry of Justice with residency in Prishtina. The Applicant has filed the Referral on his own behalf.

Challenged decisions

2. The Applicant challenges Judgment Mlc.no.6/2012 of the Supreme Court of Kosovo dated 16 April 2013 in conjunction with Judgment C.no.682/09 of the Municipal Court in Prishtina, dated 21 December 2011; decision Ac.no.1276/2008 of the District Court in Prishtina, dated 26 March 2009; and judgment Cl.no.238/07 of the Municipal Court in Prishtina, dated 19 December 2007.

Legal basis

3. Article 113.7 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 (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 subject matter of this Referral entails the obligation of the Central Inter-ministerial Committee of the Government of Kosovo (represented by the Applicant) as a respondent party to compensate per diems to a third party namely the plaintiff N.H based on his labor contract and work performance.

5. The plaintiff N.H in capacity of the employee, and the Central Inter-ministerial Committee represented by the Applicant, as the respondent party in the capacity of the employer, had differing views regarding per diem compensation of the plaintiff which culminated in legal litigation whereby the regular courts decided in favor of the plaintiff. Subsequently, the Applicant (Mr.Shefqet Hasimi) submitted a referral with the Court in order to challenge the said decisions of the regular courts.

6. The Referral indicates that the Applicant was authorized to represent the Central Inter-ministerial Committee of the Government of Kosovo in proceedings before the regular courts. However, the Applicant has expressly stated that he has filed an individual referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the "Court") on his own behalf.

Procedure before the Court

7. On 17 May 2013, the Applicant submitted the Referral with the Court.

8. On 27 May 2013, the President appointed Judge Snezhana Botusharova as Judge Rapporteur and a Review Panel composed of Judges Robert Carolan (presiding), Almiro Rodrigues and Enver Hasani.

9. On 11 June 2013, the Court notified the Applicant about the registration of the Referral. On the same date the Court communicated the Referral to the Supreme Court of Kosovo.

10. On 20 June 2013, the Court asked the Applicant to clarify whether the Referral is submitted as an individual Referral on his own behalf.

11. On 27 June 2013, the Applicant replied.

12. On 13 September 2013, the Review panel considered the report of the Judge Rapporteur and recommended to the full Court the inadmissibility of the Referral.

Summary of facts as evidenced by the documents furnished by the Applicant

13. On 19 December 2007, the Municipal Court in Prishtina by Judgment Cl.no.238/07 approved the lawsuit of the plaintiff N.H and obliged the Government of Kosovo as the respondent party to compensate the plaintiff, for the work done, with the amount of 2,440 € for the period from 1 May 2005 until 15 November 2005, based on a labor contract agreed to by the parties on 8 September 2004.

14. On 26 March 2009, the District Court in Prishtina by Decision Ac.no.1276/2008 overruled Judgment Cl.no.238/07 of the Municipal Court in Prishtina and remanded the case for retrial.

15. On 21 December 2011, the Municipal Court in Prishtina, by Judgment C.no.682/09 approved the lawsuit of the plaintiff N.H. and obliged the Government of Kosovo – Central Inter-ministerial Commission to compensate the plaintiff, for the work done, during 122 working days with the overall sum of 2,440 €.

16. On 16 April 2013, the Supreme Court of Kosovo, by Judgment Mlc.no.6/2012, rejected as unfounded the request for protection of legality filed by the Kosovo State Prosecutor against Judgment C.no.682/2009 of the Municipal Court in Prishtina dated 21 December 2011.

Applicant's allegations

17. The Applicant claims that the plaintiff N.H has not worked extra hours in accordance with the law on civil servants which can be evidenced in the work registry.

18. The Applicant further claims that all the decisions set forth by the plaintiff N.H are not approved and signed by the responsible and authorized authorities and that the plaintiff N.H has only done fictional work and as such it was approved by the regular courts.

19. The Applicant, therefore, considers that in the concrete case the applicable law and the Constitution of the Republic of Kosovo were

violated and proposes to the Court to reassess the legality and the constitutionality of the relevant court decisions. The Applicant does not specify the alleged violation of any constitutional provision in particular.

Assessment of admissibility

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, the Law and the Rules of Procedure.

21. In this respect, the Court refers to Article 113.1 of the Constitution providing:

> *"The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties".*

22. The Court also refers to Rule 36 (3) c) of the Rules of Procedure reading:

> *"A Referral may also be deemed inadmissible in any of the following cases:*
> *[...]*
> *c) the Referral was lodged by an unauthorized person;"*

23. Therefore, the Court considers that it should be first established whether the Applicant is an authorized party in the sense of the above legal provisions.

24. In the instant case, the Applicant in relation to the Referral has inter alia stated:

> *"Seeing that this referral is registered in the Constitutional Court of the Republic of Kosovo under number KI74/13, the Ministry of Justice pertinent to the submission of the Referral has not given an authorization to Shefqet Hasimi (the Applicant)...*
> *The referral submitted with the Constitutional Court of Kosovo on 17.05.2013 under number KI74/13 should consider as an INDIVIDUAL referral by Shefqet Hasimi (the Applicant)..."*

25. The Court notes that from the submitted documents it is clear that in the proceedings before the regular courts, the Applicant represented the Central Inter-ministerial Committee of the Government of Kosovo in its capacity as a responding party. Thus he himself was not a party to these proceedings.

26. The Court, therefore, considers that the Referral was not filed in a legal manner by an authorized person as required by Article 113.1 of the Constitution.

27. It follows, that the Referral must be rejected as 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 113.1 of the Constitution, Article 47 of the Law, and in compliance with the Rule 36 (3) c) of the Rules of Procedure, on 13 September 2013, 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
Snezhana Botusharova

President of the Constitutional Court
Prof. Dr. Enver Hasani

KI 91/13, Shpend Zajmi, Avni Kryeziu and 19 others, date 05 November 2013- Constitutional Review of decisions No. 681 of 15 March 2012, respectively No.338 of 1 February 2013 of the Rectorate of the University of Prishtina.

Case KI 91/13, Resolution Inadmissibilty of 28 October 2013

Keywords: individual referral, inadmissible referral, out of time referral, right to education

The Referral is based on Article 113.7 of the Constitution, Article 20 of the Law and Rule 56 (2) of the Rules of Procedure. The Applicants, among others, claimed that the decisions of the Rectorate of the University of Prishtina, which determined the time limit for finishing the studies, are unfair and, as such, violate their constitutional right to education.

The Court noted that in order to realize their constitutional rights, the Applicants should exhaust legal remedies before the competent authorities; and only after having exhausted all legal remedies, they may address the Constitutional Court within the four month time limit as provided by the respective law. The Court found that the Applicants had not submitted their Referral within the legal time limit. Due to the mentioned reasons, the Court, based on Article 113.7 of the Constitution, Articles 49 and 19.4 of the Law, and Rule 36 (1) b) of the Rules of Procedure, decided to reject the Referral as inadmissible.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI91/13
Applicants
Shpend Zajmi, Avni Kryeziu and 19 others
Constitutional Review of decisions no. 681 of 15 March 2012 respectively No.338 of 1 February 2013 of the Rectorate of the University of Prishtina

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

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

Applicants

1. The Applicants are: Shpend Zajmi, Avni Kryeziu, Irfan Daullxhiu, Badri Mulaj, Suzana Krasniqi, Bahrie Halili, Fitore Komoni, Vesel Skënderi, Arbër Tolaj, Lirie Gashi, Luljeta Luzha, Sadik Rashiti, Burbuqe Skënderi, Sylejman Halili, Florim Shaqiri, Afrim Tahiri, Musa Jashari, Lulzim Sadiku, Shpresa Rexha, Burhan Hadri and Islam Krasnqi (hereinafter: the Applicants), students at the University of Prishtina, Faculty of Medicine.

Challenged decisions

2. Decisions no.681 of 15 March 2012, respectively, no.338 of 1 February 2013 of the Rectorate of the University of Prishtina.

Legal basis

3. Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution); Article 20 of the 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").

Subject matter

4. The subject matter of the Referral is the Applicant's right to extension of the time limit for post-graduate studies. The Rectorate of the University of Prishtina had decided to reject the Applicants request for extension of the time limit for post-graduate studies, by stating that the Applicants were notified about the time limit for finishing studies.

Proceedings before the Court

5. On 28 June 2013, the Applicants submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 1 July 2013, the President, with Decision No.GJR.KI91/13, appointed Judge Arta Rama-Hajrizi as Judge Rapporteur. On the same date, the President, by Decision No.KSH.KI91/13, appointed the Review Panel composed of judges: Altay Suroy (Presiding), Snezhana Botusharova and Kadri Kryeziu (members).

7. On 15 July 2013, the Applicants were notified about the registration of the Referral. On the same day, the Referral was communicated to the Rectorate of the University of Prishtina.

8. On 13 September 2013, 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

9. In the academic year 2002/2003, the Applicants were registered for post-graduate studies at the University of Prishtina, Faculty of Medicine.

10. On 15 March 2012, the Rectorate of the University of Prishtina notified the Applicants that the Management of the University of Prishtina had made the decision i) to allow the continuation of studies with an old system of basic studies and of master studies in the Faculty of Medicine, ii) the continuation of studies for these students (including the Applicants) is allowed until 30 September 2012.

11. On 1 February 2013, the Rectorate of the University of Prishtina notified the Applicants that the Senate of the University of Prishtina had made a decision: i) the request for extension of duration of studies for the students (including also the Applicants), who have not finished master studies, registered before the entry into force of the statute no. 318 of 5 July 2004, is rejected, ii) since the Faculty of Medicine does not organize master studies with a program of studies 5 and 6 years, the students of the category as in the item I of this decision (including also the Applicants) are entitled to directly apply for the programs of the PhD, since during the basic studies have collected 300 or 360 ECTS.

Applicant's allegations

12. The Applicants allege that they have passed all exams, provided by the respective curricula and that they have fulfilled all financial obligations towards the administration of the Faculty of Medicine. The Applicants also allege that they have received the consent of the respective committees of the Faculty of Medicine, but that they have stagnated with the last committee for defense of master thesis.

13. The Applicants allege that by the decisions of the Rectorate of the University of Prishtina, which determined the time limit for finishing the studies are unfair and violate their constitutional rights, guaranteed by Article 47 [Right to Education] and Article 49 [The Right to Work and Exercise Profession] of the Constitution. The Applicants allege that the abovementioned decisions were not communicated to them in written, verbal or any other form.

14. Finally, the Applicants request from the Court: i) to assess the legality of the decisions of the Rectorate of the University of Prishtina regarding the termination of post-graduate studies, ii) to annul the said decisions, and iii) to allow them the continuation of post-graduate studies, respectively the defense of master thesis.

Assessment of the admissibility

15. In order to be able to adjudicate the Applicants' Referral, the Court has to assess beforehand whether the Applicants have met all the requirements of admissibility, which are foreseen by the Constitution and further specified by the Law and Rules of Procedure.

16. Regarding the request of the Applicants, the Court refers to Article 113.7 of the Constitution, which 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."

17. The Court also refers to the Rule 36 (1) a) of the Rules of Procedure, which determines 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."

18. The Court considers that the wording of Article 113.7 of the Constitution obliges individuals to seek realization of their constitutional rights from the public authorities that is administrative bodies and regular courts of the Republic of Kosovo before addressing the Constitutional Court.

19. 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 legal remedy for the violation of constitutional rights. This is an important aspect of the subsidiary character of the Constitution. (See, case KI41/09, Applicant AAB-RIINVEST L.L.C. Prishtina, Resolution on inadmissibility, of 21 January 2012 and mutatis mutandis, see case Selmouni vs France, No. 25803/94 ECHR, decision of 28 July 1999).

20. In the present case, the Court considers that in order to realize their constitutional rights the Applicants should exhaust legal remedies before the competent authorities; and only after having taken these actions, i.e. after exhaustion of legal remedies, they may address the Constitutional Court if they deem it necessary and that within the four month time limit prescribed in Article 49 of the Law.

21. Regarding the legal deadlines, the Court refers to Article 49 of the Law, which 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. If the claim is made against a law, then the deadline shall be counted from the day when the law entered into force."

22. The Court also refers to the Rule 36 (1) b) of the Rules of Procedure, which determines 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..."

23. From the submitted documents it can be seen that the last decision of the Rectorate of the University of Prishtina was published on 1 February 2013, while the Applicants submitted their Referral to the Court on 28 June 2013, respectively the Referral was not submitted within the period of four (4) months as provided in Article 49 of the Law and Rule 36 (1) b) of the Rules of Procedure.

24. It results that the Referral is out of time.

25. Consequently, the Referral should be rejected as inadmissible due to noncompliance with the prescribed requirements of Article 49 of the Law and Rule 36 (1) b) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court pursuant to Article 113 (7) of the Constitution, Article 49 and 19.4 of the Law; as well as pursuant to the Rule 36.1 (b) of the Rules of the Procedure, on 13 September 2013, 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; and

III. This Decision is effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Arta Rama-Hajrizi	Prof. dr. Enver Hasani

KI 50/13, Aziz Mazreku, Zekë Mazreku and Hajriz Mazreku, date 14 November 2013- Constitutional Review of the Judgment of the Supreme Court of Kosovo, Rev.no. 164/2009, of 11 December 2012

Case KI50/13, Resolution Inadmissibilty of 28 October 2013

Keywords: individual referral, inadmissible referral, manifestly ill-founded referral, protection of property

The referral is based on Article 113.7 of the Constitution, Article 20 of the Law and Rule 56 of Rules of Procedure. The Applicants allege that the Judgment of the Supreme Court is characterized by substantial violations of the provisions of the contested procedure, erroneous and incomplete determination of factual situation and erroneous application of the substantive law and as such it violates their right to property.

The Constitutional Court notes that it is not a fact finding Court, and that the correct and complete determination of the factual situation is a full jurisdiction of regular courts. Moreover, the Court emphasized that the fact that the Applicants are dissatisfied with the outcome of the case cannot of itself raise an arguable claim of a breach of their constitutional rights. Due to the above mentioned reasons, the Court pursuant to Article 113.7 of the Constitution, Article 20 of the Law and Rule 36 (1) of the Rules of Procedure decided to reject the Applicants' Referral as inadmissible.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI50/13
Applicants
Aziz Mazreku, Zekë Mazreku and Hajriz Mazreku
Constitutional Review of the Judgment Rev.no.164/2009 of the Supreme Court of Kosovo, of 11 December 2012

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

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

Applicants

1. The Applicants are Aziz Mazreku, Zekë Mazreku and Hajriz Mazreku, represented by Mr. Xhevdet Krasniqi, lawyer from Prishtina.

Challenged decisions

2. The Judgment of the Supreme Court of Kosovo Rev.no.164/2009 of 11 December 2012, the Judgment C.no.223/2006 of 19 March 2008 of the Municipal Court in Malisheva and the Judgment C.no.88/2002 of 22 March 2004 of the Municipal Court in Malisheva.

Legal basis

3. Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution); Article 20 of the 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").

Subject matter

4. The subject matter of the Referral is the property dispute between the Applicants and the third parties. In 1947, People's Municipal CouncilinDragobil gave in use the disputed real estate to the predecessor of the third party, while the latter in the same year, based on verbal contract, sold the disputed real estate to the Applicants' predecessor.

5. In 1957, People's Council of District of Prizren–Municipality of Banja by ruling took the contested real estate from the predecessor of the third party, because, the contested real estate was given for use to the latter in 1947 and not as a property title. As a consequence, due to disagreements on the property title over the contested real estate, the matter was solved by regular courts.

Proceedings before the Court

6. On 4 April 2013, the Applicants submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

7. On 16 April 2013, the President, with Decision No.GJR. KI-50/13, appointed Judge Altay Suroy as Judge Rapporteur. On the same date, the President, with Decision No.KSH. KI-50/13, appointed the Review Panel composed of judges: Snezhana Botusharova (Presiding), Kadri Kryeziu and Arta Rama-Hajrizi (members).

8. On 24 May 2013, the Applicants were notified about the registration of Referral. On the same day, the Referral was communicated to the Supreme Court of Kosovo.

9. On 26 June 2013, the Court requested from the Basic Court in Gjakova-Branch in Malisheva, to submit additional documents.

10. On 12 September 2013, the Review Panel the Review Panel considered the report of Judge Rapporteur and made a recommendation to the full Court on the inadmissibility of the Referral.

Summary of facts

11. On 2 February 1998, the Municipal Court in Rahovec by Judgment C.no.652/1997 recognized the Applicants' right as co-owners of 1/3 of ideal parts of the disputed real estate.

12. On 1 March 2002, the Municipal Court in Malisheva by Judgment C.no.1/2000 approved the statement of claim of the Applicants that, based on the verbal agreement concluded in the years 1947-'48, they are the co-owners of the disputed real estate and forced the respondents NB "Mirusha" and B.M from Malisheva to recognize and accept this Applicants' right.

13. On 13 November 2002, the District Court in Prizren by Ruling Ac.no.119/2002 approved the appeal of NB "Mirusha" in Malisheva, while the Judgment C.no.1/2000 of 1 March 2002 of the Municipal Court in Malisheva was quashed and the matter returned for retrial.

14. On 22 March 2004, the Municipal Court in Malisheva, by Judgment C.no.88/2002 rejected the Applicants' statement of claim and confirmed that the allegations in the Applicants' statement of claim as co-owners of the contested real estate are ungrounded.

15. On 19 March 2008, the Municipal Court in Malisheva by Judgment C.no.223/2006 rejected the Applicants' statement of claim to confirm that they are the owners of the 1/3 part of the contested real estate.

16. On 18 December 2008, the District Court in Prizren by Judgment Ac.no.217/2008 approved the Applicants' statement of claim and confirmed that they are the owners of the 1/3 part of the contested real estate.

17. On 26 February 2009, the Municipal Court in Malisheva by Ruling E.no.74/2009 stayed-suspended the executive procedure proposed by the Applicants.

18. On 11 December 2009, the Municipal Court in Malisheva by Ruling E.no.74/2009 decided to permit the execution of the Judgment Ac.no.217/2008 of 18 December 2008 of the District Court in Prizren.

19. On 11 December 2012, the Supreme Court of Kosovo, by Judgment Rev.no.164/2009: i) approved the revision of the Municipality of Prizren, ii) altered the Judgment Ac.no.217/2008 of 18 December 2008 of the District Court in Prizren, and iii) confirmed the Judgment C.no. 223/2006 of 19 March 2008 of the Municipal Court in Malisheva, by which the Applicants' statement of claim that they are the owners of the 1/3 part of the contested real estate was rejected.

20. The Supreme Court of Kosovo by Judgment Rev.no.164/2009 of 11 December 2012 reasoned:

> *"... From the case files, it follows that the first instance court while assessing the necessary evidence found that the property in dispute, in 1947, was allocated by the Municipality of Banja to the use of predecessor of respondent B.M. – S.M. The predecessor of respondent S.M. later sold this property to the predecessor of claimants (the Applicants) R.M., by a verbal contract on sale of property, which was fully met by contractual parties. In 1957, the People's Council of the District of Prizren– Municipality of Banja, pursuant to final decision no. 3049/57, of 16.09.1957, took the property from the predecessor of the respondent M.B. from Malisheva - S.M., allocated to him in 1947 by the Agricultural Commission of the People's Council in Dragobil, such as: the field in the place called "Fusha", surface area of 0.22.00 ha, bounded to the east with the property of B.T., at the length of 46 m, to the north with the property of S.G., at the length of 48 m, to the west with the property of the Municipality – the road, at the length of 46 m, and to the south, the line of the village, at the length of 48 m, a decision which entered into force on 17.12.1957.*
>
> *From the case files C.no. 652/1997, of the Municipal Court in Rahovec, it follows that according to the Judgment C.no. 652/1997 of 02.02.1998, the claimants were recognized their rights of the ownership, as co-owners to 1/3 ideal parts of the cadastral parcel no. 500, in the place called "Stepanica-Fusha", with the culture of house and pasture of the third class with the surface area of 0.37,00 ha, as per possession list no. 146 CZ Malisheva, to the name of SOE "Podrimja" in Rahovec, surface area of 0.28,37 ha. From the minutes of the session of 02.02.1998, according to this case file, it follows that the claimants withdrew their claim for the surface area of 0.20.90 ha. The first instance court confirmed that the part of the cadastral parcel no. 500/1, subject of this review, was in the possession of the predecessor of respondent S.M., which was allocated to him by the Agricultural Commission, according to the Law on the Agricultural Reform, and was allocated to the use in 1947, but it was taken back again as per decision no. 3049/1957, of 16.09.1957.*
>
> *... Having in mind the fact determined by the first instance court that the predecessor of the claimants (the Applicants) has purchased the immoveable property in dispute according to a verbal contract from the non-owner S.M., who at the moment of*

sale in 1948, had no ownership rights over the disputed property, since with the evidence assessed, namely the decision of the Municipal People's Council in Banja, no. 3049/57, dated 16.09.1957, it follows that S.M., farmer from the village of Malisheva, was revoked the possession over the land allocated to him in 1947 by the earlier commission of the Municipal People's Council in Dragobil, as to an agricultural interest holder, since the same person, before expiry of the deadline of 15 years of holding in possession, alienated the property, by selling it to R.M., farmer from Malisheva, from the statement of R.M., given to the minutes of 07.09.1957, before the commission of the Municipal People's Council in Banja, it is verified that the predecessor of claimants (the Applicants) knew that the predecessor of the first respondent had taken the land as an agricultural interest holder.

According to provision of Article 24, paragraph 1 of the Law on the Agrarian Reform no. 64/1945, it is provided that the land allocated according to this law cannot be divided, sold, rented or put under lien, in full or in part, in the period of 20 years, while paragraph 2 provides that this prohibition is registered in cadastral records at the moment of registration of land to the person allocated.

The first instance court, by expertise of geodesy expert M.K. of 10.10.2007, has found that the parcel in dispute was registered as socially-owned, owned by the Municipality of Malisheva, as per legal basis, namely the decision no. 3049/57 of 16.09.1957.

... Starting from this state of the matter, the Supreme Court of Kosovo has found that the first instance court, by determining correctly and completely the factual situation, has applied substantive law in a proper manner when finding that the statement of claim of claimants is ungrounded, while the second instance court has erroneously applied the substantive law, when by approving the appeal of claimants, altered the first instance judgment, and approved the statement of claim of the claimants (the Applicants).

The Supreme Court of Kosovo, in its assessment of the challenged judgment pursuant to Article 215 of the LCP, found that the judgment was rendered upon an erroneous application of substantive law, and therefore, it altered the same, as decided by enacting clause of this judgment."

Applicant's allegations

21. The Applicants allege that the Judgment of the Supreme Court is characterized by substantial violations of the provisions of the contested procedure, erroneous and incomplete determination of factual situation and erroneous application of the substantive law. The Applicants also allege that the Supreme Court during the review of the contested matter did not assess correctly the evidence and violated Article 211 of the Law on Contested Procedure because the MA of Malisheva on 19 February 2009 filed revision against the Judgment of 18 December 2008.

22. The Applicants allege that by Judgment of the Municipal Court in Rahovec they were recognized the property right over the contested real estate, while "*...Supreme Court during the trial of the contested matter made a wrong conclusion regarding the property right.*"

23. The Applicants allege that MA of Malisheva as a litigating party in this contested matter has acted in a contradictory manner, because for the contested parcel it equipped with construction permit the Applicants, while on the other hand filed revision against the Judgment of the District Court in Prizren, which rendered favourable decision for the Applicants precisely for the same contested parcel. The Applicants allege that these actions of MA Malisheva constitute the violation of the law in general and of the human dignity in particular; that the MA of Malisheva put itself in deception by contradictory actions. As an evidence of the contradictory actions of MA Malisheva the Applicants provide *Ruling of the Directorate for Agriculture, Forestry and Rural Development: (i) Ruling on exchanging agricultural land no.08/2012, 02.05.2012, (ii) Permit of Directorate of Urbanism no. 05/14, (iii) Ruling on urban conditions no. 05/51, 17.05.2012, (iv) Ruling of Directorate of Urbanism for construction permit 05/23, 05/47, 05/51.*

24. The Applicants allege that their case is characterized by confusion and legal deception and with political influence. The claim that: *"...the litigating parties (Applicants) suspect that this legal and factual confusion – deception was caused by political influence, and this may be ascertained by the judgment of the Municipal Court in Malisheva, C.no. 1/2000, in which the first instance judge first recognizes ownership rights to the claimant parties, acting legally and on merits, but when the case comes back for review, the same judge, being unable to confront with the political influence and pressure, rejects the claim, and does not recognize the ownership rights to the plaintiffs..."*

25. Furthermore, the Applicants allege that their rights guaranteed by Articles 46 [Protection of Property] and 121 [Property] of the Constitution have been violated.

Assessment of the admissibility

26. To adjudicate the Applicants' Referral, the Court has to examine beforehand whether the Applicants have fulfilled the admissibility requirements set out in the Constitution and as further specified in the Law and the Rules of Procedure.

27. In this respect, the Court refers to Article 113 (7), 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."*

28. The Court also refers to the Rule 36 (1) c) of the Rules of Procedure:

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

29. In the present case, the Court notes that the primary allegations of the Applicants have to do with alleged substantial violations of the contested procedure, erroneous and incomplete application of the factual situation and erroneous application of the substantive law by the Supreme Court of the Republic of Kosovo.

30. The Court notes that in the present case, the Applicants have not argued how their rights, guaranteed by the Constitution have been violated and they have not proved in which way the procedure in the regular courts was tainted by arbitrariness and partiality, which would imply the violation of constitutional provisions.

31. The Constitutional Court notes that it is not a fact finding 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. no. 20/09, dated 1March 2011 - issued by the Court on 5 April 2012).*

32. Moreover, the Referral does not indicate that the regular courts acted in an arbitrary or unfair manner. It is not the task of the Constitutional Court to substitute its own assessment of the facts with that of the regular courts and, as a general rule, it is the duty of these courts to assess the evidence made available to them. The Constitutional Court's task is to ascertain whether the regular courts' proceedings were fair in their entirety, including the way in which evidence were taken *(see Judgment ECHR App. No 13071/87 Edwards u. United Kingdom, para 34, of 10 July 1991).*

33. The fact that the Applicants are dissatisfied with the outcome of the case cannot of itself raise an arguable claim of a breach of Article 46 [Protection of Property] and 121 [Property] of the Constitution *(see mutatis mutandis Judgment ECHR Appl. No. 5503/02, Mezotur-Tiszazugi Tarsulat us. Hungary, Judgment of 26 July 2005).*

34. In these circumstances, the Applicants have not substantiated their allegation for violation of Article 46 [Protection of Property] and 121 [Property] of the Constitution, because the facts presented by them do not show in any way that the regular courts had denied them the rights guaranteed by the Constitution.

35. Consequently, the Referral is manifestly ill-founded and should be rejected as inadmissible pursuant to the Rule 36 (1) c) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 20 of the Law, and Rules 36 (1) c) of the Rules of Procedure, on 12 September 2013, 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
Altay Suroy

President of the Constitutional Court
Prof. Dr. Enver Hasani

KI 32/13, Januz Januzi, date 14 November 2013- Constitutional review of the decision of the Supreme Court of Kosovo, Rev.No.329/2010, of 19 December 2012

Case 32/13, Resolution Inadmissibilty of 12 April 2013.

Keywords: individual Referral, constitutional review of the Decision of the Supreme Court of Kosovo

The Referral is based on Article 113.7 of the Constitution, Article 47 of the Law on the Constitutional Court of the Republic of Kosovo no. 03/L-121 of 15 January 2009, and Rule 56 of the Rules of Procedure of the Constitutional Court.

On 11 March 2013, the Applicant submitted a Referral to the Constitutional Court of the Republic of Kosovo, requesting from the court the constitutional review of the Decision of the Supreme Court of Kosovo.

The Applicant alleges that the court decisions violate his rights regulated by the Law on Labor and guaranteed by the Constitution of Kosovo.

The President (by Decision no. GJR. KI 32/13), of 25 March 2013 appointed Judge Snezhana Botusharova as Judge Rapporteur. On the same day, the President (by Decision no. KSH. KI 32/13) appointed the Review Panel composed of Judges: Robert Carolan (Presiding), Almiro Rodrigues and Enver Hasani.

The court upon reviewing the case concluded that the Referral Applicant in this concrete case, did not indicate how and why the regular courts violated his rights regulated by the Law on Labor, nor provided any evidence on allegedly violated constitutional rights.

For all the aforementioned reasons, the Constitutional Court of Kosovo in the session held on 12 September 2013 concluded that the case is manifestly ill-founded.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI 32/13
Applicant
Januz Januzi
Constitutional review of the decision of the Supreme Court of Kosovo, Rev.No.329/2010, of 19 December 2012

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

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

The Applicant

1. The Applicant is Mr. Januz Januzi,from Prishtina (hereinafter: the "Applicant").

Challenged decision

2. The Applicant challenges the decision of the Supreme Court of Kosovo Rev.No.329/2010, of 19 December 2012, which was served to him on 17 February 2013.

Subject matter

3. The Applicant alleges that the decision of the Supreme Court of Kosovo Rev. No.329/2010, violates his rights regulated by the Law on Labor and guaranteed by the Constitution.

Legal basis

4. The Referral is based on Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the "Constitution"), Articles 20 and 22.7 of the

Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo, of 15 January 2009 (hereinafter: the "Law") and Rule 56 paragraph 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 11 March 2013, the Applicant submitted a Referral to the Constitutional Court of the Republic of Kosovo and the same has been registered under number KI 32/13.

6. On 5 April 2013, the Court notified the Applicant and the Supreme Court of Kosovo on registered Referral.

7. On 25 May, the President (by decision No. GJR. KI 32/13), appointed Judge Snezhana Botusharova as Judge Rapporteur. On the same day, the President (by decision No. KSH. KI 32/13) appointed the Review Panel composed of judges: Robert Carolan (presiding), Almiro Rodrigues and Enver Hasani.

8. On 12 September 2013, after having considered the Report of the Judge Rapporteur, the Review Panel made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

9. On 28 February 1991, the Secretariat of the Municipal Assembly of Prishtina rendered a decision [No.03/116-3] to terminate the employment relationship of the Applicant.

10. On 3 September 2003, the Applicant wrote to the Executive Director of the Municipal Assembly of Prishtina, requesting to be reinstated to the position he was working for 35 years, namely until 28 February 1991.

11. On 29 January 2004, the Applicant wrote a request to Ombudsman Institution, stating that so far he did not receive a response to his request he had addressed to the Executive Director of the Municipal Assembly of Prishtina, on 3 September 2003.

12. On 10 March 2004, the Ombudsman Institution wrote to the Municipality of Prishtina, requesting that the later responds to the Applicant's request as soon as possible.

13. On 7 April 2004, the Municipality of Prishtina offered an employment contract to the Applicant, what he signed on the same day.

14. On 16 March 2005, the Applicant wrote to the Executive Director of the Municipal Assembly of Prishtina requesting the payment of the jubilee award, in amount of 245 euro.

15. On 27 June 2005, the Municipality of Prishtina rendered a decision [01 No.118-248], by which the Applicant was retired, due to the fulfillment requirements on the old age pension, according to the Law on Labor that was in force at that time.

16. On 1 July 2005, the Applicant submitted a request to the Executive Director of the Municipal Assembly of Prishtina requesting additional payment to the pension, equivalent to two months salaries, which is 484 Euro.

17. On an unspecified day in 2005, against the Municipality of Prishtina, the Applicant filed a lawsuit with the Municipal Court in Prishtina, requesting the compensation for the salaries and the jubilee award.

18. On 12 April 2006, the Municipal Court in Prishtina issued a Judgment [C1 br.344/2005] approving the claimant's statement of claim as grounded. In its Judgment the court stated: *„The respondent, Municipality of Prishtina, is OBLIGED to pay to the claimant in the name of the jubilee award and three salaries after retirement, the amount of €605, with the interest rate, foreseen by banks for deposit for one year without specific destination, starting from 01.07.2005, when he was retired until the final payment, as well as to pay the costs of proceedings at the amount of €78, all this within the time limit of 15 days, from the day the judgment becomes final, under the threat of forced execution."*

19. On 2 June 2006, the Applicant wrote to the Executive Director of the Municipal Assembly of Prishtina requesting the execution of the Judgment of the Municipal Court [C1. No.344/2005] of 12 April 2006.

20. On 15 March 2007, against the Municipality of Prishtina, the Applicant filed a lawsuit with the Municipal Court in Prishtina requesting the payment of the salaries for the period from 30 September 2003 until 30 March 2004.

21. On 29 May 2007, the Municipal Court in Prishtina issued the decision [C1. No. 109/07], rejecting the lawsuit of the Applicant as inadmissible, since it was filed out of time.

22. In the reasoning of its decision the Municipal Court stated that: *„[…] The Court concludes that the claimant requests the compensation of personal incomes for the time he did not act-work and that is from 03.09.2003 to 30.03.2004. Consequently, the Court determined that the claimant failed to meet the deadline for protection of the violated rights, respectively the request for compensation of personal income, as it is provided by Article 186 of LCP, where it is cited that: "Compensation for damage shall be due from the moment the damage taking place." In Article 372 of LCP it is cited: "Claims for periodic charges that fall due annually or at specific shorter time intervals (periodic claims) shall become statute-barred three (3) years after each individual charge falls due," while the Article 376, item 1 provided that the compensation claims for damage inflicted shall become statute-barred three (3) years after the injured party learnt of the damage and of the person that inflicted it.""*.

23. On 16 November 2007, the Applicant filed an appeal against the decision of the Municipal Court [C1. No. 109/07], of 29 May 2007.

24. On 4 August 2010, the District Court in Prishtina issued a Judgment [Ac.No.672/2008], rejecting the Applicant's appeal as ungrounded, and upholding the decision of the Municipal Court [C1. No. 109/07], in its entirety.

25. In the enacting clause of its Judgment the District Court stated: „ *The District Court found that the first instance court in this legal matter has correctly applied the substantive law, when it found that the claimant filed claim after the deadline provided by Article 372 and Article 376 par.1 of the Law on Obligation Relationship. Also, there are no violations of provisions under Article 182 par.2 item b, g, j, k and m of contested procedure, for which this court ex-officio takes care."*

26. On an unspecified date, the Applicant filed for a revision with the Supreme Court of Kosovo, against the Judgment of the District Court in Prishtina [Ac.No.672/2008].

27. On 19 December 2012, the Supreme Court issued a decision rejecting Applicant's request for revision as ungrounded.

28. In the enacting clause of its ruling the Supreme Court stated: *„Against the ruling of the second instance court, the claimant filed revision without mentioning the reasons due to which the revision could be filed with the proposal that the challenged rulings to be modified and therefore the statement of claim of the claimant is rejected as ungrounded.“*

Applicant's allegations

29. The Applicant alleged that these courts' decisions have violated his rights regulated by the Law on Labor and guaranteed by the Constitution of Kosovo.

30. The Applicant addressed to the Court requesting:

> *„to receive the monetary compensation for the period from 03.09.2003 until 31.04.2004, in the amount of €848, as well as the interest rate from 03.09.2003 until the final payment “.*

Assessment of admissibility of the Referral

31. In order to be able to adjudicate the Applicant's Referral, the Court has to assess beforehand whether the Applicant has met the admissibility requirements, which are laid down in the Constitution and further specified by the Law and Rules of Procedure.

32. The Court notes that the Applicant did not specify what are the concrete rights regulated by the Law on Labor and guaranteed by the Constitution, violated by regular courts' decisions, although 48 of the Law on Constitutional Court of the Republic of Kosovo stipulates:

> *“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 a public authority is subject to challenge.”*

33. On the other hand, Rule 36.2 of the Rules of Procedure 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, or*

d) when the Applicant does not sufficiently substantiate his claim ".

34. In this concrete case, the Applicant did not indicate how and why the regular courts violated his rights regulated by the Law on Labor, nor provided any evidence on allegedly violated constitutional rights.

35. The Constitutional Court reiterates that it is not its task under the Constitution to act as a court of appeal, in respect of the decisions taken by the regular courts. It is the role of the regular courts to interpret and apply the pertinent rules of both procedural and substantive law (seemutatis mutandis, García Ruiz vs. Spain [VK], No. 30544/96, Judgment of the European Court of Human Rights, of 21 January 1999).

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

37. In fact, the Applicant did not substantiate his claims on constitutional grounds since he failed to show how and why the regular courts violated his rights guaranteed by the Constitution. Based on the case file the Constitutional Court does not find that the relevant proceedings in the regular courts were unfair or arbitrary (see *mutatis mutandis*, *Shub vs. Lithuania, No. 17064/06, ECtHR, Decision of 30 June 2009)*.

38. For all the aforementioned reasons, the Court concludes that the Referral does not meet the requirements from 48 of Law and Rule 36.2 (b) and (d) of the Rules of Procedure, and as such is manifestly ill-founded.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 48 of the Law and Rule 36.2 (b) and (d) of the Rules of Procedure, on 12 September 2013, unanimously

DECIDES

I. TO REJECT the Referral as inadmissible;

II. TO NOTIFY this Decision to the Parties;

III. TO PUBLISH this Decision in the Official Gazette in accordance with Article 20(4) of the Law.

IV. This Decision is effective immediately.

Judge Rapporteur
Snezhana Botusharova

President of the Constitutional Court
Prof. Dr. Enver Hasani

KI 53/11, KI 25/12, KI 100/12, KI 49/13, Isa Grajqevci, Fehmi Ajvazi, Musli Nuhiu and Ramadan Imeri, date 14 November- Constitutional Review of the Judgments of the Supreme Court Rev. no. 196/2009, dated 23 June 2009; Rev. no. 111/2009, dated 2 June 2009; Rev. no. 370/2008, dated 23 February 2009 and Rev. no. 264/2008, dated 10 December 2009

Cases KI53/11, KI25/12, KI100/12, KI49/13, Judgement of 14 October 2013

Keywords: individual referral, admissible referral, pensions and invalidity insurance fund, provisional compensation, Kosovo Energy Corporation, legitimate expectation, right to property, right to fair and impartial trial.

The referral is based on Article 113.7 of the Constitution, Article 20 of the Law and Rule 56 of Rules of Procedure. The Applicants, among other, stated that the decisions of the Supreme Court of the Republic of Kosovo approving the decision of Kosovo Energy Corporation to unilaterally annul the payments that the mentioned Corporation as employer was obliged to pay to them, were unfair and violated their rights to property and fair and impartial trial guaranteed by the Constitution.

The Court, among other, noted that the Applicants as employees on one side, and the Kosovo Energy Corporation as employer on the other, had signed an agreement for early termination of the employment relation; and the mentioned Corporation as employer was obliged to pay to the Applicants as former employees a given amount of money until the Kosovo pension and invalidity insurance fund would be established. In the mean time, Kosovo Energy Corporation decided to unilaterally annul the Applicants' monthly payments that were envisaged to be paid to them pursuant to the signed agreement between the Kosovo Energy Corporation and the Applicants. Due to these new circumstances, the parties decided to settle their dispute at court and the matter was finally resolved by the Supreme Court of Kosovo to the benefit of Kosovo Energy Corporation against the Applicants. The Constitutional Court, emphasized among other that the Applicants, had a "legitimate" expectation that they would be entitled to a monthly indemnity, and the decisions of the Supreme Court of Kosovo that confirmed the unilateral decision of Kosovo Energy Corporation violated those "legitimate expectations". For these reasons, the Court found that in this case the rights to property and fair and impartial trial, guaranteed by the Constitution and the European Convention on Human Rights, had been violated.

JUDGEMENT
in
Cases No.
KI53/11, KI25/12, KI100/12 and KI49/13
Applicants
Isa Grajqevci, Fehmi Ajvazi,Musli Nuhiu and Ramadan Imeri
Constitutional Review of the Judgments of the Supreme Court Rev. no. 196/2009,dated 23 June 2009; Rev. no. 111/2009, dated 2 June 2009; Rev. no. 370/2008, dated 23 February 2009 and Rev. no. 264/2008, dated 10 December 2009

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

Composed of

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

Applicants

1. The Referrals were submitted by Isa Grajqevci, Fehmi Ajvazi,Musli Nuhiu and Ramadan Imeri(hereinafter, the Applicants).

Challenged decisions

2. The challenged decisions are the Judgments of the Supreme Court, Rev. no. 196/2009, dated 23 June 2009; Rev. no. 111/2009, dated 2 June 2009; Rev. no. 370/2008, dated 23 February 2009 and Rev. no. 264/2008, dated 10 December 2009, which are challenged, respectively, by the Applicants Isa Grajqevci,Fehmi Ajvazi,Musli Nuhiuand Ramadan Imeri.

Subject matter

3. The subject matter of the Referrals is the review of the constitutionality of the challenged Judgments of the Supreme Court, which allegedly

violated the right to property and to a fair trial of the Applicants, as guaranteed by Article 46 of the Constitution, in conjunction with Article 1 Protocol 1 to the European Convention on Human Rights (hereinafter, the ECHR), and Article 31 of the Constitution, in conjunction withArticle 6 of the ECHR.

4. The present case is identical to the following cases already decided by the Constitutional Court (hereinafter, the identical cases):

a) 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";

b) Case KI No. 58/09, "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";

c) Case KI No. 08/10, "Isuf Mërlaku and 25 other former employees of the Kosovo Energy Corporation against 17 individual Judgments of the Supreme Court of the Republic of Kosovo";

d) Case KI No. 76/10, "Ilaz Halili and 19 other former employees of the Kosovo Energy Corporation" and

e) Case KI No. 132/10, "Istref Halili and 16 other former employees of the Kosovo Energy Corporation against 17 individual Judgments of the Supreme Court of the Republic of Kosovo".

5. The Constitutional Court found in all those identical cases 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 ECHR, as well as of Article 31 of the Constitution (Right to Fair and Impartial Trial), in conjunction with Article 6 of the ECHR in relation to some of those Applicants.

6. Consequently, the Court decided to declare invalid the Judgments delivered by the Supreme Court in those identical cases and remand those cases to the Supreme Court for reconsideration in conformity with the judgment of this Court.

Legal basis

7. The Referrals are 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, the Law) and Section 56 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter, the Rules of Procedure).

Proceedings before the Court

8. Between April 2011 and April 2013, the Applicants individually filed the Referrals with the Constitutional Court.

9. The President of the Court appointed Judge Kadri Kryeziu as Judge Rapporteur and the Review Panel composed of Judges Altay Suroy (Presiding), Enver Hasani and Ivan Cukalovic.

10. On 5 July 2013, the Review Panel, pursuant to Rule 37 of the Rules of Procedure, made a recommendation to the Court on the joining Referrals KI25/12, KI100/12 and KI49/13 to the Referral KI53/11,and on admissibility of the Referrals. On the same date, the Court deliberated the joined Referrals.

Summary of the facts

11. In general, the facts of these Referrals are identical to those cases abovementioned under paragraph 4.

12. In fact, in the course of 2001 and 2002, the Applicants signed an Agreement for Temporary Compensation of Salary for Termination of Employment Contract with their employer Kosovo Energy Corporation (hereinafter, KEK).

13. Article 1 of the Agreement 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 Applicants) is entitled to a temporary compensation due to early termination of the employment contract until the establishment and functioning of the Kosovo Fund on Pension-Invalidity Insurance.

14. Furthermore, Article 2 of the Agreement specified that the amount to be paid monthly to each Applicant was to be 206 German Marks.

15. In addition, Article 3 of the Agreement 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".

16. 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"

17. 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.

18. According to the Decision of 25 July 2006, all beneficiaries were guaranteed full payment in line with the Fund Statute. The Decision further 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.

19. 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".

20. In the summer of 2006, KEK terminated the payment stipulated by the Agreement without any notification.

21. 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.

22. 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. 138/2007 of 21 March 2008 in the case of the first Applicant Isa Grajqevci*) 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".

23. 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 cannot claim continuation of their working relations because of their invalidity. KEK reiterated that the Court was obliged to decide upon the UNMIK Regulation 2003/40 on t*he promulga*tion of the Law on Invalidity Pensions according to which the Applicants were entitled to an invalidity pension.

24. The District Court rejected as ungrounded the appeals of KEK

25. KEK submitted a revision to the Supreme Court, arguing an alleged essential violation of the Law on Contested Procedure and erroneous application of material law. KEK 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. KEK further argued that the age of the applicant was not relevant but that his invalidity was.

26. The Supreme Court rejected as unfounded the Applicants' lawsuits and quashed the judgments of the District and Municipal. The SupremeCourt concluded that the termination of employment was lawful pursuant to Article 11.1 of UNMIK Regulation 2001/27 on the Basic Labour Law in Kosovo.

27. In the Judgment of the applicant Isa Grajqevci (Rev. No. 196/2009 of 23 June 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…"

28. On 15 May 2009, 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)*".

Allegations of the parties

29. The Applicants claim that the termination of the payment is in contradiction to the signed Agreement.

30. The Applicants also claim that it is well known that the Kosovo Pension Invalidity Fund has not been established yet. On the other hand, in the original case KI No. 40/09, KEK contested the Applicants' allegations, arguing that it was widely known that the Invalidity Pension Fund had been functioning since 1 January 2004.

31. 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).

32. 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.

33. 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.

34. In sum, the Applicants claim that their rights to property and to fair trial have been violated by the decision of KEK unilaterally annulling their Agreements. The Applicants further claim that they have not been able to remedy such violation before the regular courts.

Admissibility of the Referrals

35. The Court first examines whether the Applicants have fulfilled the admissibility requirements as laid down in the Constitution and the Law.

36. In this connection, the Court refers to Article 113.7 of the Constitution, which establishes:

> *"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".*

37. The Court also refers to Article 47.2 and 49 of the Law. Article 47.2 provides that *"The individual may submit the referral in question only after he/she has exhausted all legal remedies provided by the law".* Article 49 provides that "*The referral should be submitted within a period of four (4) months (...)".*

38. The Court notes that in the present case, as in the identical cases, 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 and there is a continuing situation. Thus as the circumstance on the basis of which the Applicants complain continued, the four months period prescribed in Article 49 of the Law is inapplicable to these cases.

39. The Constitutional Court also notes that the Applicant Ramadan Imeri was older than 65 years at the time of submitting his Referral to this Court. In fact, 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.

40. 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". Consequently, the Applicants are entitled for pension from the moment when they reached the age of 65.

41. Therefore, the Referral of the Applicant Ramadan Imeri is partly admissible. With regard to the remaining Applicants, the Court does not find any reason for inadmissibility of the Referrals, as they are authorized parties, have no legal remedies to exhaust and the four months period is not applicable to the Referrals.

Substantive aspects of the Referrals
i. As regards the Protection of Property

42. The Applicants claim 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.

43. At the outset, Article 46 and 53 of the Constitution, and Article 1 of Protocol No. 1 of the ECHR should be recalled.

Article 53 [Interpretation of Human Rights Provisions] of the Constitution establishes:

"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:

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."

44. 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.

45. 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-fulfillment of the condition" (see the judgements in the identical cases).

46. The question 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 1 of Protocol No. 1 to the ECHR. (See the judgements in the identical cases).

47. The Court notes that, at the time of concluding the Agreements between the Applicants and KEK, these type of agreements have been regulated namely by Article 74 (3) 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."*

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

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

50. In this respect, the 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.

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

52. 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 it is based on a legal provision or a legal act, i.e. Agreement with KEK (see the judgements in the identical cases*)*; also*mutatis mutandis,*Gratzinger and Gratzingerova v. the Czech Republic (dec.), no. 39794/98, para 73, ECHR 2002-VII).

53. 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 judgements in the identical cases).

54. 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 thejudgements in the identical cases).

55. Consequently, the Constitutional Court concludes that there isa violation of Article 46 of the Constitution in conjunction Article 1 of Protocol 1 to the ECHR.

ii. As regards the right to fair trail

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

57. The Court refers to Article 31 [Right to Fair and Impartial Trial] of the Constitution and Article 6 of the ECHR.

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

> *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 ECHR reads:

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

58. The 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, 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 regular 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).

59. 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 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).

60. 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.

61. Moreover, it is 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 judgements in the identical cases).

62. In the present case, the Applicants requested the regular 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.

63. 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's 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.

64. It is not the task of the Constitutional Court to decide what would have been the most appropriate way for the regular 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.

65. However, the Court considers that 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 identical cases).

66. Before the foregoing, 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:

I. TO DECLARE

a) Admissible in total the Referrals KI53/11, KI25/12 and KI100/12, respectively filed by the Applicants Isa Grajqevci, Fehmi Ajvazi and Musli Nuhiu;

b) Admissible in part the Referral KI49/13 filed by the Applicant Ramadan Imeri;

II. 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;

b) There has been violation of Article 31 of the Constitution in conjunction withArticle 6 of the European Convention on Human Rights;

III. **TO DECLARE INVALID** the judgments delivered by the Supreme Court in the cases of the Applicants
Isa Grajqevci, Rev. no. 196/2009, dated 23 June 2009;
Fehmi Ajvazi, Rev. no. 111/2009, dated 2 June 2009;
Musli Nuhiu, Rev. no. 370/2008, dated 23 February 2009 and
Ramadan Imeri, Rev. no. 264/2008, dated 10 December 2009;

IV. **TO REMAND** these Judgments to the Supreme Court for reconsideration in conformity with the judgment of this Court, pursuant to Rule 74 (1) of the Rules of Procedure;

V. **TO ORDER** the Supreme Court to submit information to the Constitutional Court about the measures taken to enforce this Judgment of the Constitutional Court in accordance with Rule 63 (5) of the Rules of Procedure;

VI. **TO NOTIFY** the Judgment to the Parties;

VII. **TO PUBLISH** this Judgment in the Official Gazette, in accordance with Article 20 (4) of the Law;

VIII. **TO DECLARE** this Judgment immediately effective;

IX. **TO REMAIN** seized of the matterpending compliance with that Order.

Done at Prishtina this day of 14 October 2013

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

KI 64/13, Fane Bytyqi, date 21 November 2013- Constitutional Review of the Decision of Kosovo Energy Corporation (hereinafter: KEK) no. 192, of 19 November 2007

Case 64/13, Resolution Inadmissibilty of 12 April 2013.

Keywords; individual Referral, annulment of the KEK decision and the exemption from the obligation of payment of debt for the spent electrical energy, requests that her identity is not disclosed.

The Referral Applicant filed the Referral pursuant to 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 15 January 2009

On 25 February 2013, the Applicant submitted Referral to the Constitutional Court of the Republic of Kosovo and sought from the court the constitutional review of KEK Decision.

The Applicant stated that the challenged decision violates her fundamental rights, guaranteed by the Constitution and by the European Convention on Human Rights.

The President with Decision (no.GJR.64/13 of 29 April 2013), appointed Judge Ivan Čukalović as Judge Rapporteur.On the same day, the President with Decision (no.KSH. KI64/13) appointed the Review Panel composed of Judges: Snezhana Botusharova (Presiding), Kadri Kryeziu and Arta Rama Hajrizi.

Upon reviewing the case the court concluded that the Referral Applicant withdrew the claim in the Supreme Court and by doing so, she failed to take procedural steps in the regular court proceedings, which is regulated by law. It is more likely that the case will be declared inadmissible, since that action is understood as denying the right to further proceedings and denial of violation. In this respect, the Court concludes that the Applicant has not exhausted all legal remedies, as it is provided by Article 113.7 of the Constitution.

For all the aforementioned reasons, the Constitutional Court of Kosovo in the session held on 12 September 2013 rendered the Referral inadmissible.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI64/13
Applicant
Fane Bytyqi
Constitutional Review of the Decision of Kosovo Energy Corporation (hereinafter: KEK) no. 192, of 19 November 2007

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

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

Applicant

1. The Applicant is Fane Bytyqi from Prishtina, (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges the KEK decision no. 192, of 19 November 2007, because the challenged decision violates her fundamental rights, guaranteed by the Constitution and the European Convention on protection of human rights.

Subject matter

3. The subject matter of this Referral submitted to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) on 25 April 2013, is the annulment of the KEK decision and the exemption from the obligation of payment of debt for the spent electrical energy.

4. Furthermore, the Applicant requests that the Court does not disclose her identity.

Legal basis

5. The Referral is based on Articles 113.7 and 21.4 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), on 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, (hereinafter „the Law“) and the Rule 56 paragraph 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 25 April 2013, the Applicant submitted Referral to the Constitutional Court of the Republic of Kosovo and the same was registered under the number KI 64/13.

7. On 17 May 2013, the Court notified the Applicant and the Supreme Court of Kosovo on registration of the Referral.

8. By Decision of the President (no. GJR.64/13, of 29 April 2013) the Judge Ivan Čukalović was appointed as Judge Rapporteur. On the same day, the President by Decision (No.KSH.KI64/13), appointed the Review Panel composed of judges: Snezhana Botusharova (Presiding), Kadri Kryeziu and Arta Rama Hajrizi.

9. On 12 September 2013, after having considered the Report of the Judge Rapporteur, the Review Panel made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

10. On 13 November 2007, KEK rendered a decision no.192, whereby ordering that the Applicant is disconnected from the supply electrical network because of non-payment of the electricity bills for the spent electrical energy for the period from 2003 until 2007.

11. On 05 December 2007, the Applicant filed a claim to the Municipal Court in Prishtina against KEK decision No. 192, of 13 November 2007, by which he requested that the KEK decision is annulled as unlawful.

12. On 27 June 2008, the Municipal Court rendered the Ruling [C.no.2842/2007], by which declared itself as incompetent court for deciding on this legal matter, therefore, pursuant to provisions of

Articles 16, 17 and 21 of the Law on Contested Procedure (LCP) treated this matter as administrative conflict and forwarded the case file to the Supreme Court of Kosovo.

13. On an unspecified date, the Applicant filed an appeal to Ombudsperson, stating that the KEK decision no.192 violated her rights and, therefore, she requested the acceleration of the proceedings before the Supreme Court.

14. On 28 May 2010, Ombudsperson requested in written from the Supreme Court that the case of the Applicant to be treated with priority and to be decided in an expedited procedure.

15. On 30 June 2010, the Applicant withdrew the claim of 13 November 2007 against KEK.

16. On 02 July 2010, the Supreme Court rendered the Ruling [A.no.1229/2008], whereby the further proceedings on this legal matter was terminated, because the claimant (the Applicant), withdrew her claim voluntarily.

17. On 17 December 2010, the Ombudsperson rendered the decision on inadmissibility of the Applicant's appeal, because based on the examination of the case file, which was treated before the Supreme Court, it was found that the Applicant on 30 June 2010, voluntarily withdrew the claim in the Supreme Court.

18. Ombudsperson, in the decision on inadmissibility has concluded that: *„since the evidence which you have submitted do not show that there is a violation of human rights or misuse of authority, the* Ombudsperson *pursuant to Article 19 item 1.5 of the Law no.03/L-195, decided to terminate further investigations, taking into account that the case was solved in different way, according to your will. "*

Applicant's allegations

19. The Applicant alleges that she addressed several times KEK administration, requesting the annulment of her debt, which she has based on the spent electrical energy, but she doubts that her request has ever been reviewed.

20. The Applicant claims that for reconnection to KEK network, KEK insists that the Applicant pays her accumulated debt.

21. The Applicant further stated that based on these kinds of actions of the authorities, it is concluded that she is the victim of the violation of fundamental rights, guaranteed by the Constitution of Kosovo and by European Convention on Human Rights.

22. The Applicant requests from the Constitutional Court:

a) „To quash the KEK decision, no.192, of 13.11.2007, as unlawful;

b) To be exempted from payment of the old debt;

c) To continue to pay the bill only for the spent electrical energy"

Assessment of admissibility of the Referral

23. In order to be able to adjudicate the Applicant's Referral, the Court has to assess beforehand whether the Applicant has met all the requirements of admissibility, which are foreseen by the Constitution and further specified by the Law and Rules of Procedure.

24. In this respect, the Court refers to Article 113.1 and Article 113.7 of the Constitution which provides that:

"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".

Moreover, Article 47.2 of the Law provides that: *"The individual may submit the referral in question only after he/she has exhausted all the legal remedies provided by the law*."

25. Thus, 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.

26. In the present case, the Applicant withdrew the claim in the Supreme Court and by doing so, she failed to take procedural steps in the regular

court proceedings, which is regulated by law. It is more likely that the case will be declared inadmissible, since that action is understood as denying the right to further proceedings and denial of violation.

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 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).

28. In this respect, the Court concludes that the Applicant has not exhausted all legal remedies, available under the applicable law, as it is provide by Article 113.7 of the Constitution and Article 47.2 of the Law.

29. 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 Article 113.7 of the Constitution, Article 47.2 of the Law and Rule 36. (1) a) of the Rules of Procedure, on 12 September 2013, unanimously

DECIDES

I. TO REJECT the Referral as inadmissible;

II. TO REJECT his request not to have his identity foreclosed;

III. TO NOTIFY this Decision to the Parties;

IV. TO PUBLISH this Decision in the Official Gazette in accordance with Article 20(4) of the Law.

V. This Decision is effective immediately.

Judge Rapporteur
Ivan Čukalović

President of the Constitutional Court
Prof. Dr. Enver Hasani

KI 103/13, Mazllum Zena, date 21 November 2013- Constitutional review of the Judgment of the Supreme Court, Rev. No. 297/2010 Of2 May 2013 and the Judgment of the District Court in Peja AC. no. 73/2009 of28 June 2010

Case KI103/13, Resolution Inadmissibilty of 16 October 2013

Keywords: individual referral, civil dispute, right to work and exercise profession, manifestly ill-founded

The Applicant claimed that the judicial authorities in their decisions violated his rights guaranteed by Article 49 of the Constitution. The Applicant requested from the Constitutional Court to quash the Judgment of the Supreme Court Rev. no. 297/ 2012 of 2 May 2013 and the Judgment of the District Court in Peja, AC. no. 73/ 2009 of 28 June 2010.
The Court found that that the Applicant has failed to prove that the challenged judgments violated his constitutional right guaranteed by Article 49 of the Constitution. He did not clarify why and how the court authorities have violated his rights from the Constitution.

Therefore, the Court concluded that the Applicant's Referral does not meet the admissibility requirements, because it is manifestly ill-founded, and, as such, it is declared inadmissible.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI103/13
Applicant
Mazllum Zena
Constitutional review of the Judgment of the Supreme Court, Rev. No. 297/2010 of 2 May 2013 and the Judgment of the District Court in Peja AC. no. 73/2009 of 28 June 2010

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

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

Applicant

1. The Applicant is Mr. Mazllum Zena, from village Malësi e vogël (Radostë), Municipality of Rahovec.

Challenged decision

2. The Applicant challenges the Judgment of the Supreme Court, Rev. no. 297/2010 of 18 April 2013 and Judgment of the District Court of Peja AC. no. 73/2009 of 28 June 2010. The Judgment of the Supreme Court Rev. no. 297/2010 was served on the Applicant on 25 June 2013.

Subject matter

3. The subject matter of this Referral is the constitutional review of the Judgment of the Supreme Court, Rev. no. 297/2010 of 2 May 2013 and of the Judgment of the District Court of Peja AC. no. 73/2009 of 28 June 2010, regarding the alleged violation of the right to work.

Legal basis

4. Article 113.7 of the Constitution, Article 47 of the Law no. 03/L-121 on the Constitutional Court of the Republic of Kosovo of 16 December 2008, which entered into force on 15 January 2009 (hereinafter: the Law) and Rule 56 (2) of the Rules of Procedure of the Constitutional Court (hereinafter: Rules of Procedure).

Proceedings before the Constitutional Court

5. On 16 July 2013, the Applicant submitted the Referral to the Constitutional Court.

6. On 5 August 2013, the President appointed Deputy President Ivan Čukalović, as Judge Rapporteur and the Review Panel composed of Judges: Altay Suroy (Presiding), Snezhana Botusharova (member)and Arta Rama-Hajrizi (member).

7. On 13 September 2013, the Constitutional Court, through the Secretariat notified the Applicant and the Supreme Court on the registration of the Referral.

8. On 16 October 2013, 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

9. On 1 June 2002, the Applicant concluded employment contract (contract: No. 630, of 24 June 2002) with the Regional Water Supply Company of Hidrosistemi Radoniq in Gjakova (hereinafter: Employer). According to the employment contract No. 630, Mr. Mazllum Zena was assigned in the job position Cash collector/Fitter, for fixed-term period, from 1 June 2002 until 31 August 2002, in order that after three months his employment relationship be turned into indefinite time, if the latter performs his work duties in accordance with the terms and conditions provided in the contract.

10. On 25 July 2002, the Applicant received remark for non-submission and non-reconciliation of bills as well as of his poor performance in work under 37 %. By the last remark, before his possible dismissal, he was asked to reach the collection of financial means over 70% and improvement of his behavior with the consumers.

11. On 5 November 2003, the Employer (notification: no. 2008) terminated to Applicant his employment relationship, due to irregularities found in the area where the Applicant collected financial means.

12. On 19 November 2003, the Applicant filed an appeal against the notification No. 2008, by his Employer, respectively, the director of the company in question, due to: a) violation of the Law on administrative procedure, b) erroneous determination of factual situation and c) violation of substantive law. The Employer did not respond to the Applicant's appeal.

13. On 10 December 2003, the Applicant filed a claim in the Municipal Court in Gjakova against the Employer's notification no. 2008, as the Applicant claimed, because the Employer has terminated his employment relationship, without initiating disciplinary procedure, therefore he called the notification on termination of employment relationships unlawful.

14. On 30 September 2004, the Municipal Court in Gjakova, (Judgment: C.no. 876/2003), approved the Applicant's claim as grounded and annulled as unlawful the Employer's decision no. 2008, obliging the Employer to reinstate the Applicant to his previous job position "Cash collector/Fitter" with all rights deriving from the employment relationship. The reasoning of the judgment is as following:

> *"Based on the determined factual situation and UNMIK Regulation no. 2000/49 of 19 August 2000 on the establishment of the Administrative Department of Municipal Public Services, Article 1.2, the department is responsible for supervision of leadership and regulation of matters that have to do with municipal public services in Kosovo which include supply, transfer and use of water supply, which can be offered by public, private or other institutions that provide suchservices. From this, it follows that according to UNMIK Regulation no. 2001/27, Article 1.2, the employment relationship in the public service cannot be regulated by that regulation. In this aspect in order to terminate the employment relationship to the employee the disciplinary procedure should have been initiated by respective authority, the violations of work duties or possible irregularities should have been verified, which would make the employee responsible and then to impose the disciplinary measure".*

15. Against this judgment, the Employer filed an appeal to the District Court in Peja.

16. On 5 December 2005, the District Court in Peja (Judgment: AC. no. 8/2005) modified the Judgment of the Municipal Court in Gjakova C. no. 876/2003 of 30 September 2004 and rejected the Applicant's claim as ungrounded, by which he requested the annulment of the Employer's decision No. 2008 of 5 November 2003).

17. The Applicant filed revision to the Supreme Court against the Judgment of the District Court in Peja Ac. no. 8/2005, due to substantial violation of the contested procedure and erroneous application of substantive law.

18. On 21 June 2006, the Supreme Court (Judgment Rev. no. 43/2006), approved the revision filed by the Applicant as grounded and decided that the matter to be returned to the District Court in Peja for retrial, due to incomplete determination of factual situation. The reasoning of the judgment is as follows:

> *"Starting from such a situation of the matter, the Supreme Court of Kosovo found that such a stance of the second instance court cannot be accepted for the time being, as correct and lawful, since according to the assessment of this court of revision, due to erroneous application of the substantive law the factual situation has not been determined, for which reasons there are no conditions to amend the challenged judgment pursuant to the provision of Article 395 paragraph 1 of LCP, therefore, pursuant to paragraph 2 of this Article in conjunction with Article 399 and 374 of this law, the challenged judgment had to be quashed and the matter to be returned to the same court for retrial.*
>
> *[...]*
>
> *Regarding the termination of the employment contract due to serious cases of misconduct or unsatisfactory performance of work duties provided by Article 11.2 of the Regulation on Essential Labor Law in Kosovo (RELLK), the challenged judgment does not contain reasons which have to do with serious cases of misconduct or unsatisfactory performance and by which evidence it was determined in the first instance court due to the fact that the first instance court has not concluded that by administered evidence was not determined such a situation which may present ground for termination of employment relationship of the claimant. In cases when this provision is applied pursuant to Article 11.5 of this regulation a), the employer will notify the employee in written on his intent to terminate the employment relationship including the*

reasons for termination of such contract and will have a meeting with the employee to explain verbally to him the reasons for termination of the contract. In case the employee is member of any trade union, the employee is entitled to have present in the meeting also a representative of the trade union.In the procedure of the first instance has not been determined the fact that it was acted according to these provisions, therefore it is not sufficient that the employee is sent a written remark stating possible violations of his work duties or serious cases of misconduct, but pursuant to abovementioned provisions of this regulation the facts about these violations should be determined, respectively and the employee to be notified about them and to propose the court the evidence by which such facts were determined".

19. On 15 June 2007, the District Court in Peja (Judgment: AC.no. 333/2006), modified again the Judgment of the Municipal Court in Gjakova C. no. 876/2003 of 30 September 2004 and returned the case to the same court for retrial.

20. On 19 June 2008, the Municipal Court in Gjakova (Judgment C. no. 422/2007), approved again the Applicant's claim as grounded and annulled as unlawful the Employer's decision no. 2008 of 5 November 2003, obliging the Employer to reinstate the Applicant to his previous job position as Cash collector/Fitter, with all rights deriving from employment relationship, from the day this decision became final.

21. The Employer filed an appeal to the District Court in Peja against the Judgment of the Municipal Court of Gjakova,C. no. 422/2007 of 19 June 2008.

22. On 28 June 2010, the District Court in Peja (Judgment: AC.no. 73/2009), modified the Judgment of the Municipal Court in Gjakova C1. no. 422/2007, of 19 June 2008 and rejected as ungrounded the Applicant's claim, by which he requested the annulment of the Employer's decision No. 2008 of 5 November 2003. The following is the reasoning of the Judgment:

23. The Applicant filed revision in the Supreme Court against the Judgment AC.no. 73/2009 of 28 June 2010 of the District Court in Peja, due to substantial violation of the contested procedure provisions and erroneous application of substantive law.

24. On 2 May 2013, the Supreme Court (Judgment Rev. no. 297/2012) rejected as ungrounded the revision filed by the Applicant, upholding

the Judgment of the District Court of Peja, AC. no. 73/2009 of 28 June 2010, due to the following reasons:

> *"The Supreme Court of Kosovo assesses that the court of second instance has correctly concluded that the court of first instance has completely determined the factual situation in which has erroneously applied the substantive law, when it found that the claim of claimant is grounded. Judgment does not contain substantial violations of contested procedure provisions, which this court noticesex-officio.*
>
> *The court of second instance has given sufficient reasons on crucial facts, which this court also admits, by which is not put into doubt the legality of the appealed judgment. The court of second instance has correctly applied the substantive law when it found that legal terms and conditions as stipulated by Article 11.1 item (ç), Article 11.3 item (b) of Essential Labor Law of Kosovo were fulfilled in order to terminate to the claimant the employment relationship due to dissatisfactory performance of work duties, which include the repeated mistakes due to which is disrupted the normal course of employment relationship, situation in the company, his file and the last warning dated 25.07.2003, due to inefficiency of work, respectively low cash collection, due to passiveness at work and his behaviors with customers.*
>
> *Due to these violations, the claimant is reprimanded by the last warning in written, which is given as a last warning prior to dismissal. Behaviors with customers are proved by the facts that are found in the case files such as: requests submitted to the respondent by customers as well as the invoices for payment of debt by customers, since in the evidence of the respondent they are registered as debtors.*
>
> *This court assesses that the respondent in entirety acted on this case pursuant to Article 11.5 item (a) and item (b) of the abovementioned law, particularly according to item (b) by which it is foreseen that the employer will organize a meeting with the employee in which case the employer explains verbally to the employee the reasons of termination of contract. In case the employee is a member of the trade union he has the right that a trade union representative to be present in the meeting. In the case of claimant the notice for termination of employment relationship*

was communicated to the claimant in the presence of the trade union representative to whom it was submitted this notice translated by a translator".

Applicant's allegations

25. The Applicant alleges that the judicial authorities in their decisions violated his rights guaranteed by Article 49 [Right to Work and Exercise Profession] of the Constitution.

26. The Applicant requests from the Constitutional Court to quash the Judgment of the Supreme Court Rev. no. 297/2012 of 2 May 2013 and Judgment of the District Court in Peja AC.nr. 73/2009 of 28 June 2010, due to their partiality.

Admissibility of the Referral

27. In order to be able to adjudicate the Applicants' Referral, the Court needs 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 of the Court.

28. The Court needs first to determine whether the Applicant is authorized party to submit a Referral with the Constitutional Court in accordance with the requirements of Article 113 paragraph 1 and 7 of the Constitution. The Applicant in this case is legal entity and has shown that is authorized party as required by the abovementioned constitutional provisions.

29. The Court also determines whether the Applicant has proved that he met the requirements of Article 113.7 of the Constitution and Article 47.2 of the Law, regarding the exhaustion of legal effective remedies. The Applicant has submitted to the Court sufficient evidence for fulfillment of the requirement as provided by Article 113.7 of the Constitution, Article 47.2 of the Law and Rule 36.1 (a) of the Rules of Procedures.

30. Furthermore, the Applicant must prove that he met the requirements of Article 49 of the Law and Rule 36.1 (b) of the Rules of Procedure, regarding the submission of the Referral within provided legal time limit. It is clear from the case file that the last decision on the case of the Applicant is the Judgment of the Supreme Court, Rev. no. 228/2012, of 2 May 2013, which was served on him on 25 June 2013. The Applicant submitted the referral on 16 July 2013, which means that Referral was

filed within four 4 (four) month provided by the above mentioned provisions.

31. The Court also assesses whether the Applicant has specified and clarified in his Referral what rights and freedoms he claims that have been violated to him (Article 48 of the Law), by what act and what court or public authority. The Applicant mentioned in his Referral Article 49 of the Constitution and violation of fundamental human rights, alleging that abovementioned rights have been violated by the challenged decisions of the court authorities.

32. However, the Applicant should convincingly substantiate that the facts he claims that have caused violation of his rights and freedoms, guaranteed by the Constitution, constitute incontestably, in their essence, the elements of the violation of a right.

33. In this respect, the Court also refers to Rule 36.1 (c) and Rule 36 (2) of the Rules of Procedure which provides:

"(1) The Court may only deal with Referrals if:

[...]

c) the Referral is not manifestly ill-founded.

(2) 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,

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".

34. The Court reiterates that one of the admissibility requirements of the Referral, is whether the Applicant's Referral is manifestly founded in order that this Court goes into its merits.

35. The Court notes that the Applicant has not proved in any manner that the challenged judgments contain violations of Article 49 and violation of fundamental human rights, guaranteed by the Constitution. He did not clarify why and how the court authorities have violated his rights from the abovementioned provisions of the Constitution.

36. It is not sufficient that the Applicant refers his allegation for violation of a constitutional right, by mentioning the Article, by which he alleges that his rights were violated. The allegation for violation of constitutional rights has to be referred on the constitutional grounds, in order that the Referral is grounded.

37. The Supreme Court on this case gave sufficient reasons in its judgment, by reviewing and analyzing in entirety the circumstances of the case, based on which it has decided to uphold the Judgment of the second instance court, which is full jurisdiction of that court to assess the legality of the court decisions rendered by the lower instance courts.

38. Duty of the Constitutional Court regarding the alleged violations of the constitutional rights is to assess whether the proceedings, in their entirety were fair and in compliance with the protection, explicitly provided in the Constitution. Thus, the Constitutional Court is not a court of fourth instance, when considering the decisions taken by lower instance courts. It is the role of regular courts to interpret and apply the pertinent rules of both procedural and substantive law *(See, mutatis mutandis, Garcia Ruiz against Spain [GC], no. 30544/96, paragraph. 28, European Court of Human Rights [ECHR] 1999-I).*

39. In the present case, the Applicant has not provided any *prima facie* evidence which indicate that the alleged violations, mentioned in the Referral, constitute incontestable elements of violation of constitutional rights *(see Vanek vs. Slovak Republic, ECHR Court on admissibility, Application no. 53363/99 of 31 May 2005).*

40. Therefore, the Court cannot consider that the pertinent proceedings in the Supreme Court and in other instance courts were in any way unfair or arbitrary *(see, mutatis mutandis, Shub v. Lithuania, ECHR Decision as to the Admissibility of Application no. 17064/06 of 30 June 2009).*

41. From the reasons above, the Court notes that the Applicant's Referral does not meet the admissibility requirements either on the ground of admissibility or on the merits, because the Applicant failed to prove that

by the challenged decision were violated his rights and freedoms, guaranteed by the Constitution.

42. In sum, the Court concludes that the Applicant's Referral is manifestly ill-founded.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, pursuant to Article 48 of the Law and pursuant to Rule 36 (2) b) and d) and Rule 56 (2) of the Rules of Procedure, on 16 October 2013, unanimously

DECIDES

I. TO REJECT the Referral as inadmissible;

II. TO NOTIFY this Decision to the Parties;

III. TO PUBLISH this Decision in the Official Gazette in accordance with Article 20 (4) of the Law.

IV. This Decision is effective immediately.

Judge Rapporteur
Ivan Čukalović

President of the Constitutional Court
Prof. Dr. Enver Hasani

KI 70/13, Asllan Bahtiri, date 21 November 2013- Constitutional Review of judgment of the District Court in Prishtina, P.no. 529/2008, of 1 December 2010

Case KI-70/13, Resolution Inadmissibilty of 17 October 2013.

Keywords: Individual referral, time-barred, res judicata, final form, right to protection, criminal offence.

The Applicant has filed his referral in compliance with Article 113.7 of the Constitution of Kosovo, challenging the judgment of the District Court in Prishtina, P.no.529/2008 of 01 December 2010, by which the Applicant was found guilty of the criminal offence of murder, and by final judgment sentenced to imprisonment of two years and eight months (2 years and 8 months), a physical copy of which the Applicant refused to receive.

The Applicant alleged that the right to defence against the offence charged upon him was violated, and he claims that the (offence) was committed in Germany in 1998, while he was being tried in Kosovo; he demanded return to Germany, for the trial to be held there, where evidence are held.

The Judgment of the District Court in Prishtina, P.no. 529/2008 of 01 December 2010, was upheld by the Judgment of the Supreme Court of Kosovo, Ap.no. 77/2011, of 18 January 2012. The judgment became final on 18 January 2012, while the Applicant filed his referral with the Constitutional Court on 14 May 2013.

Deciding upon referral of Applicant Asllan Bahtiri, the Constitutional Court reviewed the proceedings in their entirety, and found that the referral is inadmissible for review, in compliance with Article 49 (Timelines) of the Law, and Rule 36 (1b) of the Rules of Procedure, since the Referral was filed beyond the deadline of four months from the service of the ruling on the last effective legal remedy on the Applicant.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI70/13
Applicant
Asllan Bahtiri
Constitutional Review of the Judgment of the District Court in Prishtina
P.no.529/2008 of1 December 2010

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

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

The Applicant

1. The Applicant is Asllan Bahtiri from Prishtina.

Challenged decision

2. The challenged decision is the Judgment of the District Court in Prishtina, P.no. 529/2008 of 01 December 2010, which was upheld by the Judgment of the Supreme Court of Kosovo, Ap.no. 77/2011, of 18 January 2012.

Subject matter

3. The subject matter is the constitutional review of the Judgment of the District Court in Prishtina, P.no. 529/2008 of 1 December 2010, by which the Applicant was found guilty for the criminal offence of murder and by final judgment sentenced to imprisonment of two years and eight months (2 years and 8 months) written version of which judgment the Applicant refused to receive.

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 15 January 2009 (hereinafter: the Law) and Rule 56 para.2 of the Rules of Procedure (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 14 May 2013, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. The President, by Decision (No.GJR. 70/13 of 27 May 2013), appointed Judge Arta Rama-Hajrizi as Judge Rapporteur. On the same date, the President, by Decision No.KSH.70/13 appointed the Review Panel composed of judges: Altay Suroy(Presiding), Snezhana Botusharova and Kadri Kryeziu.

7. On 25 July 2013, the Constitutional Court requested additional documents from the Basic Court in Prishtina.

8. On 30 July 2013, the Basic Court in Prishtina notified the Constitutional Court that the Judgment of the District Court in Prishtina, P.no. 529/2008 of 1 December 2010, became final on 18 January 2012.

9. On 17 October 2013, after having considered the Report of the Judge Rapporteur Arta Rama-Hajrizi, the Review Panel composed of judges: Altay Suroy(presiding), Snezhana Botusharova and Kadri Kryeziu made a recommendation to the full Court on the inadmissibility of the Referral.

Summary of facts

10. By Judgment of the District Court in Prishtina, P.no. 529/2008 of 01 December 2010, the Applicant was found guilty for commission of the criminal offence of murder and by final judgment sentenced to imprisonment of two years and eight months (2 years and 8 months).

11. The Judgment of the District Court in Prishtina P.no. 529/2008 of 01 December 2010 was upheld by Judgment of the Supreme Court of Kosovo Ap.no. 77/2011 of 18 January 2012. The Judgment became final on 18 January 2012, while the Applicant refused to receive the written version of the judgment.

Applicant's allegations

12. The Applicant alleges that "*the right to protection for the offence, which he is accused of, was violated. It is said that the (offence) was committed in Germany in 1998, while he is tried in Kosovo; he requested to be returned to Germany and that the trial to be held there, where the evidence are.*"

13. The Applicant requests from the Constitutional Court the following:

> *"I request to return my case for retrial and to show the sessions on TV, like some persons are shown on television, but to be recorded, because I have lost trust in justice, so in that way, nobody can manipulate anybody. The Court renders every decision "In the name of people," so according to this, it does not have anything to hide from people."*

Assessment of the admissibility of Referral

14. In order to be able to adjudicate the Applicant's Referral, the Constitutional Court has to assess beforehand whether the Applicant has met the admissibility requirements laid down in the Constitution and the Law.

15. In this respect, the Constitutional Court refers to Article 49 (Deadlines) of the Law, which provides the following:

> *"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."*

16. Based on the additional documents, submitted by the Basic Court in Prishtina, the Constitutional Court has determined that the Judgment of the District Court in Prishtina P.no. 529/2008 of 1 December 2010 became final on 18 January 2012, while the Applicant filed a submission to the Secretariat of the Constitutional Court on 14 May 2013.

17. From this it follows that the Referral is inadmissible for review pursuant to Article 49 (Deadlines) of the Law and Rule 36 (1b) of the Rules of Procedure, which provides: *"(1) 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*."

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 49 of the Law and Rule 36.1 (b) of the Rules of Procedure, in the session held on 17 October 2013, 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. Decision is effective immediately.

Judge Rapporteur
Arta Rama-Hajrizi

President of the Constitutional Court
Prof. Dr. Enver Hasani

KI 84/13, Gani Sopaj, Ahmet Sopaj and Nazmije Sopaj, date 21 November 2013- Constitutional Review of the Decision of the Supreme Court of the Republic of Kosovo, Rev. no. 294/2010, dated 10 April 2013.

Case KI 84/13, Resolution on Inadmissibility of 18 October 2013

Keywords: individual referral, manifestly illfounded, right to fair and impartial trial

The applicants, Gani Sopaj, Ahmet Sopaj and Nazmije Sopaj, filed a Referral pursuant to Article 113.7 of the Constitution of Kosovo challenging the Decision of the Supreme Court of the Republic of Kosovo, Rev. no. 294/2010, dated 10 April 2013, as being taken in violation of Article 31 [Right to Fair and Impartial Trial] of the Constitution, *"[…] because for the same issue, the same presiding judge took different decisions and this is in violation of the Constitutional right to a fair and impartial trial."*

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.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI84/13
Applicants
Gani Sopaj, Ahmet Sopaj and Nazmije Sopaj
Constitutional Review of the Decision of the Supreme Court of the Republic of Kosovo, Rev. no. 294/2010, dated 10 April 2013.

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Enver Hasani, President
Ivan Cukalovic, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Kadri Kryeziu, Judge and
Arta Rama-Hajrizi, Judge

Applicant

1. The Referral is submitted by Gani Sopaj, Ahmet Sopaj and Nazmije Sopaj (hereinafter: the "Applicants"), represented by Mr. Sehad Haliti, a practicing lawyer from Suhareka.

Challenged decision

2. The Applicants challenge the Decision of the Supreme Court, Rev. no. 294/2010, of 10 April 2013, which was served on the Applicants on 5 May 2013.

Subject matter

3. The Applicant request the constitutional review of the Decision of the Supreme Court, Rev. no. 294/2010, because it allegedly violated their rights as guaranteed by the Constitution of the Republic of Kosovo (hereinafter: the "Constitution"), namely Article 31 [Right to Fair and Impartial Trial].

Legal basis

4. The Referral is based on Article 113.7 of 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: 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 13 June 2013, the Applicants submitted the Referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the "Court").

6. On 20 June 2013, the President of the Constitutional Court, by Decision No.GJR.KI-84/13, appointed Judge Arta Rama-Hajrizi as Judge Rapporteur. On the same date, the President of the Constitutional Court, by Decision No.KSH.KI-84/13, appointed the Review Panel composed of Judges Altay Suroy (Presiding), Snezhana Botusharova and Kadri Kryeziu.

7. On 8 July 2013, the Referral was communicated to the Supreme Court.

8. On 18 October 2013, 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 20 September 2000, one of the Applicants, Mr. Gani Sopa, filed a claim for confirmation of the right to property with the Municipal Court in Suhareka.

10. On 10 July 2003, the Municipal Court in Suhareka (Judgment C. no. 113/2000) approved the Applicant's claim as founded. Furthermore, it held that based on the sale-purchase contract the Applicant is the owner of the contested cadastral plot and the respondent Municipality of Suhareka is obliged to recognize the Applicant's property right. The Public Lawyer of the Municipality of Suhareka filed a complaint against this Judgment to the District Court in Prizren.

11. On 9 December 2004, the District Court in Prizren (Judgment Ac. no. 355/2003) rejected the complaint of the Public Lawyer as unfounded and upheld the Judgment of the Municipal Court of Suhareka of 10 July 2003. The Public Lawyer of the Municipality of Suhareka filed a revision with the Supreme Court against the Judgment of the Municipal Court of Suhareka and the District Court of Prizren.

12. On 25 January 2006, the Supreme Court (Decision Rev. no. 63/2005) approved the revision as founded. The Supreme Court annulled the decisions of the lower courts and sent the case back for retrial to the first instance court. In this respect, the Supreme Court held *"[…] the judgments of the lower instance courts are with substantial violations of the Law on Contested Procedure, namely Article 354 paragraph 2 item 14 in conjunction with Article 375 paragraph 1 of the Law on Contested Procedure and because of these defects the judgment cannot be reviewed."*

13. On 15 June 2007, the Municipal Court in Suhareka (Judgment C. no. 69/07) during the retrial rejected as unfounded the Applicants claim that they are owners of the contested parcel on the basis of inheritance. The Municipal Court in Suhareka held that *"The Applicants did not provide real evidence to the court regarding their claim on acquisition of property. Therefore, the contested real estate is registered in the name of the socially owned enterprise […]"*. Furthermore, the Municipal Court in Suhareka held that *"According to the Court's opinion, the villagers of the village Bukosh did not have the right of property over the contested parcel and did not have the right to sell it to the Applicants predecessor, they did not have legal right for alienation of the contested real estate, so the same were not the owners, because in a way the property was registered and is also now registered as socially owned enterprise."* The Applicants complained against this Judgment to the District Court in Prizren.

14. On 6 March 2008, the District Court in Prizren (Decision Ac. no. 361/2007) approved the Applicants' complaint and sent back the case for retrial to the first instance court. The District Court in Prizren held that *"In reconsideration of this legal matter the court of first instance should assess the statements of witnesses and at the same time requests from geodesy expert in Suhareka or Agency for Cadastre and Geodesy in Prishtina that gives the statement in relation to that that the parcels based on the certificate (tapi), which is found in the case files if it corresponds to the contested parcel and to be given clarification of these legal relevant facts […]"*.

15. On 3 December 2009, the Municipal Court in Suhareka (C. no. 81/08) approved the Applicants claim and held that the Applicants are owners of the contested parcel on the basis of inheritance. The Municipal Court in Suhareka held that *"Based on the evidence in the case file, especially the ownership certificate (tapia) and the witnesses, the Applicants claim is founded."* The Public Lawyer of the Municipality of Suhareka filed a complaint against this Judgment to the District Court in Prizren.

16. On 29 July 2010, the District Court in Prizren (Judgment Ac. no. 37/2010) approved the complaint of the Public Lawyer as founded and revoked the Judgment of the Municipal Court of Suhareka of 3 December 2009. The Distrct Court decided that the Applicants claim must be rejected as unfounded because there is no written contract on the transfer of the property and there is no credible witness statement that the sellers of the property were legitimate owners of the property. Furthermore, the District Court held that *"Present Law on contracts and torts as well as law applicable in 1970's when alleged purchase took place requires written form of contract over real estate ownership. Contracts of a kind lacking written form are null and void. This was why Supreme Court of Kosovo in the revision proceedings instructed lower instances to verify if there was a contact dully concluded. Subsequent proceedings reveal no written contract existed."* The Applicants filed a revision with the Supreme Court against this Judgment.

17. On 10 April 2013, the Supreme Court rejected the revision of the Applicants as inadmissible. The Supreme Court held that *"In the Minutes during the main review dated 11.04.2007 it comes out that the claimants have set the amount of contest to 500 DM, respectively €250, and have stated that if the court thinks differently then the amount of the contest can be determined ex-officio. From the case files does not exist the decision of the court for determination of the amount of the contest, so the amount of the contest has remained €250. By Article 211.3 of Law on Contested Procedure, it is envisaged that the revision is inadmissible in legal property contests, in which the statement of claim does not have to do with requests in money by handover of thing or fulfilling of any other promise if the value of object of contest shown in claim of claimants does not exceed the amount of €3000. Having into account the provision of Article 211.3 of Law on Contested Procedure that the revision is inadmissible in legal property matters in which the statement of claim has nothing to do with requests in money with submission of thing or fulfilling of any other promise, if the amount of*

the contest shown in claim of claimants does not exceed the amount of €3000, while for the fact that the amount of object of contest the claimants have set in the Minutes for main review at the amount of €250, while the claim was submitted in the court on 21.09.2000, according to estimation of this court the revision of claimants in this legal matter is not admissible and as such should be dismissed."

Applicant's allegations

18. The Applicants allege that *"The Decisions of the Supreme Court, Rev. no. 294/2010, and, Rev. no. 63/2005, are in contradiction with Article 31 [Right to Fair and Impartial Trial], because for the same issue, the same presiding judge took different decisions and this is in violation of the Constitutional right to a fair and impartial trial."*

19. Moreover, the Applicants claim that *"When the two first instance decisions were in favor of the Applicants, the Supreme Court accepted the respondents revision (the Public Lawyer of the Municipality of Suhareka), and now, when the second instance decision was in favor of the respondent, the same presiding Judge of the Supreme Court rejected the revision, arguing that the value of the contested parcel does not exceed € 3,000."*

Admissibility of the Referral

20. The Court observes that, in order to be able to adjudicate the Applicants complaint, 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.

21. In this respect, the Court refers to Rule 36 (1) c) of the Rules of Procedure which foresees that *"The Court may only deal with Referrals if (...) the Referral is not manifestly ill-founded."*

22. 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 regular court, unless and in so far as they may have infringed rights and freedoms protected by the Constitution (constitutionality). Thus, this Court is not to act as a court of fourth instance, when considering the decisions taken by the 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).

23. In sum, 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 Applicants have 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).

24. In this respect, the Court notes that the Applicants did not substantiate a claim on constitutional grounds and did not provide evidence that their fundamental rights and freedoms have been violated by the regular courts. The Supreme Court provided the Applicants with a well reasoned judgment why the revision was rejected the second time. The Court also notes that when the Decision of 25 January 2006 was taken by the Supreme Court the applicable Law on Contested Procedure in its Article 382 provided that *"Revision is not permitted in the property-judicial contests, in which the charge request involves money requests, handing items or fulfillment of a proposal if the value of the object of contest in the attacked part of the final decision does not exceed 5, 000 Dinare."* However, when the Decision of 10 April 2013 was taken by the Supreme Court the Law on Contested Procedure was changed and the applicable Law on Contested Procedure in its Article 211.3 provided that *"Revision is not permitted in the property-judicial contests, in which the charge request doesn't involve money requests, handing items or fulfillment of other proposal, if the value of the object of contest shown in the charge doesn't exceed 3,000 €."*

25. 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).

26. In sum, the Applicants did not show why and how their rights as guaranteed by the Constitution have been violated. A mere statement that the Constitution has been violated cannot be considered as a constitutional complaint. Thus, pursuant to Rule 36 (1.c) of the Rules of Procedure, the Referral is manifestly ill-founded and therefore it is inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Rule 36 (1.c) and Rule 56 (2) of the Rules of Procedure, on 18 October 2013 , unanimously

DECIDES

I. TO REJECT the Referral as Inadmissible;

II. TO NOTIFY the Parties of this Decision;

III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20 (4) of the Law;

IV. TO DECLARE this Decision immediatelyeffective.

Judge Rapporteur
Arta Rama-Hajrizi

President of the Constitutional Court
Prof. Dr. Enver Hasani

KI 126/13, Shaqir Vula, date 21 November 2013- Constitutional Review of the Judgment of the Supreme Court of Kosovo, Rev. No. 293/2012, of 17 May 2013

Case KI126/13, Resolution Inadmissibilty of 21 October 2013

Keywords: individual referral, civil dispute, erroneous application of material law, manifestly ill-founded

The Applicant claimed that during the course of the abovementioned proceedings, his constitutional rights were violated because the respective courts did not apply the applicable provisions of law. According to the Applicant's Referral and statement of facts, the Applicant alleged that *"the first instance court, the appeal and the revision courts have erroneously applied the material law*. According to the Applicant, during all stages of the proceedings, the respective courts failed to *provide the necessary legal reasoning grounded on the law*".

In this case, the Court notes that the Applicant mainly complains due to erroneous application of the material law, the lack of reasoning of those decisions and other reasons that have to do with his rights to work.

As in many cases, in this case as well, the Court reminds the Applicant that the Constitutional Court is not a court of fourth instance, to assess the legality and accuracy of decisions issued by regular courts, unless there is convincing evidence that such decisions have been rendered in an unfair and unclear manner. It is the role of the regular courts to interpret and apply the relevant rules of both procedural and substantive law. (See Gacia Ruiz v. Spain [GC], No. 30544/96, 28, European Court on Human Rights [ECtHR] 1999-I).

Therefore, in accordance with Rule 36 (2) b) of the Rules of Procedure, the Applicant's Referral is considered as manifestly ill-founded and, as such, it is declared inadmissible by the Court.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI126/13
Applicant
Shaqir Vula
Constitutional Review of the Judgment of the Supreme Court of Kosovo, Rev. No. 293/2012, of 17 May 2013

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

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

Applicant

1. The Applicant is Mr. Shaqir Vula, a graduated jurist, residing in Gjakova.

Challenged Decision

2. The Applicant challenges the following court decisions: the Judgment of the Supreme Court of Kosovo in Prishtina Rev. 293/2012 of 17 May 2013; the Judgment of the District Court in Peja Ac. No. 132/2012 of 12 June 2012; and the Judgment of the Municipal Court in Gjakova C. No. 292/2008 of 20 September 2011.

Subject Matter

3. The subject matter of the Referral pertains to alleged violation of the Applicant's constitutional rights in relation to his right to a fair and impartial trial (Article 31 of the Constitution; Article 6.1 of the European Convention on Human Rights and Fundamental Freedoms (hereinafter: ECHR) and his right to work and exercise profession (Article 49 of the Constitution).

4. The Applicant requests from the Constitutional Court to annul the Judgment of the Supreme Court of Kosovo, Rev. No. 293/2012 of 17 May 2013.

Legal Basis

5. Article 113.7 of the Constitution, Article 47 of the Law no. 03/L-121 on the Constitutional Court of the Republic of Kosovo of 16 December 2008, which entered into force on 15 January 2009 (hereinafter: the Law) and Rule 56 (2) of the Rules of Procedure of the Constitutional Court (hereinafter: Rules of Procedure).

Proceedings before the Court

6. On 19 August 2013, the Applicant submitted his Referral to the Court.

7. On 30 August 2013, the President of the Constitutional Court, by Decision No. GJR. KI 126/13, appointed Judge Arta Rama-Hajrizi as Judge Rapporteur. On the same date, the President of the Constitutional Court, by Decision No. KSH. KI 126/13, appointed the Review Panel composed of Judges: Altay Suroy (Presiding), Snezhana Botusharova, and Kadri Kryeziu.

8. On 12 September 2013, the Court notified the Applicant and the Supreme Court of Kosovo of the registration of the Referral.

9. On 21 October 2013, 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. This Referral comes before the Court concerning the termination of the Applicant's employment contract for the position of Municipal Public Advocate.

11. Pursuant to the Applicant's statement of facts, the Applicant had been appointed Municipal Public Advocate pursuant to the Decision of Municipal Assembly for the period from 2003 to 2006. During this period, Applicant had an employment contact for the above stated time frame.

12. After the termination of the first employment contract for the period from 2003 until 2006, the Applicant continued to work as a Municipal Public Advocate pursuant to Gjakova Municipal Assembly decision 01 no. 112-21266/2007 of 01 June 2007, which provided:

> *"The employment contract of the Applicant at the position of Municipal Public Advocate is extended for the duration until the conclusion of the competition procedure for this position."*

13. For the purpose of continuity of the position, the Applicant's employment was extended until the conclusion of the recruitment period for the position the Applicant was currently in position of.

14. The Applicant's employment was subsequently extended by three consecutive contracts for three (3) month periods.

15. On 31 March 2008, the extension of the employment contract was terminated.

16. Subsequently, the Applicant filed claim with the Municipal Court in Gjakova, Judgment C. No. 56/2010 of 7 April 2011, which rejected the Applicant's claim as being ungrounded.

17. The Applicant subsequently filed an appeal with the District Court in Peja, Judgment Ac. No. 132/2012 of 12 June 2012, by which was ultimately rejected the Applicant's appeal.

18. The Applicant filed revision with the Supreme Court against the second instance decision. He requested from the Supreme Court to review the decision of the District Court in Peja and the decision of the Municipal Court in Gjakova.

19. On 17 May 2013, the Supreme Court (Judgment: Rev. 293/2012) rejected as ungrounded the request for revision. In its reasoning, the Supreme Court states that: "the Applicant was appointed Municipal Public Advocate pursuant to decision of the Municipal Assembly for the period from 2003 to 2006. The employment contract was extended, by contract ZK-01/17 dated 7 January 2008, with a final termination date of 31 March 2008. The Applicant (Claimant) was notified on 13 March 2008 by the Gjakova Municipality that his employment contract would be terminated on 31 March 2008 and that it would not be renewed. According to court documents, the Applicant entered into the employment contracts of his own volition and that he understood that the contract periods were for a definite time period.

20. Furthermore, the Supreme Court held that:

> *"Although in the Revision it is alleged that the Judgment contains essential violation of the provision of contentious procedure they are not specified but only the content of Article 182 of LCP has been paraphrased, that the Revision has no reasoning on this legal ground, whereas this court pursuant to Article 215 of LCP, except the capability to be a party and the regular representation of the parties in procedure does not review ex officio the existence of other essential violations of the provisions of contentious procedure. Due to this, it was found that this allegation of the Revision is not grounded."*

21. With regards *"to the erroneous application of the material law in the Revision"* the court found that *"the claimant had no remarks on the last employment contract dated 7 January 2008 effective from 1 January 2008 until 31 March 2008 and has signed it willingly, which contradicts the mentioned allegation and renders it not grounded."* Therefore, the Supreme Court held that the allegations in the Revision could not be approved and in the Applicant's specific case, the Revision allegations have not called into doubt the ground or the legality of the lower instance courts' Judgments. Based on this, the Supreme Court, pursuant to Article 222 of LCP, determined that the Applicant's Revision is rejected as ungrounded.

Applicant's Allegations

22. The Applicant alleges that during the course of the abovementioned proceedings, his constitutional rights were violated because the respective courts did not apply the applicable provisions of law.

23. According to the Applicant's Referral and statement of facts, the Applicant alleged that *"[t]he first instance court, the appeal and the revision courts have erroneously applied the material law."*

24. According to the Applicant, during all stages of the proceedings, the respective courts failed to *"provide the necessary legal reasoning grounded on the law."*

25. The Applicant further alleges that the decision to not extend his employment contract *"directly violates the provisions of Administration Instruction No. MSHP/DASHC-2003/02 CONTRACT*

PROCEDURES for Implementing Administrative Directive 2003/02 – Implementing UNMIK Regulation No. 2001/36 on the Kosovo Civil Service, which under item 4 in relation to the contract renewal provides: 'The employee's contract should normally be extended for a three year period when its renewal results due to the expiration of the first contract under the condition that: 4a.1 the budget for the position is available or most likely will possibly be available, 4a.2 when there are no disciplinary measures against the employee due to serious violations.'"

26. Furthermore, the Applicant alleges that:

a) "his employment should not have been terminated until an evaluation of his work was completed in order to facilitate the employer in determining whether to extend the employment contract or to fill the position through a public announcement.

b) *during his employment with the Municipal Public Advocate, he submitted annual work reports that were found to be successful, with no remarks made as to his work product*, and

c) his contract should not have been terminated because he performed his work in a satisfactory manner."

Admissibility of the Referral

27. In order to be able to adjudicate the Applicant's Referral, the Court must first determine whether the Applicant has fulfilled the admissibility requirement set forth in the Constitution, the Law, and Rules of Procedure.

28. The Court should firstly determine whether the Applicant is an authorized party to file the Referral in the Court. In the present case, the Applicant is natural person, therefore the Court assesses that the Applicant has met the requirement, provided by 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."*

29. The Court further notes that, the Applicant has met the requirements provided by Article 113(7) of the Constitution and Article 47(2) of the Law, as well as Rule 36.1 (a) of the Rules of Procedure, regarding the exhaustion of legal remedies provided by the law in force.

30. The Court further notes that the Applicant submitted the Referral within the time-limit prescribed by Article 49 of the Law and Rule 36.1 (b) of the Rules, to submit the Referral within the four (4) month period. The Applicant was served with the last decision (Rev. 293/2012, 17 May 2013) on 2 July 2013 and submitted the Referral in the Court on 19 August 2013, which means that the Referral was filed in accordance with the abovementioned provisions.

31. The Court must also take into consideration for admissibility purposes whether the Applicant's Referral satisfied the admissibility requirements prescribed in Rule 36.1 (c) and provisions of Rule 36.2 of the Rules of Procedure, that provides as follows:

36.(1) " The Court may only deal with Referrals if:

[...]

c) the Referral is not manifestly ill-founded.

36.(2) "The Court shall reject a Referral as being manifestly ill-founded when it is satisfied that:

(a) the Referral is not prima facie satisfied;

(b) when the presented facts do not in any way justify the allegation of a violation of the constitutional rights;

(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".

32. Based on the case file, the Court notes that the Applicant mainly complains on the decisions of regular courts due to erroneous application of the material law, the lack of reasoning of those decisions and other reasons that have to do with his rights to work.

33. The Court must remind the Applicant that the Constitutional Court is not a court of fourth instance, to assess the legality and accuracy of decisions issued by regular courts, unless there is convincing evidence

that such decisions have been rendered in an unfair and unclear manner. It is the role of the regular courts to interpret and apply the relevant rules of both procedural and substantive law. (SeeGarcia Ruiz v. Spain[GC], No. 30544/96, 28, European Court on Human Rights [ECtHR] 1999-I).

34. In the Applicant's Referral, there is no evidence to suggest that any of his rights guaranteed by the Constitution have been violated. During the course of the Applicant's regular proceedings, the Applicant had been afforded an opportunity to present his case with facts and evidence before those courts, regarding his allegations for violation of rights. It is not the task of this Court to review decisions of regular courts simply because the Applicant was not satisfied with the outcome of the previous decisions.

35. Therefore, in accordance with Rule 36 (2) (b) of the Rules of Procedure, the Applicant's Referral is considered as manifestly ill-founded and as such inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113 (7) of the Constitution, pursuant to Rule 36 (2) b) and Rule 56 (2) of the Rules of Procedure, on 21 October 2013, unanimously

DECIDES

I. TO REJECT the Referral as Inadmissible;

II. TO NOTIFY the Parties of this Decision;

III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20 (4) of the Law;

IV. TO DECLARE this Decision immediatelyeffective.

Judge Rapporteur	**President of the Constitutional Court**
Arta Rama-Hajrizi	Prof. Dr. Enver Hasani

KI 142/13, Fadil Maloku, date 21 November 2013- Request for constitutional review of the Decision of the President of the Republic of Kosovo, No. 686-2013, of 6 September 2013

Case KI142/13, Resolution Inadmissibilty of 22 October 2013

Keywords: individual referral, administrative dispute, freedom of election and participation, general principles, limitations on fundamental rights and freedoms, universal declaration, exhaustion of effective legal remedies

The Applicant claimed that the Decision no. 686-2013 of 6 September 2013 of the President of the Republic of Kosovo, violates the Applicant's constitutional rights, guaranteed by Article 21 paragraphs 1, 2, 3 and 4 [General Principles], Article 22 paragraphs 1, 2 and 3 [Direct Applicability of International Agreements and Instruments], Article 23 [Human Dignity], Article 45 paragraph 3 [Freedom of Election and Participation], Article 55 paragraph 5 [Limitations on Fundamental Rights and Freedoms], Article 4 paragraph 1 item (d) [Prohibition on Fundamental Rights and Freedoms], and Article 18 [Limitation on use of restrictions on rights] of ECHR and by Article 19 of Universal Declaration of Human Rights.

In this Case, the Court notes that the Applicant challenges the Decision of the President of the Republic of Kosovo, No. 686-2013 of 6 September 2013, regarding the termination of the Applicant's mandate as member of the Central Election Commission of the Republic of Kosovo. The Applicant in this case has failed to prove that he has exhausted effective legal remedies available under the laws in force, against the contested decision.

In this respect, the Court found that the Applicant's Referral does not meet the procedural requirements for admissibility, as required by Article 113.7 of the Constitution, and therefore, the Referral is declared inadmissible.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI142/13
Applicant
Fadil Maloku
Request for constitutional review of the Decision of the President of the Republic of Kosovo, No. 686-2013, of 6 September 2013

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Enver Hasani, President
Ivan Cukalovic, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Kadri Kryeziu, Judge and
Arta Rama-Hajrizi, Judge.

Applicant

1. The Referral is submitted by Mr. Fadil Maloku, residing in Prishtina (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges the Decision of the President of the Republic of Kosovo No. 686-2013, of 6 September 2013.

Subject matter

3. The subject matter of the Referral is the constitutional review of the Decision of the President of the Republic of Kosovo No. 686-2013 of 6 September 2013, regarding the termination of the Applicant's mandate as a member of the Central Election Commission of the Republic of Kosovo (hereinafter: CEC).

Legal basis

4. Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution); Article 47 of the Law on Constitutional Court of the Republic of Kosovo, No. 03/L-121, of 16 December 2008, which entered in

to force on 15 January 2009 (hereinafter: the Law); Rule 56 (2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: Rules of Procedure).

Proceedings before the Constitutional Court

5. On 9 September 2013, the Applicant submitted a Referral with the Constitutional Court.

6. On 24 September 2013, the President of the Court, by Decision NO. GJR.142/13, appointed Judge Altay Suroy as Judge Rapporteur, and by Decision NO. KSH.142/13, appointed members of the Review Panel, composed of Judges: Robert Carolan (Presiding), Prof. Dr. Ivan Čukalović and Prof. Dr. Enver Hasani.

7. On 8 October 2013, the Court notified the Applicant, the Office of the President of the Republic of Kosovo and the CEC Office of registration of the Referral.

8. On 22 October 2013, the Review Panel reviewed the report of the Judge Rapporteur and recommended to the Court the inadmissibility of the Referral.

Summary of facts

9. On 6 September 2013, the President of the Republic of Kosovo (Decision: no. 686-2013) terminated to the Applicant the mandate of CEC member. The Applicant used to represent in CEC the Parliamentary Group of the Coalition for New Kosovo.

10. The Decision of the President on termination of exercising the function of CEC member is based on Article 139 item 4 of the Constitution, Article 61, paragraph 5 item (a) of the Law on General Elections in the Republic of Kosovo, as well as on the document of the Parliamentary Group of the Coalition for New Kosovo, protocol no. 728, of 20 August 2013 and on the document with protocol no. 743, of 3 September 2013.

Applicant's allegations

11. The Applicant alleges that the Decision no.686-2013 of 6 September 2013 of the President of the Republic of Kosovo, violates the Applicant's constitutional rights, guaranteed by: Article 21 paragraph 1, 2, 3 and 4

[General Principles]; Article 22 paragraph 1, 2 and 3 [Direct Applicability of International Agreements and Instruments]; Article 23 [Human Dignity]; Article 45 paragraph 3 [Freedom of Election and Participation]; Article 55 paragraph 5 [Limitations on Fundamental Rights and Freedoms]; Article 4 Paragraph 1 item (d) [Prohibition of slavery and forced labour] and Article 18 [Limitation on use of restrictions on rights] of ECHR and on Article 19 of Universal Declaration of Human Rights.

12. The Applicant also alleges that the Decision No. 686-2013 of 6 September 2013 of the President of the Republic of Kosovo, is contrary to Article 61.5 item (a) of the Law on General Elections. The Applicant claims that this Article does not have to do anything with his work as CEC member. Furthermore, the latter claims that the abovementioned Decision is also contrary to Article 61 item (e) that is referred to the mandate and the appointment of the CEC members.

Assessment of admissibility of the Referral

13. The Court examines whether the Applicant has met the admissibility requirements laid down in the Constitution, as further specified in the Law and the Rules of Procedure of the Court.

14. In the present case, the Applicant is natural person, who bases his Referral on Article 113.7 (Individual Referrals) of the Constitution.

15. In this respect, the Court refers to Article 113 paragraph (7) 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."*

16. From the case file, the Court notes that the Applicant challenges the Decision of the President of the Republic of Kosovo No. 686-2013 of 6 September 2013, regarding the termination of the Applicant's mandate as member of the Central Election Commission of the Republic of Kosovo.

17. The Applicant in this case has failed to prove that he has exhausted effective legal remedies available under the laws in force, against the contested decision.

18. Thus, in this respect, the Court assesses that the Applicant's Referral does not meet the procedural requirements for admissibility, as required by Article 113.7 of the Constitution.

19. The principle of subsidiarity requires that the Applicant exhausts all procedural possibilities in the regular proceedings, in order to prevent violation of the Constitution or, if any, to remedy such violation of a fundamental right. Otherwise, the Applicant is liable to have his case declared inadmissible by the Constitutional Court, when failing to avail himself of the regular proceedings or failing to report a violation of the Constitution in the regular proceedings. The rule is based on the assumption that the legal order of Kosovo will provide an effective legal remedy for the violation of constitutional rights (see Resolution on Inadmissibility Kl-41/09, of 21 January 2010, AAB-RIINVEST University L.L.C., Prishtina vs. the Government of the Republic of Kosovo, and see *mutatis mutandis*, ECHR, Selmouni vs. France, no. 25803/94, Decision of 28 July 1999).

20. From the foregoing reasons, the Court concludes that the Applicant's Referral does not meet procedural admissibility requirements, since the Applicant has not exhausted effective legal remedies provided by law.

FOR THESE REASONS

The Constitutional Court pursuant to Article 113 paragraph (7) of the Constitution, Article 47.2 of the Law, and Rule 36 (1) a) and 56 (2) of the Rules of procedure, on 22 October 2013, unanimously:

DECIDES

I. TO REJECT the Referrals as inadmissible;

II. TO NOTIFY the Parties of this Decision;

III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20 (4) of the Law; and

IV. TO DECLARE this Decision effective immediately.

Judge Rapporteur
Altay Suroy

President of the Constitutional Court
Prof. Dr. Enver Hasani

KI 69/13, Hysen Muqa, date 26 November 2013 - Constitutional Review of the Judgment of the Supreme Court of Kosovo, Ap. no. 157/2009, of 25 May 2011

Case KI 69/13, Resolution Inadmissibilty dated 16 October 2013.

Keywords: Individual referral, referral submitted out of time, Resolution on inadmissibility

The Applicant in his Referral, submitted on 14 May 2013, requests "constitutional review of the Judgment of the District Court in Prizren, P. no. 132/08, of 30 December 2008, and of the Judgment of the Supreme Court of Kosovo, Ap. no. 157/2009, of 25 May 2011. Based on these decisions, the Applicant was found guilty for the criminal offence of Contracting for Disproportionate Profit from Property and was sentenced to imprisonment in duration of 18 months."

The Court concludes that the Referral was not submitted within legal time limit, in accordance with Article 49 of the Law, because the Judgment of the Supreme Court of Kosovo, Ap. no. 157/2009, was served on Applicant on 27 October 2011, while he submitted his Referral to the Secretariat of the Constitutional Court on 14 May 2013, which means that the Referral was submitted about 1 year and a half out of the time limit provided by the law.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI69/13
Applicant
Hysen Muqa
Constitutional Review of the Judgment of the Supreme Court of Kosovo Ap. no. 157/2009, of 25 May 2011

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Enver Hasani, President
Ivan Cukalovic, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Kadri Kryeziu, Judge and
Arta Rama-Hajrizi, Judge.

The Applicant

1. The Referral was submitted by Mr. Hysen Muqa, residing in Vraniq village, Municipality of Suhareka.

Challenged decision

2. The Applicant challenges the Judgment of the District Court in Prizren P. no. 132/08 of 30 December 2008 and the Judgment of the Supreme Court of Kosovo Ap. no.157/2009 of 25 May 2011, which was served on the Applicant on 27 October 2011.

Subject matter

3. The subject matter is the constitutional review of the Judgment of the District Court in Prizren P. no. 132/08 of 30 December 2008, and the Judgment of the Supreme Court of Kosovo Ap. no.157/2009, of 25 May 2011. According to these decisions, the Applicant was found guilty for the criminal offence of Contracting Disproportionate Profit from Property and was sentenced to 18 months imprisonment.

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: 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 14 May 2013, the Applicant submitted the Referral with the Court.

6. On 27 May 2013, the President with Decision No. GJR.KI-69/13, appointed Judge Kadri Kryeziu as Judge Rapporteur. On the same date, the President with Decision No. KSH. KI-69/13, appointed the Review Panel composed of Judges: Robert Carolan (Presiding Judge), Almiro Rodrigues and Ivan Čukalović.

7. On 6 June 2013, the Court notified the Applicant and the Supreme Court on registration of the Referral.

8. On 26 June 2013, the Court requested from the Applicant to submit to the Court, within the shortest time limit, the evidence that shows when the Applicant received the Judgment of the Supreme Court of Kosovo Ap.No. 157/2009 of 25 May 2011.

9. On 24 July 2013, the Applicant submitted to the Court the return receipt, which proves that the Judgment of the Supreme Court of Kosovo Ap. No. 157/2009 25 May 2011 was served to him.

10. On 16 October 2013, 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 30 December 2008, the District Court by Judgment P. no. 132/08 finds guilty the Applicant and five other accused of the criminal offence of Contracting for Disproportionate Profit from Property under Article 270 of the Provisional Criminal Code of Kosovo. The Applicant was sentenced to 1 (one) year and 6 (six) months imprisonment.

12. The District Public Prosecutor in Prizren filed an appeal against the Judgment P. No. 132/08 of 30 December 2008. The appeal of the

District Public Prosecutor had to do with the assumption that "*the sentences imposed upon the accused are too lenient and the first instance court has underestimated the aggravating circumstances and it is proposed that the Judgment be modified and impose harsher sentences upon the accused*."

13. On 25 May 2011, the Supreme Court of Kosovo, deciding upon the appeal of the District Public Prosecutor in Prizren, rendered the Judgment Ap. No. 157/2009, on what occasion rejected the appeal of the District Public Prosecutor as ungrounded with a reasoning that "*the first instance court has correctly and completely determined factual situation and correctly applied the criminal law, when it found that the other accused and the Applicant in this case have committed criminal offence of Contracting for Disproportionate Profit from Property under Article 270 in conjunction with Article 23 of the Criminal Code of Kosovo. The Supreme Court also finds that the imposed punishments against the accused are fair and in proportion with the social danger of the committed offences…"*

Applicant's allegations

14. The Applicant alleges that the Judgment of the District Court in Prizren P. no. 132/08, of 30 December 2008 and the Judgment of the Supreme Court of Kosovo Ap. no.157/2009 of 25 May 2011, are unlawful because they are based on a partial quasi evidence, on what occasion they decided in contradiction with provision of Article 31 of the Constitution and Article 6.1 of the European Convention on Human Rights.

Preliminary assessment of the admissibility of the Referral

15. In order to be able to review the Applicant's Referral, the Constitutional Court has to assess beforehand whether the Applicant has met all admissibility requirements laid down in the Constitution and specified in the Law and the Rules of Procedure.

16. Regarding the request of the Applicant, the Court refers to Article 49 of the Law, which 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. If the claim is made against a law, then the deadline shall be counted from the day when the law entered into force."

17. From the documents submitted by the Applicant, the Court concludes that the Referral was not submitted within the time limit provided by Article 49 of the Law, because the Judgment of the Supreme Court of Kosovo Ap.no. 157/2009 was served on the Applicant on 27 October 2011, while he submitted his Referral to the Constitutional Court Secretariat on 14 May 2013, what means that the Referral was filed about 1 year and a half beyond the time limit provided by the law.

18. Therefore, the Referral should be rejected as inadmissible, because of non-compliance with the legal time limit, provided by Article 49 of the Law.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 49 of the Law and Rule 36.1 of the Rules of Procedure, in its session held on 16 October 2013, 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. Decision is effective immediately.

Judge Rapporteur
Kadri Kryeziu

President of the Constitutional Court
Prof. Dr. Enver Hasani

KI 73/13, KI 102/13, KI 105/13, KI 106/13, KI 113/13, KI 117/13, KI 130/13,Hamdi Ademi and 6 others, date 26 November 2013- Constitutional review of the Decision ASC-11-0069 of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo, dated 22 April 2013, and Judgment SCEL-09-0001 of the Trial Panel of the Special Chamber of the Supreme Court, dated 10 June 2011

Case KI 73/13, KI 102/13, KI 105/13, KI 106/13, KI 113/13, KI 117/13, KI 130/13 Resolution Inadmissibilty of 18 November 2013

Keywords: individual referral, manifestly ill-founded, a right to compensation, privatization process

The Applicants filed their Referrals based on Article 113.7 of the Constitution of Kosovo, claiming that their constitutional rights have been violated by decisions of the Special Chamber of the Supreme Court of Kosovo, which reviewed and rendered decisions regarding the employee list published by the Privatization Agency of Kosovo. The list published by the Privatization Agency of Kosovo determined which former employees of SOE "Ramiz Sadiku" in Prishtina were entitled to a share of proceeds from the privatization of the said SOE. The Applicants appealed before the Constitutional Court claiming that they also should have been in the list published by the Privatization Agency of Kosovo, respectively, to benefit from a share of proceeds of privatization of the SOE "Ramiz Sadiku" in Prishtina. The Applicants have not invoked any particular constitutional provision, but have only claimed their rights to benefit from a share of proceeds from the privatization of the SOE "Ramiz Sadiku" in Prishtina.

The Court concluded that the Applicants' Referral is inadmissible pursuant to Rule 36 (1) c) of the Rules of Procedure since the Applicants have not presented facts that would in any way justify the allegations of a violation of the constitutional rights. The Court justified its decision by reiterating that it is not its duty, under the Constitution, to act as a court of appeal, or as a fourth instance court regarding decisions issued by the regular courts. The Court further reasoned that the Applicants neither indicated that the Special Chamber acted in an arbitrary or unfair manner nor they accurately clarified which rights and freedoms they alleged to have been violated by the Special Chamber. Due to the reasons above, the Court decided to reject the Referral as inadmissible.

RESOLUTION ON INADMISSIBILITY
in
Cases Nos.
KI 73/13,
KI102/13,
KI105/13,
KI106/13,
KI113/13,
KI117/13
KI130/13
Applicants
Hamdi Ademi and 6 others
Constitutional review of the Decision ASC-11-0069 of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo, dated 22 April 2013, and Judgment SCEL-09-0001 of the Trial Panel of the Special Chamber of the Supreme Court, dated 10 June 2011

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

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

The Applicants

1. The Referrals were submitted by Hamdi Ademi from the village of Gllamnik in Podujevo; Fejzullah Humolli from the village of Lupç i Poshtëm in Podujevo; Rifat Agushi; Selman Tahiri; Ismail Maksuti; Ukë Rrustemi from Podujevo; and Ferat Haliti from Obiliq (hereinafter, the Applicants).

Challenged decisions

2. The Applicants challenge the Decision ASC-11-0069 of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo (hereinafter, the Special Chamber), dated 22 April 2013, and Judgment

SCEL-09-0001 of the Trial Panel of the Special Chamber, dated 10 June 2011. The date of the service of the decisions to the Applicants is unknown.

Subject matter

3. The subject matter of the Referrals is the review of constitutionality of the challenged decision on the Applicants alleged entitlement to a share of proceeds acquired from the privatization of the Socially Owned Enterprise "Ramiz Sadiku" Prishtina (hereinafter, SOE "Ramiz Sadiku").

Legal basis

4. The Referrals are based on Article 113 (1) and (7) of the Constitution of the Republic of Kosovo (hereinafter, the Constitution), Articles 22 and 49 of the 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 Constitutional Court

5. The Applicants have submitted their referrals starting from the 16 May 2013 until 21 August 2013.

6. On 10 June and 29 August 2013, the Court notified the Applicants about the registration of the Referrals. On the same dates, the Court communicated the Referrals to the Special Chamber and the Kosovo Privatization Agency (hereinafter, the KPA).

7. On 10 September 2013, the President ordered the joinder of the Referrals KI102/13, KI105/13, KI106/13, KI113/13, KI117/13 and KI130/13 to the Referral KI73/13.

8. On 10 September 2013, the President appointed judge Almiro Rodrigues as Judge Rapporteur and a Review Panel composed of Judges Snezhana Botusharova (presiding), Kadri Kryeziu and Arta Rama-Hajrizi.

9. On 16 September 2013, the Court in accordance with Rule 37 of the Rules of Procedure notified the Applicants about the joinder of the Referrals.

10. On 17 October 2013, after having considered the Report of the Judge Rapporteur, the Review Panel made a recommendation to the Court on the inadmissibility of the Referral.

Summary of factsin relation to referrals
KI102/13 (Fejzullah Humolli),
KI105/13 (Rifat Agushi),
KI106/13 (Selman Tahiri)

11. At some point in time, the Applicants were employed as workers of the SOE "Ramiz Sadiku."

12. On 27 June 2006, the SOE "Ramiz Sadiku" was privatized.

13. In March 2009, the Applicants requestedto the Special Chamber to be included in the list of employees entitled to a share of proceeds from the privatization of the SOE "Ramiz Sadiku."

14. On 10 June 2011, the Trial Panel of the Special Chamber (Judgment SCEL-09-0001) rejected the Applicant's requests, holding that the Applicants did not fulfill the requirements of Section 10.4 of UNMIK Regulation 2003/13 as amended, as they reached the retirement age prior to the privatization of the SOE "Ramiz Sadiku".

15. In July 2011, the Applicants appealed to the Appellate Panel of the Special Chamber against the Judgment of the Trial Panel.

16. On 22 April 2013, the Appellate Panel of the Special Chamber (Judgment ASC-11-0069) rejected the appeals of the Applicants and upheld the Trial Panel Judgment.

Summary of facts in relation to referrals
KI73/13 (Hamdi Ademi)
KI113/13 (Ferat Haliti)
KI117/13 (Ismail Maksuti)
KI130/13 (Ukë Rrustemi)

17. In March 2009, the Applicants requestedto the Special Chamber to be included in the list of employees entitled to a share of proceeds from the privatization of the SOE "Ramiz Sadiku".

18. On 10 June 2011, the Trial Panel of the Special Chamber (Judgment SCEL-09-0001) rejected the Applicants requests, holding that the Applicants did not fulfill the requirements of Section 10.4 of UNMIK

Regulation 2003/13 as amended as they reached the retirement age prior to the privatization of the SOE "Ramiz Sadiku".

19. The Applicants appealed to the Appellate Panel of Special Chamber against the Judgment of the Trial Panel, *"due to: Erroneous facts, Violation of substantive law and Violations of procedural law"*.

20. On 18 November 2011, the Appellate Panel of the Special Chamber ordered (ASC-11-0069-A0076) to the Applicants that within fourteen (14) days from the receipt of said order: i) (…); ii) to state the dates when the appealed judgments were received; and iii) if the applicants failed to submit completed or corrected appeals which meet the requirements set forth in Section 28.2 (f) of UNMIK AD 2008/6 (in conjunction with section 58.2 leg cit) (…), the Appellate Panel of the Special Chamber shall reject the appeal on the grounds of inadmissibility.

21. On 22 April 2013, the Appellate Panel of the Special Chamber (Judgment ASC-11-0069) rejected the appeals of the Applicants and upheld the Trial Panel Judgment (SCEL-09-0001) in its entirety for the part that pertains to the Applicants appeals.

The Applicable Law

REGULATION NO. 2003/13 ON THE TRANSFORMATION OF THE RIGHT OF USE TO SOCIALLYOWNED IMMOVABLE PROPERTY

Section 10
Entitlement of Employees

10.4 For the purpose of this section an employee shall be considered as eligible, if such employee is registered as an employee with the Socially-owned Enterprise at the time of privatization and is established to have been on the payroll of the enterprise for not less than three years. This requirement shall not preclude employees, who claim that they would have been so registered and employed, had they not been subjected to discrimination, from submitting a complaint to the Special Chamber pursuant to subsection 10.6.

Applicants' Allegations

22. The Applicants claim "*they have worked in the SOE "Ramiz Sadiku" in Prishtina for many years until 28 February 1990 whereby Serbian forces coercively removed them from work and discriminated them*".

23. The Applicants allege that their rights guaranteed by the Constitution were violated, to their detriment, by the KPA and the SCSC, because they had contributed to the SOE "Ramiz Sadiku" for many years, and therefore are allegedly entitled to a share of proceeds from the privatization of said SOE. The Applicants have not invoked any constitutional provision in particular.

Assessment of Admissibility

24. The Court first examines whether the Applicants have fulfilled the admissibility requirements laid down in the Constitution, the Law and the Rules of Procedure.

25. In that respect, the Court refers to Article 113 of the Constitution, which 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".*

26. The Court also refers to Article 49 of the Law, which provides:

> *"The referral should be submitted within a period of four (4) months. The deadline shall be counted from the day upon which the claimant has been served with a court decision (...)".*

27. The Court notes that the Applicants appealed the Judgment of the Trial Panel of the Special Chamber and a final decision of the Appellate Panel of the Special Chamber was rendered on 22 April 2013. The Applicants have filed their Referrals with the Court on different days of May, July and 21 August 2013.

28. Thus, the Court considers that the Applicants are authorized parties and have exhausted all legal remedies afforded to them by the applicable law and the Referrals were submitted within the four months time limit.

29. However, the Court further refers to Article 48 of the Law which provides:

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

30. The Court also takes into account Rule 36(1) c) of the Rules of Procedure, which provides:

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

31. The Applicants allege in general that *"they had contributed to the SOE "Ramiz Sadiku" for many years, and therefore are allegedly entitled to a share of proceeds from the privatization of said SOE".*

32. As said above, the Appellate Panel of the Special Chamber (Judgment ASC-11-0069) upheld the Trial Panel Judgment, which held that the Applicants did not fulfill the requirements of Section 10.4 of UNMIK Regulation 2003/13 as amended, as they reached the retirement age prior to the privatization of the SOE "Ramiz Sadiku".

33. The Court considers that the justification provided by the Judgment of the Appellate Panel of the Special Chamber, in answering the allegations made by the Applicants, is clear and well reasoned.

34. The Court considers that the Applicants have not substantiated their allegations for violation of the provisions of the Constitution, because the facts presented by them do not show in any way that the trial and appellate panels of the Special Chamber have denied them the rights guaranteed by the Constitution

35. In this connection, the Constitutional Court reiterates that it is the role of the regular courts to interpret and apply the pertinent rules of both procedural and substantive law (See, *mutatis mutandis*, *García Ruiz v. Spain*, No. 30544/96, ECtHR, Judgment of 21 January 1999, para. 28, see also case *No. KI70/11, Applicants Faik Hima, Magbule Himaand Bestar Hima,* Resolution on Inadmissibility of 16 December 2011).

36. The Constitutional Court also emphasizes that the correct and complete determination of the factual situation is within the jurisdiction of the regular courts; 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 court instance" (see case Akdivar v. Turkey, No.21893/93, ECtHR, Judgment of 16 September 1996, para.65, also see case KI86/11, *Applicant Milaim Berisha,* Resolution on inadmissibility of 5 April 2012).

37. Furthermore, it is not the task of the Constitutional Court to substitute its own assessment of the facts with that of the regular courts and, as a general rule, it is the duty of the regular courts to assess the evidence made available to them. The Constitutional Court's task is to ascertain whether the regular courts' proceedings were fair in their entirety, including the way in which evidence was taken (see case *Edwars v. United Kingdom*, No.13071/87, Report of the European Commission of Human Rights of 10 July 1991).

38. The Court notes that the Applicants neither indicate that the Special Chamber acted in an arbitrary or unfair manner nor they accurately clarify what rights and freedoms they claim to have been violated by the Special Chambers. In fact, the Applicants have neither built a case nor brought evidence on thatthey are entitled to a share of proceeds, regardless of having reached the retirement prior to the privatization of the SOE "Ramiz Sadiku".

39. In sum, the Court considers that the Applicants have not justified and proved the main allegation that the entitlement to a share of proceeds occur also after having reached the retirement prior to the privatization. Thus, no violation of their fundamental rights and freedoms is substantiated.

40. Moreover, the disagreement ofthe Applicants with the outcome of the case cannot in of itself raise an arguable claim for a breach of the provisions of the Constitution (see case *Mezotur-Tiszazugi Tarsulat vs. Hungary,* No.5503/02, ECtHR, Judgment of 26 July 2005).

41. Therefore, the Referrals are manifestly ill-founded and, pursuant to the Rule 36(1) (c) of the Rules of Procedure, must be rejected as inadmissible.

FOR THESE REASONS

The Constitutional Court pursuant to Article 113(1) of the Constitution, Article 49 of the Law, and Rule 36(1) c) of the Rules of procedure, on 17 October 2013, unanimously:

DECIDES

I. TO REJECT the Referrals as inadmissible;

II. TO NOTIFY the Parties of this Decision;

III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20 (4) of the Law; and

IV. TO DECLARE this Decision effective immediately.

Judge Rapporteur
Almiro Rodrigues

President of the Constitutional Court
Prof. Dr. Enver Hasani

KI 80/13, Raim Gashi, date 26 November 2013- Constitutional Review of the Judgment of the Supreme Court of the Republic of Kosovo, Pml. no. 33/2013, dated 30 April 2013.

Case KI 80/13, Resolution on Inadmissibility of 18 October 2013

Keywords: individual referral, manifestly illfounded

The applicant, Raim Gashi, filed a Referral pursuant to Article 113.7 of the Constitution of Kosovo challenging the Judgment of the Supreme Court of the Republic of Kosovo, Pml. no. 33/2013, of 30 April 2013, as being taken in violation of "[...] criminal procedure provisions, Article 403, paragraph 1, item 8 and 12 of the Criminal Code of Kosovo [...]". The Applicant alleged that "[...] both the judgment of the District Court P. no. 212/2009, of 19.03.2010, and the judgment of the Supreme Court of Kosovo, Ap. no. 304/2010, of 27.06.2012, contain substantial violations of criminal procedure provisions, as per Article 403, paragraph 1, item 8 and 12 of the PCPCK, which are of absolute nature. Both judgments are grounded upon inadmissible proof – the identity of my client has not been validated – since he is not the offender. The criminal law has also been violated, due to the fact that he was found guilty of a crime he has not committed, and for which the case files contain no evidence. The whole judgment is built upon and concluded on a group of people in Ferizaj, and then, without any grounds, the accused Raim Gashi, is included, although he has nothing to do with the accused."

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 Article 113 (1) of the Constitution, Article 48 of the Law on Court and Rule 36 (1.c) of the Rules of Procedure.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI80/13
Applicant
Raim Gashi
Constitutional Review of the Judgment of the Supreme Court of the Republic of Kosovo, Pml. no. 33/2013, dated 30 April 2013

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Enver Hasani, President
Ivan Cukalovic, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Kadri Kryeziu, Judge and
Arta Rama-Hajrizi, Judge

Applicant

1. The Referral is submitted by Mr. Raim Gashi (hereinafter, the Applicant), represented by Mr. Fazli Balaj, a practicing lawyer from Prishtina.

Challenged decision

2. The Applicant challenges the Judgment Pml. no. 33/2013 of the Supreme Court, dated, of 30 April 2013, and served on him on 17 May 2013.

Subject matter

3. The Applicant requests the constitutional review of the challenged Judgment of the Supreme Court, which allegedly has been taken in violation of *"[…] criminal procedure provisions, Article 403, paragraph 1, item 8 and 12 of the Criminal Code of Kosovo […]"*. The Applicant has not specified which constitutional provision of the Constitution of the Republic of Kosovo (hereinafter, the Constitution) has been violated.

Legal basis

4. The Referral is based on Article 113.7 of 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, 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 5 June 2013, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).

6. On 20 June 2013, the President of the Constitutional Court appointed Judge Almiro Rodrigues as Judge Rapporteur and the Review Panel composed of Judges Altay Suroy (Presiding), Kadri Kryeziu and Arta Rama-Hajrizi.

7. On 5 July 2013, the Court requested to the Applicant the following additional documents:

   a. Judgment of the Supreme Court, Pml. no. 33/2013, of 30 April 2013;
   b. Judgment of the Supreme Court, AP. no. 304/2010, of 27 June 2012;
   c. Judgment of the District Court in Prishtina, P. no. 212/2009, of 19 March 2010; and
   d. Power of Attorney.

8. On 15 July 2013, the Applicant submitted the requested documents.

9. On 11 September 2013, the Referral was communicated to the Supreme Court.

10. On 18 October 2013, 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 22 March 2010, the District Court in Pristina (Judgment P. no. 212/2009) found the Applicant guilty of having committed the criminal act under Article 244.1 [Counterfeit Money] in connection with Article 23 [Co-Perpetration] and Article 382.2 [Unauthorised Ownership,

Control, Possession or Use of Weapons] of the Provisional Criminal Code of Kosovo (hereinafter, the PCCK). The Applicant complained to the Supreme Court against this Judgment.

12. On 27 June 2012, the Supreme Court (Judgment Ap. no. 304/2010) rejected the complaint of the Applicant and upheld the Judgment of the District Court of Pristina. The Supreme Court held that *"Based on all the above, and other circumstances and reasons provided by the first instance court in the judgment challenged, the Supreme Court found that the first instance court has fairly and fully ascertained the factual situation, and has properly applied criminal law in finding the accused guilty of the criminal offence of counterfeiting money, as per Article 244, paragraph 1, in connection with Article 23 of the PCCK, and therefore, it rejected as ungrounded the complaints for these allegations."* The Applicant filed with the Supreme Court a request for protection of legality.

13. On 30 April 2013, the Supreme Court (Judgment Pml. no. 33/2013) rejected the Applicant's request for protection of legality as unfounded. The Supreme Court held that *"[…] the allegations in the request for protection of legality are not grounded. The violations alleged by the representative of the sentenced are not grounded, since based on the case files, police officers (…) were heard in the capacity of witnesses, since these officers had taken part in the search of the houses of the accused (…), and they have testified about the events and the items found during the search, while the criminal report was filed by (…) investigators filing criminal report, (…) direct supervisor, (…) Head of General Investigation, and (…) Head of Regional Investigation, therefore the police officers/witnesses have not filed the criminal report, and their testimony is in compliance with Article 158, paragraph 1 of the PCCK, and the alleged violation of Article 403, paragraph 1, item 8 of the PCCK, is not grounded."*

Applicant's allegations

14. The Applicant alleges that *"[…] both the judgment of the District Court P. no. 212/2009, of 19.03.2010, and the judgment of the Supreme Court of Kosovo, Ap. no. 304/2010, of 27.06.2012, contain substantial violations of criminal procedure provisions, as per Article 403, paragraph 1, item 8 and 12 of the PCPCK, which are of absolute nature. Both judgments are grounded upon inadmissible proof – the identity of my client has not been validated – since he is not the offender. The*

criminal law has also been violated, due to the fact that he was found guilty of a crime he has not committed, and for which the case files contain no evidence. The whole judgment is built upon and concluded on a group of people in Ferizaj, and then, without any grounds, the accused Raim Gashi, is included, although he has nothing to do with the accused."

Admissibility of the Referral

15. The Court first examines whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution and as further specified in the Law and the Rules of Procedure.

16. In this respect, the Court refers to Article 48 of the Law on Court, which provides that *"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".*

17. In addition, the Court also takes into account Rule 36.1.c of the Rules of Procedure which foresees that *"The Court may only deal with Referrals if (...) the Referral is not manifestly ill-founded."*

18. 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 regular courts when assessing evidence or applying the law, unless and in so far as they may have infringed rights and freedoms protected by the Constitution (constitutionality). Thus, this Court is not to act as a court of fourth instance, when considering the decisions taken by the 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).

19. In sum, 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 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).

20. In this respect, the Court considers that the Applicant has not substantiated and proved an allegation on how and why the alleged errors of fact or law (legality) committed by the District and Supreme Courts may have infringed any of his rights and freedoms protected by

the Constitution (constitutionality). The Court further considers that the Applicant's allegation that the judgments of these courts were taken in violation of the Provisional Criminal Procedure Code of Kosovo is only of a legality nature and not of a constitutionality one.

21. 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).

22. In sum, the Applicant has not built and proved a case on a violation of any of his rights as guaranteed by the Constitution. Thus, pursuant to Rule 36.1.c. of the Rules of Procedure, the Referral is manifestly ill-founded and, therefore, it is inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 48 of the Law on the Court and Rule 36.1.c and Rule 56.2 of the Rules of Procedure, on 18 October 2013, unanimously

DECIDES

I. TO REJECT the Referral as Inadmissible;

II. TO NOTIFY the Parties of this Decision;

III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20 (4) of the Law;

IV. TO DECLARE this Decision immediatelyeffective.

Judge Rapporteur
Almiro Rodrigues

President of the Constitutional Court
Prof. Dr. Enver Hasani

KI 67/13, Shaqir Prevetica, date 26 November 2013- Constitutional Review of the Decision Rev. no. 228/2012 of the Supreme Court of the Republic of Kosovo, of 12 March 2013

Case KI67/13, Resolution Inadmissibilty of 12 September 2013

Keywords: individual referral, civil dispute, right to work and exercise profession, manifestly ill-founded

The Applicant claimed that the decisions of the regular courts have violated his right to work as guaranteed by Article 49 of the Constitution. The Applicant requested from the Court compensation for the lost time. Furthermore, the Applicant complained on the decisions of the regular courts regarding: a) the rejection of his claim as out of time; and b) the conclusions of the courts regarding the claims of former Kosovo Trust Agency, that TCC *Kosova* former *Sloga* in Prishtina was privatized and that the liquidation of the abovementioned enterprise, entered into force on 11 April 2007, by stating that until 25 April 2013, the liquidation of the enterprise above has not started, because twenty percent (20%) proceeds from the sale of this enterprise had not been paid yet to his employees.

The Court, in this case, reiterated that it is not its task to assess the legality of decisions issued by regular courts, unless such decisions have been rendered in an arbitrary and unreasoned manner. It is the task of the Court to assess if the proceedings, in their entirety, have been in compliance with the Constitution. So, the Constitutional Court is not a fourth instance in respect to the decisions taken by regular courts. It is the role of the regular 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, paragraph 28, European Court on Human Rights [ECHR] 1991-1).

Finally, the Court concluded that the Applicant's Referral does not meet all the admissibility requirements. Thus, pursuant to Article 48 of the Law and Rule 36 (2) a) and b) of the Rules of Procedure, the Referral is declared inadmissible.

RESOLUTION ON INADMISSIBILITY
in
Case no. KI67/13
Applicant
Mr. Shaqir Prevetica
Constitutional Review of the Decision Rev.no.228/2012 of the Supreme Court of the Republic of Kosovo, of 12 March 2013

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

Composed of

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

Applicant

1. The Applicant is Mr. Shaqir Prevetica, with residence in Prishtina.

Challenged decision

2. The Applicant challenges Decision Rev.no.228/2012 of the Supreme Court, of 12 March 2013 (hereinafter, the challenged Decision), which was served on Applicant on 25 April 2013.

Subject matter

3. The subject matter of the Referral is the constitutional review of the challenged Decision, which allegedly violated the right to work of the Applicant as guaranteed by Article 49 [Right to Work and Exercise Profession] of the Constitution.

Legal basis

4. Article 113.7 of the Constitution, Article 47 of the Law no. 03/L-121 on the Constitutional Court of the Republic of Kosovo of 16 December

2008, which entered in to force on 15 January 2009 (hereinafter: the Law) and Rule 56 (2) of the Rules of Procedure of the Constitutional Court (hereinafter: Rules of Procedure).

Proceedings before the Court

5. On 8 May 2013, the Applicant submitted Referral to the Court.

6. On 27 May 2013, the President appointed the judge Snezhana Botusharova as Judge Rapporteur and the Review Panel composed of judgesRobert Carolan (Presiding), Almiro Rodrigues and Enver Hasani.

7. On 19 June 2013, the Court notified the Applicant and the Supreme Court on the registration of the Referral.

8. On 12 September 2013, the Review Panel considered the report of the Judge Rapporteur and recommended to the Court the inadmissibility of the Referral.

Summary of facts

9. The Applicant used to work in the Touristy and Catering Company "Kosova" (hereinafter: TCC "Kosova") until he was sent to the social assistance.

10. On 12 December 2001, the Board of Directors of TCC "Kosova" (decision no. 117) decided to send the Applicant to paid social assistance as of 1 January 2002, by enabling him to receive personal income of 70% (seventy percent) of the average salary of employees of this catering company. In that decision it is stated: *"this Status will be provided by the Company from its own funds until the respective state institution for regulating his final legal retirement becomes functional"*.

11. On 10 September 2002, the Municipal Court in Prishtina (Ruling C. no. 46/02) rejected the claim of the Applicant as out of time.

12. On 1 February 2005, the District Court in Prishtina (Decision Ac.no.592/2002) quashed the Ruling of the Municipal Court and returned the matter to the same court for retrial.

13. On 6 June 2005, the Municipal Court (Ruling C. no. 130/05) rejected the Applicant's claim as out of time.

14. On 21 November 2007, the District Court (Ruling, Ac.no.56/2006), quashed again the Ruling of the Municipal Court in Prishtina and returned the matter to the first instance court for retrial.

15. On 1 April 2009, the Municipal Court (Ruling Cl.no.05/2008) terminated the procedure of the further adjudication of the contested matter, "because TCC "Kosova" former "Sloga" in Prishtina was privatized and that the liquidation of the abovementioned company entered into force on 11 April 2007".

16. On 20 July 2009, the District Court (Ruling Ac.no. 1178/2009) rejected as ungrounded the Applicant's appeal and upheld the Ruling of the Municipal Court rejecting the claim as out of time.

17. On 12 March 2013, the Supreme Court (Ruling, Rev. no. 228/2012) rejected as ungrounded the Applicant's revision, filed against the Ruling of the District Court. The Supreme Court reasoned its decision as following:

> *"Setting from the situation of this matter, the Supreme Court of Kosovo found that the first instance court has correctly applied the provisions of the contested procedure when it found that the appeal was out of time. By provision of Article 208 in conjunction with Article 176, paragraph 1 of the LCP, it was provided that the Ruling rendered by the first instance court can be appealed within a 15 day time limit from the day a copy of the Ruling is served, whereas Article 186, paragraph 2 of the abovementioned law, provides that the appeal is out of time if it is filed after the statutory deadline. The claimant's authorized representative Ali Qosja was served the copy of the first instance court's Ruling CI.no.5/2008 of 1.4.2009 on 2.4.2009, whereas the claimant submitted the appeal on 30.6.2009, thus the appeal has been filed after the statutory deadline envisaged by the provision of Article 176, paragraph 1 in conjunction with Article 208 of the LCP, as it was correctly found by the lower instance courts, which provided sufficient reasons in their Rulings, which this revision Court supports as correct and grounded on law."*

Applicant's allegations

18. The Applicant claims that the regular courts decisions have violated his right to work as guaranteed by Article 49 of the Constitution.

19. The Applicant requests from the Court compensation for the lost time, including the period of time from 1 January 2002 until today, due to termination of the employment relationship by the employer.

20. Furthermore, the Applicant complaints on the decisions of the regular courts regarding: a) *the rejection of his claim as out of time; and b) the conclusions of the courts regarding the claims of former Kosovo Trust Agency, "that* TCC *"Kosova" former "Sloga" in Prishtina was privatized and that the liquidation of the abovementioned enterprise, entered into force on 11 April 2007", by stating that until 25 April 2013, the liquidation of the enterprise above has not started, because twenty percent (20%) proceeds from the sale of this enterprise has not been paid yet to its employees.*

Admissibility of Referral

21. The Court assesses beforehand whether the Applicant has met all the requirements of admissibility, which are foreseen by the Constitution and further specified by the Law and Rules of Procedure.

22. In that respect, the Court refers to Article 113.7, which establishes:

> *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.*

23. The Court also refers to Article 49 [Deadlines] of the Law, which provides:

> *The referral should be submitted within a period of four (4) months. The deadline shall be counted from the day upon which the claimant has been served with a court decision.*

24. The Court notes that the Applicant is a natural person, followed proceedings trough the instances available and filed the Referral within the foreseen four months limit.

25. Therefore, the Court considers that the Applicant is an authorized party, has exhausted all legal remedies provided by law and filed his referral in time.

26. However, the Court must also refer to Article 48 of the Law, which provides:

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

27. In addition, the Court refers to Rule 36 (1) c) and Rule 36 (2) a) and b) of the Rules of Procedure foresee:

36 (1) The Court may only deal with Referrals if:

[...]

c) the Referral is not manifestly ill-founded.

36 (2) The Court shall reject a Referral as being manifestly ill-founded when it is satisfied that:

e) the Referral is not prima facie justified;

f) the presented facts do not in any way justify the allegation of a violation of the constitutional rights."

28. The Court notes that the Applicant alleges a violation of his right to work as guaranteed by Article 49 of the Constitution.

29. The Court also notes that, answering to the allegations made by the Applicant, the Supreme Court *"found that the first instance court has correctly applied the provisions of the contested procedure when it found that the appeal was out of time".*

30. The Court considers that the decision of the Supreme Court is well reasoned and justified and the Applicant has not accurately clarified how and why the decision of the Supreme Court violated his right to work.

31. In fact, the Applicant has not explained and proved namely that his appeal was filed in a due time and consequently there was a violation of his right to work.

32. The Court notes that the Applicant only complains about the decisions of regular courts, regarding the conclusion that the appeal was not filed within the legal time limit, as it was required by the provisions of the applicable law.

33. The Court recalls that it is not its task to assess the legality of decisions issued by regular courts, unless such decisions have been rendered in an arbitrary and unreasoned manner.

34. It is the task of the Court to assess if the proceedings, in their entirety, have been in compliance with the Constitution. So, the Constitutional Court is not a fourth instance in respect to the decisions taken by regular courts. It is the role of the regular courts to interpret and apply the pertinent rules of both procedural and substantive law (see*, mutatis mutandis*, Garcia Ruiz v. Spain, no. 30544/96, § 28, European Court on Human Rights [ECHR] 1999-1).

35. In the present case, the Applicant has not provided any prima facie evidence which would show that the alleged violation mentioned in the Referral constitute a violation of his constitutional right (see Vanek vs. Slovak Republic, ECtHR Decision on admissibility, Application no. 53363/99 of 31 May 2005).

36. Therefore, the Court cannot consider that the pertinent proceedings conducted in the Supreme Court 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).

37. Finally, the Court concludes that the Applicant's Referral does not meet all the admissibility requirements and thus, pursuant to Article 113 (7) of the Constitution, Article 48 of the Law and Rule 36 (2) a) and b) of the Rules of Procedure, the Referral is manifestly ill-founded and inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113 (7) of the Constitution, Article 48 of the Law and Rule 36 (1) c) and 36 (2) a) and b) and rule 56 (2) of the Rules of the Procedure, on 12 September 2013, unanimously

DECIDES

I. TO REJECT the Referral as Inadmissible;

II. TO NOTIFY this Decision to the Parties; and

III. TO PUBLISH this Decision in accordance with Article 20(4) of the Law.

IV. This Decision is effective immediately.

Judge Rapporteur
Snezhana Botusharova

President of the Constitutional Court
Prof. Dr. Enver Hasani

KI 86/13, Malush Krusha, date 05 December 2013- Constitutional Review of the Judgment of the Supreme Court in Prishtina, Rev. no. 157/2011, of 4 April 2013

Case 86/13, Resolution Inadmissibilty of 13 September 2013.

Keywords: individual Referral, constitutional review of the Decision of the Supreme Court of Kosovo

The Referral is based on Article 113.7 of the Constitution, Article 47 of the Law on the Constitutional Court of the Republic of Kosovo no. 03/L-121 of 15 January 2009 (hereinafter, the Law), and Rule 56, of the Rules of Procedure of the Constitutional Court (hereinafter, the Rules of Procedure).

On 17 April 2013, the Applicant submitted Referral to the Constitutional Court of the Republic of Kosovo and sought from the court the constitutional review of the Decision of the Supreme Court of Kosovo.

The Applicant alleges that, during the proceedings before the courts, the fundamental principle of equal treatment of parties in proceedings was violated.

The President with Decision (no.GJR. 86/13 of 20 June 2013), appointed Judge Altay Suroy as Judge Rapporteur. On the same day, the President (by Decision no. KSH. KI86/13) appointed the Review Panel composed of Judges: Robert Carolan (Presiding), Ivan Čukalović and Enver Hasani.

The court after examining the case concluded that even though the Applicant alleges that the regular courts' decisions violated his rights, guaranteed by the Constitution and the laws of the Republic of Kosovo, he did not provide any relevant evidence or facts proving that the courts have violated his constitutional rights.

Thus the Applicant failed to prove why and how his rights guaranteed by the Constitution were violated. The mere allegation of a violation of the Constitution cannot be considered as a constitutional complaint.

Therefore, the Constitutional Court in the session held on 13 September rendered the Referral as manifestly ill-founded.

RESOLUTION ON INADMISSIBILITY
in
Case no. KI86/13
Applicant
Malush Krusha
Constitutional Review of the Judgment of the Supreme Court in Prishtina, Rev. no. 157/2011, of 4 April 2013

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

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

The Applicant

1. The Applicant is Malush Krusha,from Gjakova (hereinafter: the Applicant), whom before the Court represents Bujar Krusha from Gjakova.

Challenged decision

2. The Applicant challenges Judgment of the Supreme Court in Prishtina Rev. no. 157-2011 of 4 April 2013, handed to the Applicant on 15 May 2013.

Subject matter

3. The subject matter of the Referral filed with the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) on 4 April 2013 is the confirmation of the ownership rights on property.

Legal basis

4. The Referral is based on 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: the Law), and Rule 56, paragraph 2 of the Rules of Procedure (hereinafter: the Rules of Procedure).

Proceedings before the Court

5. On 17 June 2013, the Applicant submitted a Referral to the Constitutional Court of the Republic of Kosovo, and the same has been registered under number KI86/13.

6. On 20 June 2013, the President, by Decision (No. GJR. KI86/13), appointed Judge Altay Suroy as Judge Rapporteur. On the same day, the President, by Decision (No. KSH. KI86/13), appointed the Review Panel composed of judges: Robert Carolan (presiding), Ivan Čukalović and Enver Hasani.

7. On 2 July 2013, the Court notified the Applicant and the Supreme Court on registration of the Referral.

8. On 13 September 2013, the Review Panel considered the report of Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

9. On 15 June 2009, the Municipal Court in Gjakova approved the statement of claim of claimants I.Xh. and S.Xh. from Gjakova, and issued Judgment [C. no. 263/05], by which confirmed that the claimant I.Xh. is the owner of ¼ of the ideal share of the cadastral parcel No. 1098/1. By the same Judgment the Court obliged the respondent (the Applicant), to recognize this right to the claimant, and to allow the abovementioned registration of the property with the department of geodesy and cadastre on claimant's name.

10. The Municipal Court further held that S.Xh. is the owner of the cadastral parcel No. 1098/2, and the holder of rights of permanent use. The Court obliged the respondents G.K., N.Q., E.K., B.K., V.N., N.A., B.K., to recognize to the claimant this right and enable the abovementioned registration of the property with the department of geodesy and cadastre on claimant's name.

a) The Municipal Court in the operative part of the Judgment stated that during the proceedings, presentation of evidence and witness hearing, found that Mr. D. B. K., (late now), was the owner of the parcel No.1098, with a surface of 0.10,72 ha., and that after his death in inheritance proceedings, 1/2 of the ideal parcel of the mentioned immovable property, belonged to his sons H.K. and SH.K., and based on this physical division new parcels were formed with numbers 1098/1 (which belongs to son H.K.) and 1098/2 (which belongs to the other son SH.K).

b) After H.K.'s death, by inheritance decision T. no. 62/60, parcel no. 1098/1 was inherited by his sons A.K., G.Z., I.Xh., as well as daughter N., who died in the meantime, but her share of property was inherited by sons B.K., and Sh.Xh., who, in the inheritance proceedings, were declared heirs of the ½ of the ideal share of the immovable property left by their legal predecessor.

c) The Municipal Court held that, based on the case file, according to the contract [leg. no. 6/67], in the case file mentioned as contract on division of 30.01.1967, A. K., (father of the Applicant who inherited the late H.K., who was the first heir of D.B.K., and received parcel no. 1098/1), and the Applicant, shared the whole immovable property evidenced as parcels no.1098/1 and no. 1098/2, both in a surface of 0.10,72 ha.

d) In this case, the Municipal Court concluded that the contract [leg. no. 6/67],as such has no legal basis, due to the fact that A. K. took the biggest share of the immovable property, what, according to the law, would not belong to him (meaning that the same has taken the entire cadastral parcels no. 1098/1 and no. 1098/2, in a total surface of 0.10,72 ha), even though, according to the above-mentioned inheritance decision T. br. 62/60, only ¼ of the ideal share of the cadastral parcel no. 1098/1, CZ Gjakova town, belongs to him.

e) To the Municipal Court's opinion the concluded contract on division [Leg.no.6/67], of 30.01.1967, is without any legal basis and that in no way produces legal effect to the present dispute, and has no impact on different decision-making regarding this issue.

f) The Municipal Court in its Judgment concluded that: *„the allegations of the Applicant's representative, that the Applicant, has acquired his right to permanently use the two abovementioned parcels based on the inheritance decision T. no. 33/97, which was preceded by a contract concluded between him and his father, on 30.01.1967, partially stand and that only for the ¼ of the ideal share of cadastral parcel no.1098/1, CZ Gjakova town, due to the fact that his legal predecessor (based on decision T.no.62/60), could have transferred it to the father (father of the Applicant), while father (Applicant's father) could have transferred it to the respondent (the Applicant) only ¼ of the ideal share of the cadastral parcel no. 1098/1, CZ Gjakova town, since „de lege" and „de facto" he was the owner of this ideal share only, and in fact here is expressed the well known legal principle that: „no one can alienate-transfer to the other more rights than he is personally entitled to".*

11. On 28 July 2009, the Applicant filed a complaint against the decision of the Municipal Court in Gjakova [C. no. 263/05], of 15 June 2009. In the reasoning the Applicant claims that during the proceedings before the Municipal Court occurred substantial violations of the procedural provisions, erroneous and incomplete determined factual situation, as well as erroneous application of substantive law, proposing to the Court to annul the Judgment and remand the case for retrial.

12. On 10 December 2012, the District Court in Peja issued the Judgment [Ac. no. 352/09], by which rejected the Applicant's claim and upheld in its entirety the Judgment of the Municipal Court in Gjakova [C. no. 263/05], of 15 June 2009.

13. In its reasoning the District Court stated: *„the District Court found that the first instance court, after assessment of the evidence, has correctly and completely determined the factual situation, and by correct assessment of the evidence correctly applied the substantive law when found that the statement of claim of claimants is founded, and provided substantive legal and factual reasons on relevant facts, crucial for a just solution of this matter, which are approved by this court as well."*

14. On 19 January 2011, the Applicant filed for a revision with the Supreme Court, against the Judgment of the Municipal Court in Gjakova [C. no. 263/05] and the District Court in Peja [Ac. no. 352/09].

15. On 4 April 2013, Supreme Court of Kosovo issued the Judgment [Rev.no.157/2011], by which rejected Applicant's request for revision as unfounded.

16. The Supreme Court in its Judgment stated: „*that it did examine the challenged Judgment of the Municipal Court, in terms of Article 215 of the Law, and thus found that the Applicant's request for revision was unfounded.*"

Applicant's allegations

17. The Applicant alleges that: *„according to the provision of Article 24 of the Constitution of the Republic of Kosovo, all citizens of Kosovo are equal before the law. Everyone enjoys the right to equal legal protection without discrimination*".

18. The Applicant further alleges that, during the proceedings before the courts, the fundamental principle of equal treatment of parties in proceedings was violated.

19. The Applicant claims that the factual situation was not determined in a fair manner. That this situation has been determined based on the statements of the opposite party only. *„In this procedure I was not given the opportunity to give a statement and prove the fact that I am the only heir of my late father A.K., from Gjakova. "*

20. The Applicant requests from the Constitutional Court:

> *„To annul the Judgment of the Municipal Court in Gjakova, C. no .263/05, of 31 January 2011, Judgment of the District Court in Peja, Ac. no. 134/2011, of 19 April 2011, and the Judgment of the Supreme Court of Kosovo, Rev.no.157/2011, of 4 April 2013, as unlawful decisions, by which my rights, guaranteed by the Constitution of the Republic of Kosovo, were violated in the most flagrant manner."*

Assessment of admissibility

21. In order to be able to adjudicate the Applicant's Referral, the Court has to assess beforehand whether the Applicant has met the admissibility requirements, which are laid down in the Constitution and further specified by the Law and Rules of Procedure.

22. In this regard, the Court refers to the Article 48 of the Law on Constitutional Court, which stipulates:

> *"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 a public authority is subject to challenge."*

23. Moreover, the Court also takes into account the Rule 36 (1) c) of the Rules of Procedure, which provides: *„The Court may only deal with Referrals if: (...) The Referral is not manifestly ill-founded."*

24. Even though the Applicant alleges that the regular courts' decisions violated his rights, guaranteed by the Constitution and the laws of the Republic of Kosovo, he did not provide any relevant evidence or facts proving that the courts have violated his constitutional rights (see, Vanek vs. Slovak Republic, No. 53363/99, ECtHR decision on admissibility, of 31 May 2005.).

25. The Constitutional Court reiterates that it is not its task under the Constitution to act as a court of appeal, in respect of the decisions taken by the regular courts. It is the role of the regular courts to interpret and apply the pertinent rules of both procedural and substantive law (see García Ruiz vs. Spain [GC], No. 30544/96, par. 28, European Court of Human Rights [ECtHR] 1999-1).

26. In fact, the Constitutional Court can only consider whether the evidence has been presented in such a manner and the proceedings in general, viewed in the entirety, have been conducted in such a way that the Applicant had a fair trial (see, *inter alia,* European Commission of Human Rights, Edwards vs. United Kingdom, App. No. 13071/87, adopted 10 July 1991).

27. However, after having examined the documents submitted by the Applicant, the Constitutional Court did not find that the proceedings and decisions of the regular courts were in any way unfair or tainted by arbitrariness (see,*mutatis mutandis,* see, Vanek vs. Slovak Republic, No. 53363/99, ECtHR decision on admissibility, of 31 May 2005.).

28. Thus, the Applicant failed to prove why and how his rights, guaranteed by the Constitution, were violated. The mere allegation of a violation of the Constitution cannot be considered as a constitutional complaint. Therefore, pursuant to Rule 36 (1) c) of the Rules of Procedure, the Referral is manifestly ill-founded, and consequently inadmissible.

FOR THESE REASONS,

The Constitutional Court, pursuant to Rule 36 (1) c) of the Rules of Procedure, on 13 September 2013, unanimously

DECIDES

I. TO REJECT the Referral as Inadmissible;

II. TO NOTIFY this Decision to the Parties;

III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20 (4) of the Law;

IV. TO DECLARE this Decision effective immediately.

Judge Rapporteur
Altay Suroy

President of the Constitutional Court
Prof. Dr. Enver Hasani

KI 93/13, Mustafe Osmani, date 05 December 2013- Constitutional Review of the Judgment of Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters

Case KI 93/13, Resolution Inadmissibilty of 21 October 2013.

Keywords: individual Referral, constitutional review of the Judgment of Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters .

The Referral is based on Article 113.7 of the Constitution, Article 47 of the Law on the Constitutional Court of the Republic of Kosovo no. 03/L-121 of 15 January 2009 (hereinafter, the Law), and Rule 56, of the Rules of Procedure of the Constitutional Court (hereinafter, the Rules of Procedure).

On 01 July 2013, the Applicant submitted Referral to the Constitutional Court of Kosovo seeking the constitutional review of the Judgment of Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters

The Applicant has not specified what constitutional rights have been violated to him by the challenged Judgment, but only seeks from the Court to acknowledge him the right to 20% share from the privatization of the public enterprise Ramiz Sadiku.

The President with Decision (no.GJR. KI93/13 of 05 August 2013), appointed Judge Altay Suroy as Judge Rapporteur. On the same day, the President with Decision no.KSH.KI 93/13 appointed the Review Panel composed of Judges: Robert Carolan (Presiding), Ivan Čukalović and Enver Hasani.

After examining the documents that the Applicant submitted to the court, The Court finds that the Applicant did not base his allegations on constitutional grounds, because he did not show how the regular courts have violated his rights guaranteed by the Constitution.

The Court considers that the justification provided by the Judgment of the Appellate Panel of the Special Chamber, in answering the allegations made by the Applicants, is clear and wel reasoned.

For all the aforementioned reasons, the Constitutional Court of Kosovo in the session held on 21 October 2013 rendered the Referral inadmissible.

RESOLUTION ON INADMISSIBILITY
in
Case no. KI 93/13
Applicant
Mustafë Osmani
Constitutional Review of the Judgment of the Appellate Panel of the Special Chamber of Supreme Court of Kosovo, on Privatization Agency of Kosovo Related Matters, ASC-ll-0069, of 22 April 2013

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

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

Applicant

1. The Applicant is Mr. Mustafë Osmani born on 20 October 1946, from the village Llausha, Municipality of Podujevo (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges the Judgment of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters (hereinafter: Appellate Panel of the Special Chamber) ASC-ll-0069, of 22April 2013, which was served on the Applicant on 21 June 2013.

Subject matter

3. The subject matter is exercising the right to 20% share from privatization of the Socially Owned Enterprise Ramiz Sadiku (hereinafter: SOE Ramiz Sadiku), in Prishtina.

Legal basis

4. The Referral is based on 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 of 15 January 2009,(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).

Proceedings before the Constitutional Court

5. On 01 July2013, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 05 August 2013, the President appointed Judge Altay Suroy as Judge Rapporteur and a Review Panel composed of Judges: Robert Carolan (Presiding), Ivan Čukalović and Enver Hasani.

7. On 26 August 2013, the Court notified the Applicant and the Special Chamber of the Supreme Court on the registration of Referral.

8. On 21 October 2013, 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 2006, the SOE Ramiz Sadiku completed the privatization process.

10. On 12 March 2009, the Applicant filed an appeal to the Special Chamber of the Supreme Court against the final list of employees, who gained the right to 20 % share, which was compiled by the Agency for Privatization (hereinafter: the Agency).

11. In the appeal, the Applicant alleged that he is the victim of discrimination, but at the same time he did not provide evidence to the Special Chamber to substantiate his allegation.

12. On 10 June 2011, the Trial Panel of the Special Chamber rejected the Applicant's complaint as ungrounded. In the reasoning of its decision, the Trial Panel stated: *„that based on the examination of the case file,*

submitted by the Agency and the Applicant, it was determined that in the proceedings before the Agency there are two claims with the same names, one is Mustafë Osmani (the Applicant), who is born in Llausha on 20 October 1946, and who according to the evidence of the Agency, is not eligible to exercise right to 20% share, and another person, with the same name and surname, who was born in 1939, and who according to the evidence of the Agency meets requirements to be included on the list.“

13. On an unspecified date, the Applicant filed a complaint to the Appellate Panel of the Special Chamber against the Trial Panel of the Special Chamber decisions of 10 June 2011.

14. During the hearing procedure before the Appellate Panel of the Special Chamber, the Applicant did not submit evidence, by which he would justify his allegation that he was an employee in the “SOE Ramiz Sadiku”, but he only reiterated the appeal allegations of 12 March 2009.

15. On 22 April 2013, the Appellate Panel of the Special Chamber rendered the judgment [ASC-ll-0069], whereby rejecting the Applicant’s complaint as ungrounded, because the Applicant failed to prove his allegations pursuant to Article 10.4 of UNMIK Regulation 2003/13.

Relevant law

16. *“REGULATION NO. 2003/13, ON THE TRANSFORMATION OF THE RIGHT OF USE TO* SOCIALLYOWNED *IMMOVABLE PROPERTY*

Section 10
Entitlement of Employees

Article 10.4 *„For the purpose of this section an employee shall be considered as eligible, if such employee is registered as an employee with the Socially-owned Enterprise at the time of privatization and is established to have been on the payroll of the enterprise, for not less than three years. This requirement shall not preclude employees, who claim that they would have been so registered and employed, had they not been subjected to discrimination, from submitting a complaint to the Special Chamber pursuant to subsection.”*

Applicant’s allegations

17. The Applicant addresses the Constitutional Court, with only one request that:

> „He wants that he is entitled to 20% share from privatization, same as his colleagues“

Assessment of the admissibility of the Referral

18. In order to be able to adjudicate the Applicant's Referral, the Court should 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

19. 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 exhausting all legal remedies provided by law."*

20. The Court notes that the Applicant in his Referral has not specified what constitutional rights have been violated to him by the Judgment of the Appellate Panel of the Special Chamber [ASC-ll-0069], of 22 April 2013, even though Article48 of the Law on Constitutional Court of the Republic of Kosovo provides:

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

21. The Court also refers to Rule 36 (1) c) of the Rules of Procedure:

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

22. The Constitutional Court reiterates that it is not its task under the Constitution to act as a court of appeal, in respect of the decisions taken by regular courts. It is the role of the latter to interpret and apply the pertinent rules of both procedural and substantive law (see Case Garcia Ruiz v. Spain, no. 30544/96, ECHR Judgment of 21 January 1999).

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 has had a fair trial (see, the case Edwards v. United Kingdom App. No 13071/87, Report of the European Commission on Human Rights, which was adopted on 10 July 1991).

24. The Court considers that the justification provided by the Judgment of the Appellate Panel of the Special Chamber, in answering the allegations made by the Applicants, is clear and well reasoned.

25. The fact that the Applicant is unsatisfied with the outcome of the case, cannot of itself raise an arguable claim of a breach of rights guaranteed by the Constitution (see case Mezotur-Tisazugi Tarsulat vs. Hungary, Appl. No. 5503/02, ECHR Judgment of 26 July 2005).

26. In the present case, the Applicant did not base his allegations on constitutional grounds, because he did not show how the regular courts have violated his rights guaranteed by the Constitution.

27. It follows that the Referral is manifestly ill-founded and it should be rejected as inadmissible pursuant to Rule 36 (1) c) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 20 of the Law, and Rule 36 (1) a) of the Rules of Procedure, on 21 October 2013, unanimously

DECIDES

I. TO REJECT the Referral as Inadmissible;

II. TO NOTIFY the Parties of this Decision;

III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20 (4) of the Law;

IV. TO DECLARE this Decision immediatelyeffective.

Judge Rapporteur
Altay Suroy

President of the Constitutional Court
Prof. Dr. Enver Hasani

KI 58/13, Sadik Bislimi, date 05 December 2013- Constitutional Review of the Judgment of the Municipal Court in Ferizaj, C. no. 6/2008 of 5 November 2012; Ruling of the Municipal Court in Ferizaj, C. no. 364/2009 of 19 December 2012; and Ruling of the Basic Court in Ferizaj, C. no. 534/10 of 15 March 2013

Case KI58/13, Resolution Inadmissibilty of 16 October 2013

Keywords: individual referral, civil dispute, right to fair trial, premature referral, exhaustion of effective legal remedies

The Applicant in general complained against decisions of the first instance, where, the subject of challenge in all three presented cases was not the same. The Applicant alleged that the regular courts by their decisions have violated his constitutional rights, guaranteed by Article 31 of the Constitution. The Applicant requested from the Court, among others, the compensation of damage caused by KEK to the household (house appliances), because of the interruption of electrical energy; removal of obstacles to the possession of his property, which is obstructed by KEK electrical network and compensation of the damage caused by the termination of pension.

In this case, the Court stated that the Applicant had the opportunity to raise the alleged violations of the constitutional rights for judicial bias, which he was raising before the Constitutional Court, to the higher instances such as the Court of Appeal and the Supreme Court. For the foregoing reasons, the Court concluded that the Applicant's Referral did not meet the admissibility criteria, 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, therefore, pursuant to Article 46 [Admissibility] of the Law, the Referral is found inadmissible.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI58/13
Applicant
Mr. Sadik Bislimi
Constitutional Review of the Judgment of the Municipal Court of Ferizaj C. no. 6/2008 of 5 November 2012; C. no. 364/2009 of 19 December 2012 and the Ruling of the Basic Court in Ferizaj C. no. 534/10 of 15 March 2013

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

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

Applicant

1. The Applicant is Mr. Sadik Bislimi, residing in Ferizaj.

Challenged decision

2. The Applicant challenges the Decision of the Municipal Court in Ferizaj C. no. 6/2008 of 5 November 2012; C. no. 364/2009 of 19 December 2012 and Decision of the Basic Court in Ferizaj C. no. 534/10 of 15 March 2013.

Subject matter

3. The subject matter of the Referral is the constitutional review by the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) of the Judgment of the Municipal Court in Ferizaj C. no. 6/2008 of 5 November 2012; Decision of the Municipal Court of Ferizaj C.no.364/2009 of 19 December 2012 and the Decision of the Basic Court in Ferizaj C.no.534/10 of 15 March 2013, by which the Applicant alleges that his rights to a fair and impartial trial have been violated, a right

guaranteed by Article 31 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution).

Legal basis

4. Article 113.7 of the Constitution, Article 47 of the Law on the Constitutional Court of the Republic of Kosovo, No. 03/L-121, of 16 December 2008, which entered into force on 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 18 April 2013, the Applicant submitted the Referral to the Court.

6. On 29 April 2013, the President of the Constitutional Court by Decision No. GJR.58/13 appointed Judge Altay Suroy as Judge Rapporteur and by Decision No. KSH.58/13 the President appointed the Review Panel composed of judges: Ivan Čukalović (Presiding), Kadri Kryeziu and Enver Hasani.

7. On 8 May 2013, the Court notified the Applicant of the registration of Referral under no. KI 58/13 and requested from the Applicant the completion of the same with the necessary documentation.

8. On 18 June 2013, the Applicant submitted the completed referral form, which lacked the decisions of higher instances.

9. On 26 June 2013, the Court again requested from the Applicant additional documents.

10. On 10 July 2013, Mr. Kushtrim Bislimi, on behalf of the Applicant, through electronic mail notified the Court that the requested decisions and the referral form were submitted to the Court on 14 June 2013.

11. On 16 October 2013, 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 the facts

12. On 28 December 2007, the Applicant filed a claim with the Municipal Court in Ferizaj against Kosovo Energy Corporation (hereinafter: KEK) regarding the damage caused by the interruption of electrical energy during the period of time from 1 January 2003 until 31 October 2007.

13. On 5 November 2012, the Municipal Court in Ferizaj (Judgment, C.no.6/2008) rejected the statement of claim of the Applicant filed against KEK, regarding the compensation of damage in the amount of 2.761,47,00 euro caused by interruption of electrical energy for the time period from 1 January 2003 until 31 October 2007. The Court in question, in accordance with Article 319 paragraph 1 and Article 322 of the Law on Contested Procedure (LCP) concluded that the evidence submitted by the Applicant did not present sufficient grounds for the approval of his statement of claim, therefore rejected it as ungrounded. Against this judgment, the Applicant was allowed the right to appeal within the time limit of 15 days from the day of service of Judgment.

14. On 12 November 2009, the Applicant filed a claim with the Municipal Court of Ferizaj regarding the obstruction to possession and use of his private property, because of the obstructions that were caused, as he alleges, from the distribution network of the electrical energy, which was managed by KEK.

15. On 19 December 2012, the Municipal Court in Ferizaj (Ruling, C. no. 364/09) dismissed the Applicant's statement of claim as out of time, as it is stated by the said court, because the Applicant missed the legal time limit for submission of claim.

16. On 20 December 2010, the Applicant filed a claim with the Basic Court in Ferizaj against the Government of Kosovo, namely the Ministry of Labor and Social Welfare, regarding the request for compensation of damage caused by the termination of pension for 13 (thirteen) consecutive years.

17. On 15 March 2012, the Basic Court in Ferizaj (Ruling, C.no.534/10) rejected the Applicant's claim as ungrounded, as stated by the said court, due to the fact that the claim was unclear, incomprehensible and without specified requests.

18. The Applicant has stated in his Referral that he has filed an appeal against the decisions of first instance with the second instance court. Nevertheless, the Applicant has not submitted any decision of the second instance and third instance court, even though he was requested several times by the Constitutional Court to do so.

Applicant's allegations

19. The Applicant alleges that the regular courts by their decisions have violated his constitutional rights, guaranteed by Article 31 of the Constitution.

20. The Applicant requests, among others, from the Constitutional Court: the compensation of damage caused by KEK to the household (house appliances), because of the interruption of electrical energy; removal of obstacles to the possession of his property, which is obstructed by KEK electrical network and compensation of the damage caused by the termination of pension.

Admissibility of the Referral

21. The Court first examines whether the Applicant has fulfilled the admissibility requirements, laid down in the Constitution as further specified in the Law and the Rules of Procedure of the Court.

22. In this case, the Court refers to Article 113 paragraph 7 which establishes that:

> *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."*

23. Article 47 (2) of the Law on the Court also provides that: *"The individual may submit the referral in question only after he/she has exhausted all the legal remedies provided by the law."*

24. Furthermore, Rule 36 (1) a) of Rules of Procedure provides 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.*

25. The Constitutional Court notes from the case files that the Applicant in general complains against the decisions of the first instance, where, the subject of challenge in all three presented cases is not the same.

26. In the first case (Judgment, C.no.6/2008 of 5 November 2012), he complains about the damage caused by KEK, due to interruption of electrical energy; in the second case (Ruling, C. no. 364/09 of 19 December 2012) he complains about the obstruction to possession of his private property also by KEK authorities and in the third case (Ruling, C.no.534/10 of 15 March 2013) he complains about the damage caused by termination of pension for 13 (thirteen) consecutive years.

27. In this case, the Court states that the Applicant had the opportunity to raise the alleged violations of the constitutional rights for judicial bias, which he is raising before the Constitutional Court, to the higher instances such as the Court of Appeal and the Supreme Court. Since the Constitutional Court has requested several times from the Applicant to complete the Referral with relevant documents, the Court assesses that the burden of responsibility lies with the party/parties in case of failure to complete the Referral.

28. From this viewpoint, the Constitutional Court considers that the Applicant's Referral is premature, since we are dealing with non-exhaustion of available legal remedies under the laws in force.

29. Therefore, in accordance with the principle of subsidiarity, the Court considers that the Applicant is under the obligation to exhaust all legal remedies provided by law, as stipulated by Article 113 (7) of the Constitution and the other legal provisions, which were mentioned above.

30. In fact, the purpose of the exhaustion rule is to allow the regular courts the opportunity of putting right the alleged violations of the Constitution. The exhaustion rule is operatively intertwined with the subsidiary character of the constitutional justice procedural framework (See, *mutatis mutandis*, Selmouni v. France [GC], § 74; Kudla v. Poland [GC], § 152; Andrashik and Others v. Slovakia (dec.).

31. Whenever a judicial decision is challenged on the basis of some legal position that is unacceptable from the viewpoint of human rights and fundamental freedoms, the regular courts that issued the decision must be afforded the opportunity to reconsider the challenged decision. That means that, every time a human rights violation is alleged, such an

allegation cannot as a rule arrive to the Constitutional court without first being considered by the regular courts.

32. Before the foregoing reasons, the Court concludes that the Referral does not meet the admissibility requirements, as required by Article 113.7 of the Constitution, Article 47.2 of Law and Rule 36 (1) a) of the Rules of Procedure, therefore pursuant to Article 46 [Admissibility] of the Law, the Referral as such is considered inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 47.2 of the Law and Rule 36 (1) a) and Rule 56 (2) of the Rules of Procedure, on 16 October 2013, unanimously

DECIDES

I. TO REJECT the Referral as Inadmissible;

II. TO NOTIFY the Parties of this Decision;

III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20 (4) of the Law;

IV. This Decision is effective immediately.

Judge Rapporteur
Altay Suroy

President of the Constitutional Court
Prof. Dr. Enver Hasani

KI 81/13, Privatization Agency of Kosovo, date 05 December 2013-- Constitutional Review of the Decision of the Appellate Panel of the Special Chamber of the Supreme Court of the Republic of Kosovo, DHPGJS. No. AC-II-12-0212 of 7 March 2013

Case KI81/13, Resolution Inadmissibilty of 22 October 2013

Keywords: individual referral, civil dispute, general principles, right to fair and impartial trial, manifestly ill-founded

The Applicant alleged that the court authorities, respectively the Appellate Panel of the SCSC by Ruling AC-II-12-0212 of 7 March 2013 has violated constitutional rights guaranteed by Article 102, paragraph 3 of the Constitution, as well as the right to fair and impartial trial guaranteed by Article 31 of the Constitution and by Article 6 of ECHR. In particular, the Applicant claimed that the Appellate Panel of the SCSC, when deciding on the PAK appeal, by not reviewing the subject of property dispute, regarding the lack of jurisdiction of the Municipal Court in Prishtina, decided contrary to Article 102.3 of the Constitution and contrary to the requirements of Article 6 of ECHR.

The Court, in this case, concluded that the pertinent proceedings in the Special Chamber of the Supreme Court have not been in any way unfair or tainted by arbitrariness because the court in question has substantiated and convincingly justified its verdict with regards to the decision taken (*see, mutatis mutandis, Shub v. Lithuania, ECtHR Decision as to the Admissibility of Application no. 17064/06 of 30 June 2009)*. In sum, the Court concluded that the Applicant's Referral does not meet the admissibility requirements, because the Applicant failed to prove that by the challenged decision were violated his rights and freedoms guaranteed by the Constitution. Therefore, in accordance with Rule 36 (2) b) of the Rules of Procedure, the Referral is declared inadmissible.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI81/13
Applicant
Privatization Agency of Kosovo
Constitutional Review of the Decision of the Appellate Panel of the Special Chamber of the Supreme Court of the Republic of Kosovo DHPGJS. No. AC-II-12-0212 of 7 March 2013

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

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

Applicant

1. The Applicant is the Privatization Agency of Kosovo (hereinafter: Applicant), represented by Mr. Shefik Kurteshi.

Challenged decision

2. The Applicant challenges the Decision of the Appellate Panel of the Special Chamber of the Supreme Court of the Republic of Kosovo no. AC-II-12-0212, of 7 March 2013 (hereinafter: the SCSC), which was received by the Applicant on 23 March 2013.

Subject matter

3. The subject matter of the Referral is the constitutional review of the Decision of the Appellate Panel of the SCSC no. AC-II-12-0212 of 7 March 2013, regarding the property dispute and the competencies of the Privatization Agency of Kosovo that have to do with socially owned properties.

Legal basis

4. Article 113.7 in conjunction with Article 21 of the Constitution, Article 47 of the Law no. 03/L-121 on the Constitutional Court of the Republic of Kosovo, of 16 December 2008, which entered into force on 15 January 2009 (hereinafter: the Law); and on the 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 June 2013, the Applicant submitted the Referral to the Court.

6. On 20 June 2013, the President of the Constitutional Court, by Decision no. GJR.KI81/13, appointed Judge Snezhana Botusharova as Judge Rapporteur. On same date, the President of the Constitutional Court, by Decision no. KSH.KI81/13 appointed the Review Panel composed of judges: Robert Carolan (Presiding), Almiro Rodrigues and Prof. Dr. Enver Hasani.

7. On 9 July 2013, the Court notified the Applicant's representative and the SCSC on the registration of the Referral no. KI 81/13.

8. On 22 October 2013, the Review Panel reviewed the report of the Judge Rapporteur and recommended to the full Court the inadmissibility of the Referral.

Summary of facts

9. The Applicant states that the company Euro Vetfarm L.L.C. from Prishtina (Claimant) filed a claim against the company for medical supply and production "Vetfarm" J.S.C. with seat in Belgrade, in the Municipal Court in Prishtina. The subject of review of this legal matter was the recognition of the property right, based on the contract Ov. No.23887/2009 of 3 September 2009, certified by the Municipal Court in Belgrade, regarding the sale-purchase of real estate (house-building) with area of 0.09,68 hectares and the right of joint use of the yard with area of 0.12,26 hectares.

10. On 19 February 2010, the Municipal Court in Prishtina (Judgment, C. no. 2134/2009) approved as grounded the statement of claim filed by the company Euro Vetfarm L.L.C in Prishtina (Claimant). By this Judgment, it was determined that the company Euro Vetfarm L.L.C. in Prishtina, based on the sale-purchase contract of real estate, gained the

property right over the immovable property, which is located in Prishtina, Xhemail Prishtina Street, no. 5, with culture house-building, with area 0.09,68 hectares and the right of joint use of the yard with area 0.12,26 hectares, with total area of the house and the yard of 0.21.94 hectares. The property is registered as cadastral plot no. 4724 and registered according to the possession list no.1590, according to the certificate for the property right over the real estate UL-71914059-1590 CZ Prishtina.

11. The Municipal Court in Prishtina, by Judgment C.no.2134/2009 obliged the respondent, the "Vetfarm" J.S. Company in Belgrade to recognize the property right to the company Euro-Vetfarm L.L.C. in Prishtina and the right of permanent use of the real estate in question. By this judgment the Directorate for Cadastre, Geodesy and Property in Prishtina was obliged to register the abovementioned real estate and to transfer from the respondent "Vetfarm" J.S.C in Belgrade to the claimant Euro Vetfarm L.L.C. in Prishtina, within 15 (fifteen) days from the day the Judgment becomes final.

12. On 26 April 2010, the Municipal Cadastral Office in Prishtina (hereinafter: MCO), based on the request of the company Euro Vetfarm L.L.C., Reference no.: 05-952-1776, of 8 April 2010, according to the Judgment C.no.2134/2009 of 19 February 2010 of the Municipal Court in Prishtina, requested from PAK to give consent for registration of property in the cadastral books in the name of the new owner (Claimant) Euro Vetfarm L.L.C. in Prishtina. MCO in Prishtina also requested for clarifications regarding the property in question, if the latter is an asset of any joint stock company or socially owned enterprise and the accurate name of the company, which in the MCO Prishtina, is registered as "Vetfarm" and "Vetprom".

13. On 8 June 2010, the Applicant (PAK), after being notified by the MCO in Prishtina, regarding the Judgment C.no.2134/2009 of 19 February 2010 of the Municipal Court in Prishtina, filed an appeal in SCSC, requesting the annulment of the execution of Judgment C. no. 2134/2009 of 19 February 2010 and the approval of the proposal for imposition of interim measure regarding the registration of challenged real estate in the name of the new owner Euro Vetfarm L.L.C. in Prishtina by the MCO in Prishtina. The Applicant's appeal (PAK) is based on the fact that according to the Law 03/L-067, the PAK is competent to administer socially owned enterprises in Kosovo.

14. On 1 July 2012, the Trial Panel of the SCSC (Ruling, SCA-10-0043) approved the Applicant's request for imposition of interim measure, by prohibiting the MCO of Prishtina the transfer and registration of property in the cadastral book, according to the order of the Judgment C.no.2134/2009 of 19 February 2010 of the Municipal Court in Prishtina, until rendering a judgment by the SCSC on this matter.

15. On 15 July 2010, Euro Vetfarm L.L.C. in Prishtina filed an appeal with the Appellate Panel of the SCSC against the Ruling of the Trial Panel of the SCSC, regarding the imposition of interim measure. This company, through the filed appeal has requested modification of the Ruling SCA-10-0043 of 1 July 2010 of SCSC and upholding the Judgment C.no.2134/2009 of the Municipal Court in Prishtina, of 19 February 2010. The authorities of Euro Vetfarm L.L.C. in Prishtina challenged the Ruling of the Trial Panel of the SCSC, by alleging that the SCSC is not competent to adjudicate the cases that have to do with the Joint Stock Companies, but only with socially owned enterprises.

16. On 22 March 2011, the Appellate Panel of SCSC (Ruling: ASC-10-0049) rejected the appeal of the company Euro Vetfarm L.L.C. in Prishtina and upheld the Ruling of the Trial Panel of SCSC SCA-10-0043 of 1 July 2010 regarding the approval of the Applicant's request (PAK) for imposition of interim measure which prohibited the transfer and registration of the property in the cadastral books in the MCO in Prishtina.

17. On 7 March 2013, the SCSC Appellate Panel (Ruling: AC-II-12-0212) after the entire review of the case, rejected as inadmissible the Applicant's appeal filed against the Judgment C.no.2134/2009 of 19 February 2010 of the Municipal Court in Prishtina. The reasoning of the Ruling of the SCSC Appellate Panel states as follows:

> *"PAK alleges in the appeal that on 26 April 2010 was notified of the Judgment of the Municipal Court. From the case file it is clear that the respondent (SOE for medical supply and production export-import Vetfarm Belgrade) was served the Judgment of the Municipal Court on 25 March 2010, which on 6 April 2010, by submission filed in the Municipal Court in Prishtina stated that waives the appeal. At that time, the PAK was established and was operational. It is an indisputable fact that the appellant has not filed an appeal in the SCSC within the time limit of 60 days, against the judgment of the Municipal Court. The fact whether it was notified on time of the judgment, has not been proved by PAK and the burden of proof falls to it.*

[...]
The Appellate Panel, due to belated appeal, assesses that now it is not its opportunity to respond, whether this court had jurisdiction regarding the claim and whether legal title (Contract for the purchase of assets), based on which is required the transfer of the challenged property was based on the law, because the belated appeal of the PAK prevents procedurally the Appellate Panel to go further and review the merits of the appealed judgment.
Therefore, as it is already established by the jurisprudence of the Appellate Panel (ASC 11-0094) in such cases, it cannot be considered to be justifiable the annulment of a judgment which has become final, based on belated appeal filed by PAK after more than two months from the time, when the time limit for the appeal had expired and especially following the waiver of the appeal by the authorized representative appointed by the respondent itself.

One of the fundamental principles of each applicable law is the production of legal certainty for the parties through the law and the court decisions. The final decisions, in which the parties consciously miss legal deadlines to challenge them, or to waive from the appeal, or waiver of appeal, cannot be subject to judicial interventions to modify them later, only because the party after some time has interest to change them, because this causes legal uncertainty for involved parties. In this case, the review of the merits of the belated appeal of the PAK which was not involved in the proceedings before the Municipal Court, the appeal filed against the appealed judgment would prejudice the right of the parties to a fair trial based on Article 6 (1) of the European Convention on Human Rights (there is a similar legal view by the Court of Strasbourg, Case Brumarescu vs. Romania, for violation of Article 6 of the Convention, and the right to a fair trial, in case of interference of a final decision due to filing of legal remedy out of time).”

Furthermore in this case, the PAK filed the appeal against the Judgment of the Municipal Court in Prishtina, in which proceedings it was not a party. The responding party is an enterprise from the Republic of Serbia, therefore as it was decided now by the jurisprudence of the Appellate Panel (AC-II-12-0058), in such cases, the appeal is inadmissible also for the fact that pursuant to Article 5.2 of the Annex of LSC, the respondent with its seat outside the country (regardless of its unclear legal status and

challenged property it has in Prishtina), cannot be a party in the procedures before the SCSC panels.

18. On 27 March 2013, the Applicant, against the Ruling of the Appellate Panel of the SCSC no. AC-II-0212 of 7 March 2013, filed a proposal in the Office of the State Prosecution for initiation of the request for protection of legality. The Applicant in the proposal for the initiation of the request for protection of legality stated that the Ruling of the Appellate Panel of SCSC is unlawful, because it is not based on legal arguments and the reasoning of the ruling is not sufficient and convincing and because of this it challenges the claims of the Appellate Panel of the SCSC, for rejection of the appeal as out of time by the abovementioned instance.

19. On 25 April 2013, the Office of the Chief State Prosecutor (Notification: KML C.no.44/13 of 12 April 2013) notified the Applicant that it did not find legal ground to file request for protection of legality.

Applicant's allegations

20. The Applicant alleges that the court authorities, respectively the Appellate Panel of the SCSC (Ruling, AC-II-12-0212 of 7 March 2013) has violated constitutional rights guaranteed by Article 102 paragraph 3 of the Constitution, as well as the right to "fair and impartial trial" guaranteed by Article 31 of the Constitution and by Article 6 of ECHR.

21. The Applicant alleges that: the Municipal Court in Prishtina, by deciding on the property dispute in question has violated provisions of Article 5.1 (a) (i) and 5.1 (a) (ii) of the Law on PAK (Law no. 03/L-067) which was in force and which provides:

5.1 a) The Agency shall have the authority to administer:

(i) Socially-owned Enterprises, regardless of whether they underwent a Transformation; and

(ii) any assets located in the territory of Kosovo, whether organized into an entity or not, which comprised socially-owned property on or after 22 March 1989, regardless of whether they underwent a Transformation though subject to Article 5.1 (b) below; and [...].

22. The Applicant alleges that: *"despite legal obligation pursuant to Article 102.3 of the Constitution of Kosovo that "the courts shall adjudicate based on the Constitution and the law", the Municipal Court in Prishtina has*

violated Articles 5.1 and 29.1 of the Law on PAK (no.03/L-067), the law that was in force at the time when the claim was filed as well as Articles 75.3, 76 and 77.1 of the Law on Contested Procedure (Law no. 03/L-006); Article 4.1, items 4 and 5 of UNMIK Regulation 2008/4 on the SCSC regarding the Privatization Agency of Kosovo related matters, thus the reviewing and rendering Judgment C.no.2134/2009 of 19 February 2010 was unlawful and has violated the Constitution and the laws in force in the Republic of Kosovo."

23. In particular, the Applicant alleges that*: "The Appellate Panel of the SCSC, when deciding on the PAK appeal, by not reviewing the subject of the property dispute, regarding the lack of jurisdiction of the Municipal Court in Prishtina, decided contrary to Article 102.3 of the Constitution and contrary to the requirements of Article 6 of ECHR, the right guaranteed by Article 31 of the Constitution by rejecting the Applicant's appeal as out of time".*

24. In addition, the Applicant alleges that the appeal in the SCSC was duly filed, since on 26 April 2010 it was notified for the first time of the Judgment C.no.2134/2009 of 19 February 2010 of the Municipal Court in Prishtina, by the MCO in Prishtina.

Admissibility of Referral

25. In order to be able to adjudicate the Applicant's Referral, the Court has to assess beforehand whether the Applicant has met all the requirements of admissibility, laid down in the Constitution and further specified by the Law and Rules of Procedure.
26. In this case the Court refers to Article 113.7 of the Constitution which provide:

> *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."*

27. And Article 21 paragraph 4 of the Constitution which provide:

> *22.4"Fundamental rights and freedoms set forth in the Constitution are also valid for legal persons to the extent applicable."*

28. The Constitutional Court, after having examined in their entirety all evidence and arguments presented by the Applicant, notes that the Applicant mainly complains against the decision of the Appellate Panel of the SCSC, by which the Applicant's appeal was rejected as out of time. The Applicant in his appeal had requested from the Appellate Panel to declare null and void the Judgment of the Municipal Court in Prishtina, due to adjudication of the case by the latter even though it lacked the jurisdiction.

29. The Court must also take into consideration for admissibility purposes whether the Applicant's Referral satisfied the admissibility requirements prescribed in Rule 36 (1) (c) and provisions of Rule 36 (2) of the Rules of Procedure, that provides as follows:

36 (1) "The Court may only deal with Referrals if:

[...]

c) the Referral is not manifestly ill-founded.

36 (2) "The Court shall reject a Referral as being manifestly ill-founded when it is satisfied that:

a) the Referral is not prima facie satisfied;

b) when the presented facts do not in any way justify the allegation of a violation of the constitutional rights;

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".

30. As to the Applicant's allegation that: "the Appellate Panel of the SCSC, decided in contradiction with the Constitution and applicable laws of the Republic of Kosovo", the Court considers that the Ruling of the Appellate Panel of the SCSC, does not contain in substance violations of the constitutional rights, as the Applicant failed to prove how and why the decision of the Panel was unjustified and arbitrary.

31. The Court recalls that the case should be built on the basis of constitutional arguments for the Court to intervene.

32. The reasoning of the decision of the Appellate Panel of the SCSC is mainly supported by the principle of guaranteeing legal certainty of final court decisions, by supporting the reasoning of the decision in harmony with the law case of ECHR, related to the cases of the analogue nature. Following is the conclusion of the Panel regarding the case:

> *"One of the fundamental principles of each applicable law is the production of legal certainty for the parties through the law and the court decisions. The final decisions, in which the parties consciously miss legal deadlines to challenged them, or to waive from the appeal, or waiver of appeal, cannot be subject to judicial interventions to modify them later, only because the party after some time has interest to change them, because this causes legal uncertainty for parties. In this case, the review of the merits of the belated appeal of the PAK which was not involved in the proceedings before the Municipal Court, the appeal filed against the appealed judgment would prejudice the right of the parties to a fair trial based on Article 6 (1) of the European Convention on Human Rights (there is a similar legal view by the Court of Strasbourg, Case Brumarescu vs. Romania, for violation of Article 6 of the Convention, and the right to a fair trial, in case of interference of a final decision due to filing of legal remedy out of time)."*

33. As per the Applicant's allegation regarding the fact that: *"the Municipal Court in Prishtina has violated Articles 5.1 and 29.1 of the Law on PAK (no.03/L-067), the law that was in force at the time when the claim was filed as well as rticles 75.3, 76 and 77.1 of the Law on Contested Procedure (Law no. 03/L-006); Article 4.1, items 4 and 5 of UNMIK Regulation 2008/4 on the SCSC regarding the Privatization Agency of Kosovo related matters",* the Court notes that, the ground of the Applicant's appeal contains allegations that have to do with substantial violations of the applied legal provisions and of the contested procedure.

34. Therefore, the Court considers that such allegations may be of the scope of legality.

35. The Court stresses that it is not its task to assess the legality and accuracy of decisions rendered by regular courts, unless there is convincing evidence that such decisions have been rendered in an obviously unfair and unclear manner.

36. It is the task of the Court, concerning the alleged violations of the constitutional rights, to examine and assess whether the proceedings in their entirety were fair and in accordance with the protection, explicitly stipulated by the Constitution. Thus, the Constitutional Court is not a court of fourth instance, when considering the decisions issued by courts of lower instances. It is the role of regular courts to interpret and apply the pertinent rules of procedural and substantive law *(see, mutatis mutandis, Garcia Ruiz v. Spain [GC], no. 30544/96, paragraph 28, the European Court of Human Rights [ECHR] 1999-I).*

37. In the present case, the Applicant has not provided any evidence which indicates that the alleged violations, mentioned in the referral constitute violation of their constitutional rights *(see Vanek vs. Slovak Republic, ECHR Court on admissibility of the application no. 53363/99 of 31 May 2005).*

38. Furthermore, the Court cannot consider that the pertinent proceedings in the Special Chamber of the Supreme Court have been in any way unfair or tainted by arbitrariness *(see, mutatis mutandis, Shub v. Lithuania, ECtHR Decision as to the Admissibility of Application no. 17064/06 of 30 June 2009).*

39. In sum, the Court concludes that the Applicant's Referral does not meet the admissibility requirements, because the Applicant failed to prove that by the challenged decision were violated his rights and freedoms guaranteed by the Constitution.

40. Therefore, in accordance with Rule 36 (2) b) and d) of the Rules of Procedure, the Applicant's Referral is considered as manifestly ill-founded and as such inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113 (7) of the Constitution and Rules 36 (2) b) and d) and 56 (2) of the Rules of Procedure, on 22 October 2013, unanimously

DECIDES

I. TO REJECT the Referral as Inadmissible;

II. TO NOTIFY the Parties of this Decision;

III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20 (4) of the Law;

IV. This Decision is effective immediately.

Judge Rapporteur
Snezhana Botusharova

President of the Constitutional Court
Prof. Dr. Enver Hasani

KI 28/12, Fehmi Ymeri, date 06 December 2013- Constitutional Review of the Judgment of the Supreme Court of the Republic of Kosovo, Rev. I. nr. 200/2010, dated 10 January 2010

Case KI28/12, Resolution Inadmissibilty of 25 November 2013

Keywords: individual referral, inadmissible referral, manifestly ill-founded referral, right to work and exercise profession.

The referral is based on Article 113.7 of the Constitution, Article 22 of the Law and Rule 56 of Rules of Procedure. The applicant among other claimed that his right to to work and exercise profession had been violated.

The Court emphasizes that matters of fact or law are within the jurisdiction of regular courts and that it cannot act as a court of appeals or a fourth instance court. The Court, reasoned further that the applicant did not provide any evidence on the alleged violations of the rights and freedoms guaranteed by the Constitution. Due to the above mentioned reasons, the Court pursuant to Article 113.7 of the Constitution, Rule 36 (1) c) and Rule 56 (2) of the Rules of Procedure decided to reject as inadmissible the Applicant's referral.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI28/12
Applicant
Fehmi Ymeri
Constitutional Review of the Judgment of the Supreme Court of the Republic of Kosovo, Rev. I. nr. 200/2010, dated 10 January 2012.

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

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

Applicant

1. The Referral is submitted by Mr. Fehmi Ymeri (hereinafter: the Applicant) residing in Prishtina. In the proceeding before the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) the Applicant is represented by Mr. Habib Hashani, a lawyer from Prishtina.

Challenged decision

2. The Applicant challenges the Judgment of the Supreme Court of the Republic of Kosovo (hereinafter: the Supreme Court) of 10 January 2012, which was served on the Applicant on 7 February 2012.

Subject matter

3. The Applicant alleges that the Judgment of the Supreme Court, Rev. no. 200/2010 has violated the right to work and exercise his profession, as guaranteed by the provisions of Article 49 [Right to Work and Exercise Profession] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution).

Legal basis

4. The Referral is based on 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: 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 23 March 2012, the Applicant submitted the Referral with the Court.

6. On 25 April 2012, the President of the Constitutional Court, with Decision No. GJR. KI28/12, appointed Judge Ivan Cukalovic as Judge Rapporteur. On the same date, the President of the Constitutional Court, with Decision No. KSH. KI28/12, appointed the Review Panel composed of Judges Almiro Rodrigues (Presiding), Snezhana Botusharova and Kadri Kryeziu.

7. On 22 October 2013, after having considered the report of Judge Rapporteur, the Review Panel made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

8. On 10 June 2000, the head of the Selection Panel notified the Applicant that he has been selected for the position of the Director of Restructuring of the Kosovo Energy Corporation (KEK).

9. On an unspecified date the Special Representative of the Secretary General, appointed the Applicant as a Restructure Director with the Kosovo Energy Corporation (KEK) as of 24 July 2000.

10. On 16 September 2002, the Applicant submitted his letter of resignation mainly due to the difficult state in which the Kosovo Energy Corporation was going through.

11. On 9 May 2003, through decision ref. nr. 1579 the Managing Director of KEK, notified the applicant that since resignation from the position of Restructuring Director, the KEK management has tried to find a new suitable assignment, however without any success. Furthermore, through this letter the Applicant is notified that his working relationship with KEK ends on 10 August 2003.

12. On 30 May 2003, the Applicant replied to the KEK Managing Director where he expressed his disappointment with the decision and asking for the annulment of the decision 1579 dated 9 May 2003 regarding his termination of employment.

13. On 3 June 2006, the KEK managing director requested that the Applicant respects decision nr. 1579 dated 9 May 2003.

14. On 20 May 2009, the Municipal Court in Prishtina by decision C1. No. 257/2008 approved the Applicant's claim and annulled decision n0. 157 dated 9 May 2003 regarding the termination of employment and ordered KEK to return the Applicant to his previous position. The court stated that following the Applicant's resignation from his position as Restructuring Director the employer "was obliged to find him another adequate position within KEK in accordance with Article 12 of the UNMIK Regulation 2001/27.

15. On 14 May 2010, the District Court in Prishtina by decision Ac. No. 49/10 rejected the appeal of KEK and confirmed the latter decision of the Municipal Court.

16. On 10 January 2010, the Supreme Court by decision Rev. I. no. 200/2010 approved the revision of KEK and overturned the decision of the lower instances.

17. The Supreme Court of Kosovo in its Judgment stated *"that the courts of the lower instances, based on the administered evidences, have wrongfully implemented the material provisions when they found that the statement of claim of the claimant is founded, for which reason pursuant to the Article 224.1 of the Law on Contested Procedure, the revision of the respondent was accepted and both judgments of the courts of the lower instances were changed and the statement of claim of the claimant is rejected".*

18. Furthermore, the Supreme Court stated that *"Pursuant to the UNMIK Regulation 2001/27, the Essential Labour Law Article 11.1 point b) is set forth that the employment contract is terminated with a written agreement between the employer and the employee. The act of resignation of the claimant from the position of the manager of the position of the restructuring is a form of termination of the employment relationship pursuant of the above-mentioned provision.*

The respondent could have expressed a good will and assign the claimant in other working positions but it was not obliged. It was the right of the respondent that in the occasion of the resignation from the position with special responsibility to assign the claimant in another working position which compiles to his professional background, for which the respondent was engaged but it did not have the possibility. Therefore the assessment of the courts of the lower instances that the respondent did not implement the procedure for the termination of the employment relationship towards the claimant due to the economic changes pursuant to the Article 12 of the Regulation no. 2001/27, from the Supreme Court cannot be accepted since in the case of the claimant, the employment relationship was terminated pursuant to the Article 11, paragraph 1. Point b) of this regulation".

Applicant's allegations

19. The Applicant alleges that his right to work and exercise his profession has been violated due to the fact that *"his resignation was only related to his assigned position as Restructuring Director but not from KEK"*. In addition the Applicant alleges that KEK was obliged to find him another suitable adequate position within the company.

Assessment of the admissibility of the Referral

20. The Court first examines whether the Applicant has fulfilled the admissibility requirements set out in the Constitution, and 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:

> *"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."*

22. The Court also refers to Rule 36 (1) c) of the Rules of Procedure which foresees that

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

23. 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

regular court, unless and in so far as they may have infringed rights and freedoms protected by the Constitution (constitutionality). Thus, this Court is not to act as a court of fourth instance, when considering the decisions taken by the 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).

24. In sum, 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 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).

25. In this respect, the Court notes that the Applicant did not substantiate a claim on constitutional grounds and did not provide any evidence that his rights and freedoms have been violated by the regular courts. The Supreme Court provided the Applicant with a well reasoned judgment as to why his employee was not obliged to find him another position within KEK following his resignation from his assigned role with this institution.

26. 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).

27. In sum, the Applicant did not show why and how his rights as guaranteed by the Constitution have been violated. A mere statement that the Constitution has been violated cannot be considered as a constitutional complaint. Thus, pursuant to Rule 36 (1.c) of the Rules of Procedure, the Referral is manifestly ill-founded.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Rules 36 (1) c) and 56 (2) of the Rules of Procedure, on 22 October 2013, 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
Prof. Dr. Ivan Čukalović

President of the Constitutional Court
Prof. Dr. Enver Hasani

KI 79/12, Tanasko Djordjević and others, date 06 December 2013- Constitutional review of the Judgment of the Supreme Court of Kosovo, MIc Rev. 377/2009, of 8 May 2012

Case KI 79/12, Resolution Inadmissibilty of 19 November 2013

Keywords: Individual Referral, manifestly ill-founded, annulment of contract of gift, property dispute.

The Applicants filed the Referral based on Article 113.7 of the Constitution, alleging that the Judgment of the Supreme Court of Kosovo, Mlc Rev. 377/2009, of 8 May 2012, which modified the Judgment of the District Court in Prizren and rejected the lawsuit of the Applicants for the annulment of the contract of gift of the immovable property included in the contract of gift, alleged their right to property, guaranteed by Article 46 of the Constitution.

After having reviewed the case in its entirety, the Constitutional Court cannot consider that the pertinent proceedings before the Supreme Court were in any way unfair or arbitrary. Further, the Constitutional Court reiterated that it is not a court of fourth instance when reviewing decision taken by the lower instance courts. It is the duty of the regular courts to interpret and apply the pertinent rules of both procedural and substantive law.

The Court found that the Applicants' Referral does not meet the admissibility requirements, as the Applicants have failed to prove that the challenged decision has violated their constitutionally guaranteed rights and freedoms. Therefore, the Court concluded that the Applicants' Referral, pursuant to Rule 36.2 (a) and (b) of the Rules of Procedure is manifestly ill-founded and therefore inadmissible.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI79/12
Applicants
Tanasko Djordjević and others
Constitutional review of the Judgment of the Supreme Court of Kosovo MIc Rev. 377/2009, of 8 May 2012

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Enver Hasani, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Kadri Kryeziu, Judge and
Arta Rama-Hajrizi, Judge.

Applicant

1. The Applicants are Mr. Tanasko Djordjević, Ms. Miloratka Jelić, Mr. Srboljub Djordjević, Ms. Serafina Djordjević, Ms. Jagoda Janković and Milorad Djordjević from Prizren, who by a power of attorney are represented by Mr. Bashkim Nevzati, a practicing lawyer from Prizren.

Challenged decision

2. The challenged decision is the Judgment of the Supreme Court of Kosovo MIc Rev. 377/2009, of 8 May 2012, served on the Applicants on 12 July 2012, which modified the Judgment of the District Court in Prizren and rejected the lawsuit of the Applicanst for the annulment of the contract of gift of the immovable property included in the contract of gift Leg. Nr. (Posl. Br. Ov.) 956/59, of 7 October 1959, concluded between the predecessor of the plaintiffs as the donor and the Municipality of Prizren, in the capacity of the donee.

Subject matter

3. The Applicants challenges the Judgment of the Supreme Court of Kosovo MIc Rev. 377/2009, of 8 May 2012, alleging that there has been

a 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 Kosovo (hereinafter: the Law) and Rule 56.2 of the Rules of Procedure of the Constitutional Court (hereinafter: the Rules).

Proceedings before the Court

5. On 24 August 2012, the Applicants filed the Referral with Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 27 September 2012, the Constitutional Court notified the Applicant and the Municipal Court in Prizren, the District Court in Prizren and the Supreme Court of Kosovo that a proceeding of constitutional review of decisions related to case no. KI79/12 was initiated.

7. By Decision of the President (No. GJR. 79/12, of 4 September 2012), Judge Ivan Čukalović was appointed Judge Rapporteur. On the same day, the President, by Decision no. KSH. 79/12, appointed the Review Panel composed of Judges: Snezhana Botusharova(Presiding), Kadri Kryeziu and Enver Hasani, members of the Panel.

8. On 19 November 2013 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. On 7 October 1959, a contract of gift Leg. no. 956/59 was concluded between Jovanka Miletić Dejanović, from Prizren, as the donor, on one side, and the then People's Council of the Municipality of Prizren, as the donee, on the other side, according to which the donor donated to the donee cadastral plots: no. 4/168/2 with surface area of 0.47,00 ha; no. 5/229 with surface area of 0.30,00 ha; no. 5/236 with surface area of 0.92,00 ha; and no. 5/316 with surface area of 0.38,00 ha in the cadastral zone of Prizren, which were registered in the name of the plaintiffs' predecessor.

10. On the basis of this contract, this parcel was transferred into socially owned property in the name of the Municipal Assembly of Prizren.

11. The former owner of the immovable property described above passed away on 15 March 1967, and was survived by Grozdana Djordjević, who also passed away and was survived by the plaintiffs in the regular courts and who are represented before the Court by the Applicant.

12. On an unspecified date during 1997, the heirs of the late Jovanka Jovanović initiated before the Municipal Court in Prizren, by a lawsuit, proceedings for the annulment of the contract and the return of the immovable property as they considered that the signing of the contract of gift was done under threats and it did not represent her own free will. The plaintiffs in these proceedings requested from the Municipal Court in Prizren to have ownership returned over cadastral plot no. 5/316 which is now registered in the name of MA Prizren as cadastral plot No. 2035 with surface area of 0.38,67 ha, cadastral plot 5/236 which is now registered in the name of AIC "Progress-Export" from Prizren, and cadastral plot no. 5070 with surface area of 0.94,74 ha which is registered in the name of M.K.

13. The Municipal Court in Prizren, after having examined the evidence and the testimony of the witnesses, issued Judgment C. Nr. 1067/97 of 12 December 2007, by which it approved the lawsuit and the claim of the plaintiffs and determined that the contract of gift of immovable property Leg. no. 956/59, of 7 October 1959, concluded between Jovanka Miletić Dejanović, from Prizren, as the donor, on one side, and the Municipality of Prizren, as the donee, on the other side, was null and void.

14. In its Decision, the Municipal Court in Prizren stated that:

> *"The Court assessed the statements of the mentioned witnesses because their statements completely match and prove the fact that the contract of gift was concluded under pressure and it is not an expression of the free will of the donor, and therefore as such it is absolutely null within the meaning of Law on Transfer of Real Property which is applicable Law pursuant to Regulation no. 1999/24".*

15. Within the legal time limit, the respondents (Municipality of Prizren and AIC "Progress-Export") addressed the District Court in Prizren with separate appeals against this Judgment, thereby *"challenging the said Judgment due to essential violations of civil procedure provisions,*

erroneous and incomplete determination of the factual situation and erroneous application of the substantive law, proposing that the challenged Judgment be quashed and the case be remanded to the first instance court for retrial".

16. On 1 December 2008, the District Court in Prizren, deciding upon appeal, issued Judgment Ac. no. 143/04, rejecting as unfounded the respondents' appeals and upholding the Judgment of the Municipal Court in Prizren C. No. 1067/97.

17. The District Court in Prizren, in its Judgment, among others, stated that *"by determining the decisive facts the first instance court has rightly decided when it confirmed that the contract of gift Leg. No. 956/59 is null. For this, in the Judgment of the first instance convincing reasons have been given, which this court entirely agrees with and acknowledges them as such."*

18. Against the Judgment of the District Court in Prizren, the Public Prosecutor of Kosovo filed a request for protection of legality *"due to essential violations of the provisions of the contested procedure and erroneous application of the substantive law, proposing that the judgments of the lower instance courts be quashed and the matter be remanded to the first instance court for retrial".* At the same time, the Municipality of Prizren also filed a revision "*due to essential violations of the contested procedure and erroneous application of the substantive law, proposing that the judgments of the lower instance courts be modified so that the claim of the plaintiffs is rejected or the case to be quashed and the matter to be remanded to the first instance court for retrial."*

19. On 8 May 2012, the Supreme Court of Kosovo issued Judgment MIc Rev. no. 377/2009, by which it found that the lower instance courts had erroneously applied the substantive law and it modified the judgments of those courts.

20. In the reasoning part of its Judgment, the Supreme Court stated that:

> *"The contract of gift which was concluded on 30.9.1959, as (it can be seen) from the copy of the contract that is in the case file, and in the concrete case the provisions of the Law of Contract and Torts, which entered into force on 1.10.1978, cannot be applied. The provisions of this law pursuant to its Article 1106 shall not apply to*

obligation relations which arose prior to the entry into force of this law."

[...]

"Even if supposed that there was lack of will of the contracting party due to threat, misleading or fraud, according to the rules of the civil law, such contract would have been relatively null, and that the annulment of the contract for such reasons may be requested within one year of the day one has become aware of the cause of possibility of rescission, of cease of the cause of threat, and such right is forfeited after the objective time limit of three years".

[...]

"For the fact that all the time limits for requesting relative nullity of the contract have elapsed, these being preclusive time limits, in the concrete case one may not request nullity of contract after the elapse of the time limit of over 38 years, as the plaintiffs did in the concrete case".

Applicant's allegations

21. The Applicants challenge the Judgment of the Supreme Court of Kosovo, MIc Rev. no. 377/2009, of 8 May 2012, alleging that *"pursuant to Article 54 of the Constitution of the Republic of Kosovo, 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".*

22. The Applicants allege that the Supreme Court by MIc Rev. no. 377/2009 has violated Article 46 [Protection of Property] of the Constitution, which states that that every natural and legal person shall have the right to enjoy his property and that no one shall be deprived of his property.

Admissibility of Referral

23. The Court first assesses whether the Applicants have met the admissibility requirements, laid down in the Constitution and further specified by the Law and the Rules of Procedure of the Court.

24. In that regard, the Court refers to Article 113 (7), which establishes:

"Individuals are authorized to refer violations by public authorities of their individual rights and freedoms guaranteed by the Constitution, but only after exhaustion of legal remedies provided by law."

25. The Court also refers to Article 48 of the Law which provides:

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

26. In addition, Rule 36 (1) c) and (2) a) and b) of the Rules of Procedure provides:

"(1) The Court may only deal with Referrals if:

[...]

(c) the Referral is not manifestly ill-founded.

[...]

(2) 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."

27. In the present case, the Court notes that the Applicants challenge the Decision of the Supreme Court, by which, they allege that their rights and freedoms guaranteed by the Constitution and international instruments have been violated as a result of erroneous determination of the facts and erroneous application of the law by the Supreme Court.

28. After having reviewed the case in its entirety, the Constitutional Court cannot consider that the pertinent proceedings before the Supreme Court were in any way unfair or arbitrary (See*, mutatis mutandis,* Shub vs. Lithuania, ECtHR Decision as to admissibility of Application No. 17064/06, of 30 June 2009).

29. The Constitutional Court reiterates that it is not a court of fourth instance when reviewing decisions taken by the lower instance courts. It is the duty of the regular 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 of Human Rights [ECtHR] 1999-I).

30. The Applicants have not presented any *prima facie* evidence indicating a violation of his constitutional rights (see Vanek vs. Slovak Republic, ECHR decision as to the admissibility of Application no. 53363/99 of 31 May 2005). The Applicants do not in any way substantiate the claim that his rights guaranteed by Article 46 of the Constitution has been violated.

31. Therefore, the Court finds that the Applicants' Referral do not meet the admissibility requirements, as the Applicant has failed to prove that the challenged decision has violated their constitutionally guaranteed rights and freedoms.

32. In all, the Court concludes that the Applicants' Referral, pursuant to Rule 36.2 (a) and (b) of the Rules of Procedure is manifestly ill-founded and therefore inadmissible.

FOR THESE REASONS

Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 20 of the Law and Rule 36.2 and Rule 56.2 of the Rules of Procedure, on 19 November 2013, by majority:

DECIDES

I. TO REJECT the Referral as Inadmissible;

II. TO NOTIFY this decision to the Parties

III. TO PUBLISH the decision in the Official Gazette, in accordance with Article 20 (4) of the Law; and

IV. This Decision is effective immediately.

Judge Rapporteur
Ivan Čukalović

President of the Constitutional Court
Prof. Dr. Enver Hasani

KI 122/13, Rizah Llumnica, date 06 December 2013 – Constitutional Review of the Judgment of the Supreme Court of Kosovo, Rev. no. 12/2011, of 8 April 2013.

Case KI122/13, Resolution on Inadmissibility, 21 October 2013

Keywords: Individual Referral, manifestly ill-founded, building a case, *prima facie* evidence, protection of property, right to fair and impartial trial.

The Applicant, Mr. Rizah Llumnica, filed the Referral based on Article 113.7 of the Constitution of Kosovo, challenging the Judgment of the Supreme Court of Kosovo, Rev. no. 12/2011, of 8 April 2013, by which he alleges his rights guaranteed by the Constitution, namely Articles 46 [Protection of Property] and 31 [Right to Fair and Impartial Trial], have been violated.

The Court concluded that the Referral does not meet the admissibility criteria since the Applicant has not substantiated his allegation nor has he submitted any *prima facie* evidence indicating a violation of his rights under the Constitution. This way, the Court decided that the Referral is manifestly ill-founded pursuant to Rule 36 1) (c) and (2) b) and d) of the Rules of Procedure.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI122/13
Applicant
Rizah Llumnica
Constitutional review of the
Judgment Rev. no. 12/2011 of the Supreme Court of Kosovo,
dated 8 April 2013

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

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

The Applicant

1. The Referral was submitted by Mr. Rizah Llumnica from Prishtina, represented by Mr. Halil Palaj (the Applicant).

Challenged decision

2. The Applicant challenges the Judgment Rev. no. 12/2011 of the Supreme Court of Kosovo, dated 8 April 2013, which was served to him on 21 May 2013.

Subject matter

3. The Applicant alleges that the challenged Judgment violated his rights guaranteed by the Constitution, namely Articles 46 [Protection of Property] and 31 [Right to Fair and Impartial Trial].

Legal basis

4. The Referral is based on Article 113.7 of the Constitution of the Republic of Kosovo (hereiafter, 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, the Law) and Rule 29 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter, the Rules).

Proceedings before the Constitutional Court

5. On 13 August 2013, the Applicantsubmitted the Referral to the Court.

6. On 30 August 2013, the President appointed Judge Almiro Rodrigues as Judge Rapporteur and the Review Panel composed of Judges Altay Suroy (Presiding), Kadri Kryeziu and Arta Rama.

7. On 11 September 2013, the Court informed the Applicant on the registration of the Referral and requested the certificate of receipt confirming the date of notification of the Judgment of the Supreme Court. On the same date, the Court also informed the Supreme Court of the Referral.

8. On 24 September 2013, the Applicant submitted the requested certificate of receipt.

9. On 21 October 2013, 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 4 July 2001, the Applicant filed a claim with the Municipal Court of Prishtina against the Prishtina Municipality for ascertainment of his right to a immovable property.

11. On 8 June 2007, the Municipal Court of Prishtina (Judgment C.no.733/01) rejected the Applicant's claim as ungrounded.

12. The Applicant filed an appeal with the District Court of Prishtina, due to the violation of the provisions of the contentious procedure, and erroneous and incomplete application of the material law.

13. On 21 September 2010, the District Court of Prishtina (Judgment Ac.no.146/2008) rejected as ungrounded the appeal of the Applicant, reasoning that *"the appeal claims are* not *related to the statement of*

claim, confirmation of the right of property but are exclusively related to the procedure and the expropriation ruling of year 1976" which are two different procedures and that *"the claimant against the mentioned Ruling could only initiate an administrative conflict pursuant to Article 3 of the Law non Administrative Conflicts".*

14. On 27 October 2010, the Applicant filed a revision with the Supreme Court, due to erroneous application of material law, alleging that *"this immovable property was private property of claimant's father, grandfather and great grandfather, where he has lived with his family and there is no law in the world and in the states with functional democracy, which is also applicable in the Republic of Kosovo, that can deny his right of property and the acknowledging of his right of property".*

15. On 8 April 2013, the Supreme Court (Judgment Rev.no.12/2011) rejected as inadmissible the revision of the Applicant, because *"the value of this contested matter was not defined at all in this claim, whereas the claimant paid the court tax on the claim at the amount of 20 DM, thus pursuant to the registry on the court taxes of the Municipal Court in Prishtina, which is found in the case file, implies the contest values between 25-250 Euro, it is found that his value of the contest of 250 Euro, for which the court tax has been paid at the amount of 20 DM, does not exceed the amount envisaged pursuant to the provision of Article 382 paragraph 2 of the LCP in conjunction to the Article 2 under item (i) of the UNMIK Administrative Instruction no.2001/10".*

Applicant's allegations

16. The Applicant alleges a violation of Articles 46 and 31 of the Constitution, claiming that *"the guaranteed right to property has been violated, his property for 80 years of Rizah Llumnica's father expropriated not for public interests but rather personal for the state security inspectors. The right of private property is sacred untouchable and inviolable."*

17. The Applicant concludes requesting the Constitutional Court to *"annul the Judgment of Supreme Court of Kosovo Rev.no.12/2011 dated 08.04.2013 and order a merited review of the revision."*

Admissibilityof the Referral

18. First of all, the Court examines whether the Applicant has fulfilled the Referral admissibility requirements.

19. In that respect, the Court refers to Article 113 of the Constitution which establishes:

> *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 exhausting all legal remedies provided by law.*

20. In addition, the Court also refers to Article 49 of the Law, which provides:

> *The referral should be submitted within a period of four (4) months.*

21. In the instant case, the Court notes that the Applicant has sought recourse to protect his rights before the Municipal and District Courts and, finally, before the Supreme Court of Kosovo. The Court also notes that the Applicant was served with the Supreme Court Judgment on 15 of July 2013 and filed his Referral with the Court on 21 May 2013.

22. Thus, the Court considers that the Applicant is an authorized party, has exhausted all legal remedies afforded to him by the applicable law and the Referral was submitted within the four months time limit.

23. Consequently, the Court concludes that the Referral meets the admissibility requirements set up by Article 113.7 of the Constitution and by Article 49 of the Law.

24. However, the Court must take into account Article 48 of the Law which provides:

> *In his/her referral, the claimant should accurately clarify what rights and freedoms he/she claims to have been violated (...).*

25. In addition, the Court also refers to Rule 36 of the Rules, which foresees:

(1) The Court may review referrals only if:

[…]
(c) The referral is not manifestly ill- founded."

(2) 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
[…], or
(d) the Applicant does not sufficiently substantiate his claim.

26. The Court notes that the Applicant challenged before the Supreme Court the Judgment of the District Court due to erroneous application of material law. He is challenging before the Constitutional Court the Judgment of the Supreme Court because *"the guaranteed right to property"* and *"the right to a fair and impartial trial"* have been violated by the challenged decision.

27. The Court further notes that the Supreme Court rejected the revision of Applicant as inadmissible because the *"value of the contest of 250 Euro, for which the court tax has been paid at the amount of 20 DM, does not exceed the amount envisaged pursuant to the provision of Article 382 paragraph 2 of the LCP in conjunction to the Article 2 under item (i) of the UNMIK Administrative Instruction no.2001/10"*. Thus, the value of the contest determined this way by the Supreme Court was 250 Euros which is well below the 800 Euros threshold for the revision to be admissible under the Law on Contested Procedure.

28. The Court considers that the justification provided by the Judgment of the Supreme Court is clear and well reasoned in answering the allegation of the Applicant.

29. On the other side, the Applicant does not accurately clarify why and how the decision of the Supreme Court rejecting the revision because of the insufficiency of the monetary value has violated his right to a fair and impartial trial, as guaranteed by Article 31 of the Constitution.

30. In this connection, the Constitutional Court reiterates that it is not its task under the Constitution to act as a court of fourth instance, in respect of the decisions taken by the regular courts. It is the role of the regular courts to interpret and apply the pertinent rules of both procedural and substantive law (See, *mutatis mutandis*, García Ruiz v. Spain, No. 30544/96, ECtHR, Judgment of 21 January 1999, para. 28, see also case No. KI70/11, Applicants Faik Hima, Magbule Hima and Bestar Hima, Resolution on Inadmissibility of 16 December 2011).

31. The Constitutional Court can only consider whether the evidence has been presented in such a manner that the proceedings in general and viewed in its entirety have been conducted in such a way that the Applicants had a fair trial (See, *inter alia*, Edwards v. United Kingdom,No. 13071/87, Report of European Commission of Human Rights of 10 July 1991).

32. The Court considersthat the proceedings before the regular courts, including before the Supreme Court, have been fair and reasoned (See, *mutatis mutandis,* Shub v. Lithuania, No. 17064/06, ECtHR, Decision of 30 June 2009).

33. In sum, the Applicant has not substantiated his allegation nor has he submitted any *prima facie* evidence indicating a violation of his rights under the Constitution (See Vanek v. Slovak Republic, No. 53363/99, ECtHR, Decision of 31 May 2005).

34. It follows that the Referral is manifestly ill-founded and as such is inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113 (7) of the Constitution, Article 48 of the Law and Rule 36 (1) c) and (2) b) and d) and 56 (2) of the Rules, on 21 October 2013, unanimously

DECIDES

I. TO REJECT the Referral as Inadmissible;

II. TO NOTIFY this Decision to the Parties;

III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20.4 of the Law; and

IV. TO DECLARE this Decision effective immediately.

Judge Rapporteur
Almiro Rodrigues

President of the Constitutional Court
Prof. dr. Enver Hasani

KI 17/13, Bujar Bukoshi, 06 December 2013- Constitutional Review of the District Court in Prishtina Ka, No. 562/12 of 8 October 2012

Case KI 17/13, to Strike out the Referall of 4 March 2013

Keywords: Individual Referral, request for interim measure, immunity of the members of the Government, human dignity.

The Applicant filed the Referral based on Article 113.7 of the Constitution of the Republic of Kosovo, claiming that he had functional immunity for all actions and decisions that he took as Minister of Health in the Government of the Republic of Kosovo and they were in accordance with the applicable law in Kosovo. Therefore he cannot be criminally prosecuted. The applicant also claims that the confirmation of the indictment was made public and this damaged his reputation, thus violating his human dignity. Furthermore, the Applicant requests from the Court to impose interim measures suspending the criminal proceedings against him in the regular courts, until the final adjudication of the referral.

The Court in this case found that, at this stage, it is within the regular courts' competencies to collect and assess the evidences, and to decide whether the acts and decisions taken by the Applicant fall within the scope of the Minister of Health, which is protected by functional immunity and to adjudicate accordingly. Therefore, without prejudice to any further decision to be made by the Court on admissibility or on the merits in the future, it decided to reject the request for Interim Measures.

DECISION TO STRIKE OUT THE REFERRAL
in
Case No. KI17/13
Applicant
Bujar Bukoshi
Constitutional Review of the Decision of the District Court in Prishtina
Ka, No. 562/12 of 8 October 2012

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

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

Applicant

1. The Applicant is Bujar Bukoshi, residing in Prishtina, represented by Besnik R. Berisha, a lawyer from Prishtina.

Challenged Decision

2. The Applicant challenges the Decision Ka. No. 265/12, of the District Court in Prishtina, adopted on 8 October 2012, and served on the Applicant on 10 October 2012.

Subject matter

3. The subject matter of the Referral is the assessment of the Constitutionality of the Decision Ka. No. 265/12 of the District Court in Prishtina, which confirmed the indictment against the Applicant. The Applicant claims that *"the allegations against him in the indictment are unconstitutional, since the actions and decision that he has taken fall within the scope of competences as a Minister of Health."*

4. The Applicant further request from the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) to impose interim measures suspending the criminal investigations against him until this Court takes the final decision.

Legal basis

5. Article 113.7 of the Constitution, Articles 22, 48 and 49 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo of 15 January 2009 (hereinafter: the "Law") and Rule 29 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the "Rules of Procedure").

Proceedings before the Court

6. On 11 February 2013, the Applicant submitted the Referral to the Court.

7. On 13 February 2013, the Applicant submitted additional documents to the Court.

8. On 25 February 2013, the President of the Court, with Decision No. GJR. KI. 17/13, appointed Judge Snezhana Botusharova as Judge Rapporteur. On the same date, the President of the Court, with Decision No. KSH. KI. 17/13, appointed the Review Panel composed of Judges Robert Carolan (Presiding), Ivan Čukalović and Kadri Kryeziu.

9. On 8 March 2013, the Constitutional Court informed the Applicant that the Referral had been registered and informed the Appellate Court in Prishtina as a successor of the District Court in Prishtina.

10. On 14 March 2013, the Constitutional Court adopted the Decision Rk 388/13, rejecting the Applicant's request for interim measure.

11. On 7 October 2013, pursuant to Article 32 of the Rules of Procedure, the Applicant submitted a request to withdraw the Referral, stating that *"the criminal matter in which Mr. Bukoshi was involved as an accused person, at the Basic Court in Prishtina, after the conclusion of the judicial review by the first instance Mr. Bukoshi was released from all charges of the Prosecution."*
[…]

"Therefore, as we now have a new procedural situation in the criminal matter against Mr. Bukoshi, it seems unnecessary to further proceed with Referral KI17/13".

12. On 18 November 2013, in the light of the above developments, the Judge Rapporteur recommended to the Review Panel, to discontinue further examination of the Referral.

The Court's Assessment

13. In order to be able to decide what further steps to take following the communication from the Applicants" representatives the Court refers to Article 23 of the Law and Rule 32 of the Rules of Procedure of the Court.

14. Article 23 of the Law stipulates that:

"The Constitutional Court shall decide on matters referred to it in a legal manner by authorized parties notwithstanding the withdrawal of a party from proceedings"

15. Whilst Rule 32 of the Rules of Procedure reads as follows:

Rule 32

Withdrawal of Referrals and Replies

(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.

(5) The Secretariat shall inform all parties in writing of any withdrawal, of any decision by the Court to decide the referral despite the withdrawal, and of any decision to dismiss the referral before final decision.

16. The Court notes that there are no special circumstances concerning the protection of the human rights of the Applicants which would require further examination of the Referral. Thus, the Court considers that there is no matter to be decided.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 23 of the Law and Rule 32 paragraphs 1 and 4 of the Rules of Procedure, unanimously, on 18 November 2013, 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**
Snezhana Botusharova	Prof. Dr. Enver Hasani

KO 08/13, Municipality of Klina, date 06 December 2013- Constitutional Review of the Decision of the Administrative Panel of the Supreme Court of Kosovo, A. no. 811/2006, of 16 March 2007, and fifteen (15) other decisions and Request for imposing Interim Measure

Case KO08/13, Resolution on Inadmissibility of 10 September 2013

Keywords: referral by state authorities, request for interim measure, civil dispute, protection of property, local government, local government and territorial organization, unauthorized party.

The Applicant, in this case, claimed that the sixteen judgments of the Administrative Panel of the Supreme Court of Kosovo, violated its rights guaranteed by Articles: 12, 46, 121, 123 and 124 of the Constitution, as well as Article 1 Protocol 1 of the ECHR. The Applicant argued that the properties in the sixteen cases affected by the revocation of permits for temporary construction and the demolition orders of its Inspectorate of the Directorate for Urbanism and municipal properties for use for public purposes. Furthermore, the Applicant alleged that the judgments of the Supreme Court directly affect the Applicant's ability to exercise its property rights and to regulate the use of municipal land.

The Court notes that the Referral submitted by the Municipality of Klina pursuant to Article 113.4 of the Constitution, does not "*contest the constitutionality of laws or acts of the Government*", but instead challenges sixteen decisions of the Supreme Court in administrative proceedings. As such, the Court considers that decisions of the Supreme Court of the Republic of Kosovo in administrative proceedings are not acts or laws of the Government within the meaning of Article 113 (4) of the Constitution (See, *mutatis mutandis,* Municipality of Gjakova v. District Commercial Court, no. KO 123/10, Resolution of 21 May 2012).

Consequently, the Court finds that the Applicant in this case is not an authorized party, as required by Article 113 (1) of the Constitution to challenge the decisions of the Supreme Court because those decisions are neither laws nor acts that the Applicant could have challenged pursuant to Article 113.4 of the Constitution.

RESOLUTION ON INADMISSIBILITY
in
Case No. KO 08/13
Applicant
Municipality of Klina
Constitutional Review of the Decision of the Administrative Panel of the Supreme Court of Kosovo, A.no.811/2006, dated 14 March 2007, and fifteen (15) other decisions
and
Request for imposing Interim Measure

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

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

The Applicant

1. The Applicant is the Municipality of Klina, represented by Mr. A. Sh.

Challenged decisions

2. The Applicant challengesthe following sixteen decisions of the Administrative Chamber of the Supreme Court of Kosovo in respect of sixteen different third parties:

    a. A.no.811/2006, dated 14 March 2007;
    b. A.no.752/2006, dated 14 March 2007;
    c. A.no.755/2006, dated 14 March 2007;
    d. A.no.635/2006, dated 14 March 2007;
    e. A.no.753/2006, dated 14 March 2007;
    f. A.no.754/2006, dated 14 March 2007;
    g. A.no.751/2006, dated 14 March 2007;
    h. A.no.750/2006, dated 28 January 2009;
    i. A.no.749/2006, dated 28 January 2009;
    j. A.no.638/2006, dated 28 January 2009;

k. A.no.747/2006, dated 28 January 2009;
l. A.no.637/2006, dated 28 January 2009;
m. A.no.636/2006, dated 28 January 2009;
n. A.no.746/2006, dated 28 January 2009;
o. A.no.748/2006, dated 28 January 2009; and
p. A.no.579/2006, dated 28 January 2009.

Subject matter

3. The subject matter of this Referral is the constitutional review of the aforementioned challenged decisions. The Applicant alleges that the said decisionsviolated its rights guaranteed by the Constitution, namely Article 12 [Local Government] in conjunction with Articles 123 and 124 [Local Government and Territorial Organization], Article 46 [Protection of Property] and Article 121 [Property]. In addition, the Applicant alleges a violation of its right to the free enjoyment of property under Article 1 of Protocol 1 of the European Convention on Human Rights (hereinafter: the ECHR).

4. Furthermore, the Applicant requests the Constitutional Court to impose an Interim Measure under Article 27 of the Law on the Constitutional Court, pending the Court's decision on the Referral, in order to prevent the irreparable damage to municipal public property that would result from execution of the decisions of the MESP and the judgments of the Supreme Court.

Legal basis

5. Article 113.4 of the Constitution, Articles 27, 40 and 41 of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo of 16 December 2008, entered into force on 15 January 2009(hereinafter: the Law), and Rule 55 and Rule 56 (2) and (3) of the Rules of Procedure (hereinafter: the Rules).

Proceedings before the Constitutional Court

6. On 24 December 2009, the Applicant sent a letter to the Court, intending this to constitute the submission of a Referral.

7. On 30 December 2009, the Court requested the Applicant to submit a completed official referral form and to designate an authorized representative.

8. On 9 January 2013, the Court informed the Applicant that, due to the absence of any response to the Court's request of 30 December 2009, the Referral had not been registered with the Court, because the Court considered the Referral incomplete.

9. On 23 January 2013, the Applicant submitted a completed referral form, together with a letter of authorization of a representative and the relevant court decisions. The Applicant alleged that the letter of the Court dated 30 December 2009 was not received and that, therefore, the completed referral form was not submitted at that time.

10. On 23 January 2013, the Referral was registered in the Court.

11. On 30 January 2013, the Applicant submitted additional argumentation in relation to the Referral, and clarified that the Referral was based on Article 113.4 of the Constitution, and not on Article 113.7.

12. On 30 January 2013, the President of the Court no. GJR.08/13 appointed Judge Robert Carolan as Judge Rapporteur and by Decision no. KSH.08/13 the President appointed the Review Panel composed of members: Snezhana Botusharova (presiding), Kadri Kryeziu and Arta Rama-Hajrizi.

13. On 26 March 2013, the Referral was communicated to the Supreme Court.

14. On 14 November 2013, the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

The facts of the case

15. On 18 April 2003, the Municipal Assembly of Klina (01 Nr. 350-107/03) adopted a revised detailed urban plan for the Municipality of Klina.

16. On 14 March 2005, on the basis of the revised urban plan, the Board of Directors of the Applicant issued a Decision (1/3 NR.353-247/2005) revoking all existing permits for the construction of temporary premises. The Board of Directors justified this Decision on the basis that all existing temporary constructions had been constructed on property owned by the Municipality, which the Municipality needed for public purposes.

17. During the course of 2005, following the Decision of the Board of Directors of 14 March 2005, the Inspectorate of the Municipal Directorate for Urbanism and Public Services of the Municipality of Klina issued individual orders for the demolition of temporary constructions in the municipality, both in cases where a temporary construction permit had previously been issued, and in cases where no permit existed. Owners of temporary constructions were given 15 days to demolish their constructions, or the Inspectorate would proceed to forced execution of its order.

18. At least sixteen (16) individuals whose properties were demolished as a consequence of these orders of the Inspectorate of the Directorate for Urbanism submitted administrative complaints to the Chief Executive Officer of the Municipality of Klina, in accordance with Section 35 of UNMIK REG. 2000/45 On Self-Government of Municipalities in Kosovo.

19. The Chief Executive Officer (CEO) of Klina rejected as unfounded the complaints of all sixteen complaining individuals. In accordance with UNMIK REG. 2000/45, all sixteen individuals submitted appeals against these decisions of the CEO of Klina to the central administrative authority, the Ministry of Environment and Spatial Planning.

20. The Ministry of Environment and Spatial Planning (MESP) approved the appeals of all sixteen applicants and annulled the decisions of the CEO of Klina on their complaints. The MESP issued the following individual decisions:

    a. A-106/05, dated 20 March 2006;
    b. A-78/05, dated 06 March 2006;
    c. A-83/05, dated 15 March 2006;
    d. A-76/05, dated 01 March 2006;
    e. A-80/05, dated 01 March 2006;
    f. A-84/05, dated 15 March 2006;
    g. A-81/05, dated 13 March 2006;
    h. A-77/05, dated 03 March 2006;
    i. A-85/05, dated 14 March 2006;
    j. A-75/05, dated 27 March 2006;
    k. A-82/05, dated 14 March 2006;
    l. A-70/05, dated 23 March 2006;
    m. A-71/05, dated 24 March 2006;
    n. A-79/05, dated 06 March 2006;

o. A-86/05, dated 16 March 2006; and
p. A-69/05, dated 16 March 2006.

21. In all sixteen cases, the MESP reasoned that the Chief Executive Officer of Klina, in its decisions on the appellants' complaints, had failed to determine the factual situation in a complete and correct manner, and had failed to pay due attention to the rules of procedure, which had rendered the decisions unfair. The MESP returned the cases of all sixteen appellants back to the deciding administrative authority (i.e. the Applicant) for review and re-consideration of its decisions.

22. The Applicant (i.e. the Municipality of Klina) submitted appeals against all sixteen of these decisions of the MESP to the Administrative Panel of the Supreme Court. The Applicant claimed in its appeal that the MESP decisions were not in compliance with the law, and that the law had been applied to the detriment of the Municipality of Klina. The Applicant claimed that the MESP should have conducted a site visit in order to correctly determine the facts.

23. On 14 March 2007, in seven of the cases, and on 28 January 2009, in the remaining nine cases, the Administrative Panel of the Supreme Court rejected the Applicant's appeals as ungrounded in all sixteen cases. The relevant case numbers and dates of the judgments of the Supreme Court are given above in paragraph 2.

24. In all sixteen cases, the Administrative Panel of the Supreme Court reasoned that,

> *"The Court concluded that there are contradictions in this legal-administrative matter, which have not been avoided when decided by the first instance body* [the Inspectorate of the Directorate for Urbanism]*, since there were not taken into consideration the evidence in the case file and were not provided reasons about decisive facts, important for fair decision of this legal matter and particularly the determination of the fact whether the urban plan for the town of Klina was approved, whether the decision for revocation of temporary permits was made, whether in the particular case we are dealing with removal of the temporary premises or the forced demolition of the premises, which appears in the phase of forced execution, which should not be the situation in this case, but also due to the fact that whether the deadline of the permit, according to which the construction of the temporary premises took place, has expired.*

[...] For these reasons and aiming at avoiding highlighted flaws in the challenged ruling, the sued administrative body [i.e. MESP] *annulled the challenged decisions and gave instructions that in the reopened procedure are eliminated shortcomings, with the purpose of rendering a fair and legal decision."*

25. The Applicant does not appear to have taken any action in relation to these sixteen complaints following the decisions of the MESP and the judgments of the Administrative Panel of the Supreme Court.

Applicant's Allegations

26. As stated above, the Applicant alleges that the sixteen judgments of the Administrative Panel of the Supreme Court of Kosovo, indicated by number and date in paragraph 2 above, violated its rights guaranteed by the Constitution. Specifically, the Applicant alleges violations of Articles 12, 46, 121, 123, and 124 of the Constitution, as well as of Article 1 Protocol 1 of the ECHR.

27. The Applicant argues that the properties in the sixteen cases affected by the revocation of permits for temporary construction and the demolition orders of its Inspectorate of the Directorate for Urbanism are municipal properties for use for public purposes. The Applicant alleges that the judgments of the Supreme Court directly affect the Applicant's ability to exercise its property rights and to regulate the use of municipal land.

28. The Applicant further alleges that the municipal properties at issue had been usurped during the 1990s during the period of when the autonomous status of the province of Kosovo had been revoked, and that, by making these judgments, the Supreme Court was legitimizing this illegal usurpation of municipal land.

29. The Applicant also alleges that the Supreme Court's judgments violate its rights of local self-government under the Constitution. The Applicant argues that the decisions of the MESP and the judgments of the Supreme Court cannot be implemented because the land in question is municipal public property which cannot be returned to the respective private persons. The Applicant claims that to implement these decisions, and to return the properties, would lead to *'urban chaos and irreparable consequences'* for the Municipality of Klina. The Applicant claims that in the intervening period the situation in the municipality has changed, and all of the affected properties have other urban

destinations than they had at the time the initial demolition orders were implemented.

30. The Applicant requests the Constitutional Court to annul the judgments of the Supreme Court and the decisions of the MESP in these sixteen cases.

Admissibility of the Referral

31. First of all, in order to be able to adjudicate the Applicant's Referral, the Constitutional Court must examine whether the Applicant has met all the requirements of admissibility, which are foreseen by the Constitution and further specified by the Law and Rules of Procedure.

32. The Court refers to Article 113 (1) of the Constitution, which stipulates that,

> *"1. The Constitutional Court decides only on matters referred to the Court in a legal manner by authorized parties."*

33. The Court should first examine if the Applicant is an authorized party to submit a Referral with the Court, pursuant to the requirements of Article 113 (4) of the Constitution.

34. Article 113 (4) stipulates that,

> *"4. A municipality may contest the constitutionality of laws or acts of the Government infringing upon their responsibilities or diminishing their revenues when municipalities are affected by such law or act."*

35. The Court notes that the Referral submitted by the Municipality of Klina pursuant to Article 113.4 of the Constitution does not *"contest the constitutionality of laws or acts of the Government",* but instead challenges sixteen decisions of the Supreme Court in administrative proceedings.

36. In this respect, the Court recalls Article 4 of the Constitution, which provides, *inter alia*, that,

> *"1. Kosovo is a democratic Republic based on the principle of the separation of powers and the checks and balances among them as provided by this Constitution.*

[…]

4. The Government of the Republic of Kosovo is responsible for implementation of laws and state policies and is subject to parliamentarian control.

5. The judicial power is unique and independent and is exercised by courts.

[…]"

37. As such, the Court considers that decisions of the Supreme Court of the Republic of Kosovo in administrative proceedings are not acts or laws of the Government within the meaning of Article 113 (4) of the Constitution (See, *mutatis mutandis*, Municipality of Gjakova v District Commercial Court, no. KO 123/10, Resolution of 21 May 2012).

38. However, even if the Applicant had submitted his Referral pursuant to Article 113.7 in conjunction with Article 21.4 (legal persons) of the Constitution with respect to the constitutional review of the challenged decisions, the Court would nevertheless consider the Applicant's Referral as being out of time, because from the day of publication of the decisions (28 January 2009) until the first day of attempting to submit the Referral (24 December 2009) more than four months have elapsed.

39. In that regard, Article 49 of the Law clearly establishes 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…"*

In relation to the request for imposing interim measure

40. The Court notes that the Applicant also requests from the Court to impose an Interim Measure.

41. In this regard, the Court refers to Article 116.2 [Legal Effect of Decisions] of the Constitution, which 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".

42. Also, the Court takes into consideration Article 27 of the Law, which provides:

> *"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".*

43. Furthermore, Rule 54 (1) of the Rules of Procedure provides:

> "*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*".

44. Finally, Rule 55 (1) of the Rules of Procedure provides:

> *"A request for interim measures shall be given expedited consideration by the Court and shall have priority over all other referrals".*

45. In order to impose an interim measure, the Court, pursuant to Rule 55 (4) of the Rules of Procedure, must find that:

> *"(a) the party requesting interim measures has shown a prima facie case on the merits of the referral and, if admissibility has not yet been determined, a prima facie case on the admissibility of the referral;*
>
> *(b) the party requesting interim measures has shown that it would suffer unrecoverable damages if the interim relief is not granted; and*
>
> *(c) the interim measures are in the public interest.*
>
> *If the party requesting interim measures has not made this necessary showing, the Review Panel shall recommend denying the application".*

46. The Court concludes that since the Applicant's Referral is rejected as inadmissible, the request for Interim Measure can no longer be subject of review and, therefore, the request for interim measure must be rejected.

47. In consequence, the Court finds that the Applicant in this case is not an authorized party, as required by Article 113 (1) of the Constitution to challenge the decisions of the Supreme Court because those decisions are neither laws nor acts that the Applicant could have challenged pursuant to Article 113.4 of the Constitution.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113 (1) and (4) of the Constitution, Articles 27 and 40 of the Law and Rule 36 (3) c), Rule 55 and Rule 56 (2) and (3) of the Rules of Procedure, on 14 November 2013, unanimously

DECIDES

I. TO REJECT the Referral as Inadmissible;

II. TO REJECT the request for Interim Measure;

III. TO NOTIFY the Parties of this Decision;

IV. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20 (4) of the Law;

V. This Decision is effective immediately.

Judge Rapporteur
Robert Carolan

President of the Constitutional Court
Prof. Dr. Enver Hasani

KI 85/13, NT SH Q D "Driloni Commerce" Prishtina, date 12 December 2013- Constitutional Review of the Judgment of the Supreme Court of Kosovo, Rev. E. no. 4/2010 dated 21 January 2013

Case KI85/13, Resolution on Inadmissibility of 18 October 2013

Keywords: individual referral, manifestly ill-founded, resolution on inadmissibility.

In his Referral submitted to the Constitutional Court on 13 June 2013, the Applicant requests constitutional review of the Judgment of the Supreme Court of Kosovo, Rev .E. no. 4/2010, of 21 January 2013 which was served on the Applicant on 15 February 2013.

The Court concludes 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*."

RESOLUTION ON INADMISSIBILITY
in
Case No. KI85/13
Applicant
NT SH Q D "Driloni Commerce" Prishtina
Constitutional Review of the judgment of the Supreme Court of Kosovo, Rev. E. no. 4/2010 dated 21 January 2013

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

Composed of:

Enver Hasani, President
Ivan Cukalovic, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Kadri Kryeziu, Judge and
Arta Rama-Hajrizi, Judge

The Applicant

1. The Applicant is N.T. SH Q D "Driloni Commerce" a private company from Pristina, represented by lawyer Sabri Kryeziu from Lipjan.

Subject matter

2. The subject matter of the Referral submitted to the Constitutional Court ("Court") is judgment of the Supreme Court of Kosovo, Rev.E.no.4/2010 dated 21 January 2013 which was served on the Applicant on 15 February 2013.

Legal basis

3. The Referral is based on Art. 113.7 of the Constitution; Articles 47, of the Law, No. 03/L-121, 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 Constitutional Court

4. On 13 June 2013, the Applicant submitted the Referral to the Court.

5. On 20 June 2013, the President appointed Judge Robert Carolan as Judge Rapporteur and the Review Panel composed of Judges Snezhana Botusharova (Presiding), Kadri Kryeziu and Arta Rama-Hajrizi.

6. On 23 July 2013, the Court notified the Applicant that the referral had been registered with the Court.

7. Also on 23 July 2013, the Court notified the Supreme Court of the referral.

8. On 18 October 2013, after having considered the Report of the Judge Rapporteur, the Review Panel made a recommendation to the Court on the inadmissibility of the Referral.

The Facts of the Case

9. On an unspecified date the Applicant submitted a petition to the District Commercial Court in Pristina against two private companies for compensation of damage in amount of 616, 478 Euro.

10. On 8 June 2009 the District Commercial Court in Pristina issued a judgment no II.C no 422/2008 and rejected the Applicant's petition as ungrounded. In its reasoning the District Commercial Court in Pristina stated, *inter alia*, that *"the court has not approved the proposal of the claimant [i.e. the Applicant] for taking an evidence of super expertise since the Applicant had not presented the invoices requested by the financial expert witness."*

11. On 3 November 2009, the Applicant submitted an appeal against the above mentioned judgment, alleging among other things that its request for the super expertise examination "*was rejected without giving any reasoning…*".

12. On 18 May 2010 the Supreme Court issued a judgement no Ae. No. 200/2009 and rejected the Applicant's appeal of 3 November 2009 as ungrounded. In the reasoning the Supreme Court stated that "*On page 3 the last paragraph of the financial expertise examination, it was stated that on 28 January 2009 the expert witness has contacted the legal representative of the claimant and that the legal representative claimed that he does not possess any other documentation related to the dispute. The legal representative has not presented such documentation requested from the expert witness … and has neither*

presented objections with regard to the documentation the Court received from the first respondent".

13. On 17 June 2010, the Applicant submitted a request for revision against judgement of the Supreme Court judgment of 18 May 2010. The Applicant reiterated that it's request for the super expertise examination submitted to the District Court was unlawfully rejected.

14. On 21 January 2013 the Supreme Court issued a judgement Rev. E. No 4/2010 and rejected the Applicant's request for the revision of the Supreme Court judgement of 18 May 2010, as ungrounded. The Supreme Court confirmed that "*the allegations of the revision do not stand ….according the assessment of this court, the appealed judgement is clear, the reasoning contains reasons for the crucial facts, while the enacting clause is not in contradiction with the reasoning, and that the court of second instance in its reasoning has given sufficient responses …which this court also admits*."

Applicant's Allegation

15. The Applicant alleges that its right to Equality before Law guaranteed by Article 3 of the Constitution has been violated since its request for an additional expert examination was refused.

Assessment of the admissibility of the Referral

16. In order to be able to adjudicate the Applicant's Referral the Court needs to first 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.

17. The Court notes that in substance the Applicant complains that it's right to fair and impartial trial guaranteed by Article 31 of the Constitution in conjunction with Article 6 paragraph 1 of the European Convention on Human Rights ("the Convention") has been violated.

18. Article 31.1 of the Constitution reads:

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

19. The Court reiterates that the principle of equality of arms is part of the wider concept of a fair hearing within the meaning of Article 6 paragraph 1 of the Convention. It requires a “fair balance” between the parties: each party must be afforded a reasonable opportunity to present their case under conditions that do not place them at a disadvantage vis-à-vis their opponent or opponents (see the ECHR judgment in the case of Gorraiz Lizarraga and Others v. Spain, no. 62543/00, para. 56, ECHR 2004-III).

20. The Court finds that the principle of equality of arms was not violated in the instant case. The regular courts thoroughly examined Applicant's claim and made specific findings that the Applicant never presented any evidence that would justify having the testimony of another expert witness. Therefore, there is no evidence to support Applicant's claim.

21. Furthermore, the Constitutional 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, Garcia Ruiz v. Spain [GC], no. 30544/96, para. 28, European Court on Human Rights [ECHR] 1999-I, see also Resolution on Inadmissibility in case no 70/11, Applicants Faik Hima, Magbule Hima and Bestar Hima, Constitutional review of the Judgment of the Supreme Court, A. No 983/08 dated 7 February 2011).

22. In conclusion, the Applicant has neither built a case on a violation of any of it’s rights guaranteed by the Constitution nor has it submitted any *prima facie* evidence on such a violation (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-grounded pursuant to Rule 36 1. (c) of the Rules of Procedure which provides that "The Court may only deal with Referrals f: c) the Referral is not manifestly ill-founded."

FOR THESE REASONS

The Constitutional Court pursuant to Article 113 (7) of the Constitution and Rule 36 of the Rules of the Procedure, unanimously:

DECIDES

I. TO REJECT the Referral as Inadmissible;

II. TO NOTIFY this Decision to the Parties;

III. TO PUBLISH this decision in the Official Gazette, in accordance with Article 20 (4) of the Law; and

IV. TO DECLARE this Decision immediately effective.

Judge Rapporteur
Robert Carolan

President of the Constitutional Court
Prof. Dr. Enver Hasani

KI 183/13, Privatization Agency of Kosovo, date 12 December 2013- Constitutional Review of the Decision of the Appellate Panel of the Special Chamber of the Supreme Court of the Republic of Kosovo, DHPGJS. No. AC-II-12-0212, of 7 March 2013 and request for imposing interim measure

Case KI183/13, Resolution on Inadmissibility of 14 November 2013

Keywords: individual referral, legal person, civil dispute, erroneous application of substantive law, manifestly ill-founded

The Applicant filed the Referral based on Article 113.7, in conjunction with Article 21.4 of the Constitution, claiming that the SCSC Appellate Panel Decision no. AC-II-12-0008 of 23 May 2013, rejecting the PAK complaint as inadmissible, and the Judgment of the Municipal Court in Prishtina C.no.503/2005 of 5 November 2007 contains the following violations: *i) Violation of constitutionality and legality, as provided upon by Chapter VII, Article 102, paragraph 3, of the Constitution of the Republic of Kosovo, thereby providing that the courts shall adjudicate upon Constitution and law. ii) Violation of the European Convention on Human Rights (ECHR), Article 6, providing on fair and impartial trial; and the PAK expresses its view that the SCSC Appellate Panel has rendered its Decision no. AC-II-12-0008 in violation of Article 102, paragraph 3, based on the fact that the legal reasoning is not based on legal arguments, and reasoning is not sufficient and convincing. This fact can be proven by relevant evidence, which prove to the contrary of what was stated by the Appellate Panel, that the PAK complaint was filed after the set deadline, and as such, it must be rejected as inadmissible.*

In this case, The Applicant submitted the Referral on 24 October 2013, in one of the branches of the Post of Kosovo, and the Court received the same on 28 October 2013. In this case, the date of submission of the Referral shall be deemed to be 24 October 2013, the date when the Referral was submitted to the Branch office of Post of Kosovo. The Referral does not meet procedural criteria for admissibility, due to submitting the same out of the time limit provided by the Law and the Rules of Procedure.

The Applicant also requested from the Court to impose interim measures. However, since the Applicant's Referral is rejected as inadmissible for procedural reasons, then the request for interim measures can no longer be subject of review and, therefore, the request for interim measure is rejected.

RESOLUTION ON INADMISSIBILITY
in
Case no. KI183/13
Applicant
Privatization Agency of Kosovo
Constitutional Review of the Decision of the Appellate Panel of the Special Chamber of the Supreme Court of the Republic of Kosovo DHPGJS. No. AC-II-12-0212 of 7 March 2013
and
request for imposing interim measure

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

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

Applicant

1. The Applicant is the Privatization Agency of Kosovo (hereinafter: Applicant), represented by Mr. Agron Kajtazi, lawyer.

Challenged decision

2. The Applicant challenges the Decision of the Appellate Panel of the Special Chamber of the Supreme Court of the Republic of Kosovono. AC-II-12-0008, of 23 May 2013 (hereinafter: SCSC Appellate Panel), and the Judgment of the Municipal Court in Prishtina C.no.503/2005 of 5 November 2007. The Applicant was served the Judgment of the APSCSC on 17 June 2013.

Subject matter

3. The subject matter of the Referral is constitutional review of the Decision of the Appellate Panel of the SCSC no. AC-II-12-0008, of 23

May 2013, related to alleged violations of Article 102.3 [General Principles] of the Constitution, and Article 6 [Right to due process] of the ECHR.

4. Amongst others, the Applicant requests from the Court to impose an Interim Measure.

Legal basis

5. Article 113.7, in conjunction with Article 21 of the Constitution, Articles 27 and 47 of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo, of 16 December 2008, entered into force on 15 January 2009 (hereinafter: Law), an0d Rules 55 and 56, paragraphs 2 and 3 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: Rules of Procedure).

Proceedings before the Court

6. On 24 October 2013, the Applicant submitted the Referral to the Kosovo Post Office.

7. On 28 October 2013, the Referral of the Applicant was delivered to the Court, through the Kosovo Post courier.

8. On 31 October 2013, the President of the Court, by Decision No. GJR.183/13, appointed Judge Robert Carolan as Judge Rapporteur, and by Decision No. KSH.183/13, appointed the Review Panel composed of members: Snezhana Botusharova (Presiding), Kadri Kryeziu and Arta Rama-Hajrizi.

9. On 2 October 2013, the Court informed the representative of the Applicant and the SCSC on the registration of Referral.

10. On 14 October 2013, 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

11. On 8 April 2005, the claimants Mrs. B. and Mr. B. M. filed a claim with the Municipal Court in Prishtina, related to annulment of immovable property sale contracts (no. 96/62 of 13 January 1962, no. 3243163 of 28 December 1963, no. 3022/63 of 5 February 1963), entered into by the predecessor of claimants and respondents.

12. On 5 November 2007, the Municipal Court in Prishtina rendered Judgment C. no. 503/2005), thereby approving as grounded the claim of claimants, and ordering the respondent, the enterprise SOE KBI "Kosova Export", from Fushë Kosova, to restore the ownership over the property claimed to the claimants.

13. The Judgment was served on the respondent on 12 November 2007, and the respondent did not file any complaint.

14. On 2 April 2008, the Kosovo Cadastral Agency, by Decision no. 952/4, refused the request of the claimants to transfer the claimed parcels. The claimants had requested transfer of such parcels to their ownership, based on the case won by Judgment of the Municipal Court in Prishtina, C. no. 503/2005 of 5 November 2007. The request of the claimants was refused by the Kosovo Cadastral Agency, due to the allegation of the Agency that "the request lacked relevant evidence which would justify the legal basis of the plaintiffs' request".

15. On 8 June 2008, the claimants filed a complaint with the SCSC, challenging the decision on refusing the transfer of parcels into the ownership to the claimants.

16. On 9 June 2010, the SCSC Trial Panel rendered the Decision SCC-08-0168, thereby rejecting the claim of claimants as inadmissible, due to the fact that the subject of such claim was already adjudicated by the Judgment of the Municipal Court in Prishtina. The decision was served upon the representative of the claimants and the respondent on 18 June 2010.

17. On 1 February 2012, the Applicant, as a representative of the SOE KBI "Kosova Export" from Fushë Kosova, against the final Judgment of the Municipal Court in Prishtina, C.no.503/2005 of 5 November 2007, filed a complaint with the Appellate Panel of the SCSC, thereby requesting annulment of the Judgment, due to lack of primary jurisdiction of that court to decide upon the case.

18. On 31 June 2013, the SCSC Appellate Panel rendered a Decision AC-II-12-0008, thereby rejecting as inadmissible the complaint of the Applicant, filed against the Judgment of the Municipal Court in Prishtina, C.no.503/2005 of 5 November 2007, due to filing the appeal out of the legal time limit.

19. The following is a conclusion of the SCSC Appellate Panel related to reasoning of the decision: "*Therefore, the PAK complaint is inadmissible, since the judgment challenged had already been final, and was under execution proceeding, and therefore, such challenging was possible only by extraordinary remedies, and only within the set legal deadlines.*"

Applicant's allegations

20. The Applicant alleges that the SCSC Appellate Panel Decision no. AC-II-12-0008 of 23 May 2013, rejecting the PAK complaint as inadmissible, and the Judgment of the Municipal Court in Prishtina C.no.503/2005 of 5 November 2007 contains the following violations:

> *i) Violation of constitutionality and legality, as provided upon by Chapter VII, Article 102, paragraph 3, of the Constitution of the Republic of Kosovo, thereby providing that the courts shall adjudicate upon Constitution and law.*
>
> *ii) Violation of the European Convention on Human Rights (ECHR), Article 6, providing on fair and impartial trial; and*
>
> *the PAK expresses its view that the SCSC Appellate Panel has rendered its Decision no. AC-II-12-0008 in violation of Article 102, paragraph 3, based on the fact that the legal reasoning is not based on legal arguments, and reasoning is not sufficient and convincing. This fact can be proven by relevant evidence, which prove to the contrary of what was stated by the Appellate Panel, that the PAK complaint was filed after the set deadline, and as such, it must be rejected as inadmissible".*

21. Furthermore, the Applicant requires the Constitutional Court to render a judgment finding the referral admissible, and annul the Decision AC-11-12-0008 of 23 May 2013, rendered by the SCSC Appellate Panel, and the Judgment of the Municipal Court in Prishtina, C. no. 503/2005 of 5 November 2007.

Assessment of admissibility of the Referral

22. In order to be able to adjudicate the Referral of the Applicant, the Court needs first to examine whether the applicant has met all requirements as provided by the Constitution, and further specified by the Law and the Rules of Procedure of the Court.

23. The Referral of the Applicant is grounded upon Article 113. paragraph 7, 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.*

And Article 21, paragraph 4 of the Constitution which provides:

> *21.4 "Fundamental rights and freedoms set forth in the Constitution are also valid for legal persons to the extent applicable."*

24. In terms of admissibility in this case, the Court refers to Article 49 [Deadlines] of the Law, which provides that:

> "*The referral should be submitted within a period of four (4) months…"*

25. Furthermore, Rule 36 (1) item b) [Admissibility Criteria] of the Rules of Procedure provides that:

> *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"*

26. From the case files, it is clearly shown that the last decision on the Applicant's matter is the Decision of the SCSC Appellate Panel AC-U-12-0008, of 23 May 2013, which the Applicant claims to have received on 17 June 2013.

27. The Applicant submitted the Referral on 24 October 2013, in one of the branches of the Post of Kosovo, and the Court received the same on 28 October 2013. In this case, the date of submission of the Referral shall be deemed to be 24 October 2013, the date when the Referral was submitted to the Branch office of Post of Kosovo.

28. With a view of calculating deadlines, the Court refers to Rule 27. (3) and (6) [Calculation of time periods] of the Rules of Procedure, which provide:

Rule 27

"A time period prescribed by the Constitution, the law or these Rules shall be calculated as follows:

[...]

3) When a period is expressed in months, the period shall end at the close of the same calendar date of the month as the day during which the event or action from which the period to be calculated occurred;

[...]

(6) Otherwise "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".

29. In this context, the Court notes that the Applicant has not filed his Referral within the deadline of four (4) months, since the Referral had to be filed ultimately on Thursday, 17 October 2013, to be in compliance with the four month deadline of the law.

In relation to the request for imposing interim measure

30. The Court notes that the Applicant also requests from the Court to impose an Interim Measure.

31. In this regard, the Court refers to Article 116.2 [Legal Effect of Decisions] of the Constitution, which 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".*

32. Also, the Court takes into consideration Article 27 of the Law, which provides:

"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".

33. Furthermore, Rule 54(1) of the Rules of Procedure provides:

> "*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*".

34. Finally, Rule 55 (1) of the Rules of Procedure provides:

> *"A request for interim measures shall be given expedited consideration by the Court and shall have priority over all other referrals".*

35. For the Court to impose an interim measure, it must find, in compliance with Rule 55 (4) of the Rules of Procedure, that:

> *"(a) the party requesting interim measures has shown a prima facie case on the merits of the referral and, if admissibility has not yet been determined, a prima facie case on the admissibility of the referral;*
>
> *(b) the party requesting interim measures has shown that it would suffer unrecoverable damages if the interim relief is not granted; and*
>
> *(c) the interim measures are in the public interest.*
>
> *If the party requesting interim measures has not made this necessary showing, the Review Panel shall recommend denying the application".*

36. The Court concludes that since the Applicant's Referral is rejected as inadmissible, then the request for Interim Measure can no longer be subject of review and, therefore, the request for interim measure must be rejected.

37. The Referral does not meet procedural criteria for admissibility, due to submitting the same out of the time limit provided for by the Law and the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, in accordance with Articles 27 and 49 of the Law and Rule 36 (1) b), Rule 55, and Rule 56 (2) and (3) of the Rules of Procedure, on 14 November 2013, unanimously

DECIDES

I. TO REJECT the Referral as Inadmissible;

II. TO REJECT the request for Interim Measure;

III. TO NOTIFY the Parties of this Decision;

IV. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20 (4) of the Law;

V. This Decision is effective immediately.

Judge Rapporteur
Robert Carolan

President of the Constitutional Court
Prof. Dr. Enver Hasani

KI 10/12, Rasim Kozmaqi, date 12 December 2013- Request for constitutional review of the Judgment of the Supreme Court of Kosovo Rev.no. 297/2011 dated 19 December 2011

Case KI10/12, Resolution on Inadmissibility of 25 November 2013

Keywords: individual referral, inadmissible referral, manifestly ill-founded referral, right to pension

The referral is based on Article 113.7 of the Constitution, Article 22 of the Law and Rule 56 of Rules of Procedure. The Applicant, without mentioning any particular constitutional provision claimed that his constitutional rights had been violated.

The Court emphasizes that matters of fact or law are within the jurisdiction of regular courts and that it cannot act as a court of appeals or a fourth instance court. The Court, further reasons that the mere fact that Applicant is unsatisfied with the outcome of the case cannot serve as the right to file an arguable claim on violation of rights guaranteed by the Constitution. Due to the above mentioned reasons, the Court pursuant to Article 113.7 of the Constitution, Article 20 of the Law and Rule 56 (2) of the Rules of Procedure decided to reject as inadmissible the Applicant's referral.

RESOLUTION ON INADMISSIBILITY
in
Case no.KI10/12
Applicant
Rasim Kozmaqi
Request for constitutional review of the Judgment of the Supreme Court of Kosovo Rev.no.297/2011 dated 19 December 2011

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

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

Applicant

1. The Applicant is Mr. Rasim Kozmaqi (hereinafter: the Applicant).

Challenged decision

2. The challenged decision of the public authority is the Judgment of the Supreme Court of the Republic of Kosovo Rev.nr.297/2011 dated 19 December 2011.

Subject matter

3. The subject matter of the case submitted in the Constitutional Court of the Republic of Kosovo (hereinafter: the Court), is the Constitutional Review of the Judgment of the Supreme Court in Prishtina Rev.nr.297/2011 dated 19 December 2011.

Legal basis

4. Article 113.7 of the Constitution; Article 22 and Article 27 of the Law on Constitutional Court of the Republic of Kosovo, Nr. 03/L-121, dated 15 January 2009; and Rule 54, Rule 55 and Rule 56 (2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo.

Proceedings before the Constitutional Court

5. In February 2012, the Applicant submitted Referral to the Constitutional Court and the same was registered with No. KI10/12.

6. On 7 February 2012 by Decision GJR.KIKEK IV, the President of the Court appointed Judge Kadri Kryeziu as Judge Rapporteur, and Judges Altay Suroy (Presiding), Ivan Čukalović and Enver Hasani as members of the Review Panel.

7. On 17 June 2013, 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

8. Kosovo Energy Corporation (KEK) – Pension Fund, rendered Decision on Application for Pension, which is dedicated to the Applicant Mr. Rasim Kozmaqi, by which is approved to Mr. Kozmaqi the request for premature pension in Kosovo Energy Corporation (hereinafter: KEK) and namely the pension of "B" category, all this in compliance with UNMIK Regulation 2001/35 and with the KEK Pension Fund Statute.

9. In the abovementioned decision was determined that the payment of pension for Mr. Kozmaqi will start from 1 July 2003 and will end on 1 August 2008, while the amount of monthly pension shall be 105 Euros. In the decision was also stated that the unsatisfied party may file appeal within the time limit of 15 days to the "Committee for Reconsideration of Disputes", through the Pension Fund Administration.

10. From the documentation submitted by the Applicant together with the Referral, the Court finds that no appeal was filed against the decision of the Pension Fund.

11. After 1 August 2008, KEK terminated the payment of pension to Mr. Rasim Kozmaqi and this fact is concluded by the Judgment of the Municipal Court in Prishtina, Judgment of District Court and by Judgment of the Supreme Court.

12. On 29 January 2010, the Municipal Court in Prishtina rendered the Judgment CI. no. 342/2008 by which it approved the statement of claim of the claimant Mr. Rasim Kozmaqi and obliged the respondent KEK to pay him pension based on the decision, until the conditions for payment exist.

13. KEK lodged an appeal against this judgment in the District Court in Prishtina.

14. The District Court in Prishtina rendered the Judgment Ac.no.784/2009, rejecting as ungrounded the appeal of KEK and upheld the judgment of the Municipal Court with the justification:

> "*According to this court, the first instance court's conclusion, that the statement of claim of claimant is grounded, is fair. The first instance court judgment is based on a correct and complete determination of factual situation, upon which the substantive law was applied correctly.*"

15. Against this judgment, a request for revision was filed in the Supreme Court of Kosovo.

16. On 19 December 2011, the Supreme Court of Kosovo approved the revision and in the reasoning of the Judgment the Supreme Court stated"*such a legal stance of the lower instance courts cannot be accepted as fair and lawful, since according to the evaluation of this Court on such determined factual situation the substantive law was incorrectly applied when both courts of lower instances found that the claimant's statement of claim is grounded.*"

Applicant's allegations for constitutional violations

17. The Applicant has not specified any provision of the Constitution of the Republic of Kosovo. He alleges that by the challenged Judgment an injustice was made to him.

Assessment of admissibility of the Referral

18. In order to be able to adjudicate the Applicant's Referral, the Court has to assess beforehand whether the Applicant has met all the requirements of admissibility, which are foreseen by the Constitution and further specified by the Law and Rules of Procedure.

19. The Court also takes into consideration the Rule 36 of the Rules of Procedure of the Constitutional Court, where is provided:

"(1) The Court may only deal with Referrals if:

(c) the Referral is not manifestly ill-founded."

20. Referring to the Applicant's Referral and of alleged violations of the constitutional rights, the Constitutional Court concludes that the Applicant has exhausted all legal remedies, provided by the law, which he had at his disposal, as he has filed Referral within legal time limit, provided by Article 49 on Law on Constitutional Court, therefore in these circumstances, the Court will review merits of the alleged constitutional rights, as presented by the Applicant.

21. In this aspect, the Court states that the Constitutional Court is not a fact-finding court and on this occasion it wishes to emphasize that the correct and complete determination of factual situation is full jurisdiction of regular courts, as in this case of the Supreme Court, by rejecting the claimant's revision or of the District Court in Prishtina by rejecting the appeal of the appellant and that its role (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 fourth instance court" (see, *mutatis mutandis*, i.a., Akdivar v. Turkey, 16 September 1996, R. J. D, 1996-IV, para. 65).

22. The mere fact that Applicant is unsatisfied with the outcome of the case cannot serve as the right to file an arguable claim on violation of Article 31 of the Constitution or of the Article 6 of ECHR *(see mutatis mutandis* Judgment ECHR Appl. No. 5503/02, Mezotur-Tisazugi Tarsulat vs. Hungary, Judgment of 26 July 2005 or Tengerakisvs.Cyprus,no.35698/03, decision dated 9 November 2006, §74*)*.

23. The Applicant did not present any valid argument that would substantiate his allegations for violation of Article 49 of the Constitution and, apart from the claim that he had a lawful decision on pension and his request that the pension should continue to be paid, he did not justify how his right, guaranteed by Constitution, was violated. Furthermore, the regular courts, in regular and legal proceedings have concluded that the obligations that derive from the decision of the

respondent KEK and that are favorable to the claimant Mr. Kozmaqi, have been fulfilled in entirety. In fact, the Applicant did not at all challenge the proceedings and the process in entirety, but he challenged the final outcome of the court processes, which was not favorable to him.

24. Furthermore, to declare a Judgment or a Resolution of a public authority as unconstitutional, the Applicant should *prima facie* show before the Constitutional Court that, "the decision of the public authority, as such, will be an indicator of a violation of the request to a fair trial and if, the unfairness of that decision is so evident, that the decision can be considered as extremely arbitrary." (See, ECtHR, Khamidov against Russia, no. 72118/01, Judgment dated 15 November 2007, § 175).

25. The Constitutional Court in the Judgment of Supreme Court 316/2011 of 14 June 2012 did not find elements of arbitrariness and neither of alleged violation of human rights, as the Applicant had alleged.

26. As to the allegation for violation of the right guaranteed by Article 24 of the Constitution (Equality before the Law) which the Applicant alleges that it was violated, substantiating it by the fact that the Supreme Court rendered a different judgment in an identical case, the Court concludes that in the case mentioned by the Applicant, the conducted judicial process was essentially different.

27. The Court also states that the Applicant did not present as evidence an act of an individual agreement concluded between him and KEK, as the Applicants of the Referrals filed by a group of KEK employees had, as well as former pensioners of this company, where it was stated that the pension would be paid "*until the establishment and functioning of the Pension Disability Insurance Fund of Kosovo*" (See Judgments of the Constitutional Court, dated 23 June 2010 of the Applicant Mr. Imer Ibrahimi and 48 others, and of the Applicant Mr. Gani Prokshi and 15 others), but had a decision on pension on precisely fixed term, which he accepted and did not challenge it, therefore the Court did not find arguments to treat this Referral as other cases of this court, mentioned above filed by former KEK employees.

28. In these circumstances, the Applicant did not "sufficiently substantiate his allegation". The Court, pursuant to Rule 36, paragraph 2, item c and item d, finds that the Referral should be rejected as being manifestly ill-founded and, consequently

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 56 (2) of the Rules of Procedure, on 8 July 2013, unanimously

DECIDES

I. TO REJECT the Referral as inadmissible;

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

III. This Decision is effective immediately.

Judge Rapporteur
Kadri Kryeziu

President of the Constitutional Court
Prof. Dr. Enver Hasani

KI 23/12, Fehmi Krasniqi, date 12 December 2013- Request for constitutional review of the Judgment of the Supreme Court of Kosovo Rev.no. 317/2011 dated 19 December 2011

Case KI23/12, Resolution on Inadmissibility of 25 November 2013

Keywords: individual referral, inadmissible referral, manifestly ill-founded referral, right to pension

The referral is based on Article 113.7 of the Constitution, Article 22 of the Law and Rule 56 of Rules of Procedure. The Applicant, without mentioning any particular constitutional provision claimed that his constitutional rights had been violated.

The Court emphasizes that matters of fact or law are within the jurisdiction of regular courts and that it cannot act as a court of appeals or a fourth instance court. Furthermore the applicant did not provide any evidence on violations of the rights and freedoms guaranteed by the Constitution. The Court, further reasons that the mere fact that Applicant is unsatisfied with the outcome of the case cannot serve as the right to file an arguable claim on violation of rights guaranteed by the Constitution. Due to the above mentioned reasons, the Court pursuant to Article 113.7 of the Constitution, Article 20 of the Law and Rule 56 (2) of the Rules of Procedure decided to reject as inadmissible the Applicant's referral.

RESOLUTION ON INADMISSIBILITY
in
Case no. KI23/12
Applicant
Fehmi Krasniqi
Request for constitutional review of the Judgment of the Supreme Court of Kosovo, Rev.no.317/2011, dated 19 December 2011

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

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

Applicant

1. The Applicant is Mr. Fehmi Krasniqi (hereinafter: the Applicant) from Prishtina.

Challenged decision

2. The challenged decision of the public authority is the Judgment of the Supreme Court in Prishtina, Rev. No. 317/2011, dated 19 December 2011.

Subject matter

3. The subject matter of the case submitted to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) is the constitutional review of the Judgment of the Supreme Court in Prishtina, Rev. no. 317/2011, dated 19 December 2011, which rejected the Applicant's revision filed against the Judgment Ac. no. 343/2010, dated 4 June 2011, of the District Court in Prishtina.

Legal basis

4. Article 113.7 of the Constitution, Articles 22 and Article 27 of the Law on Constitutional Court of the Republic of Kosovo, Nr. 03/L-121, of 15 January 2009; and Rule 54, Rule 55 and Rule 56 (2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo.

Proceedings before the Constitutional Court

5. On 7 March 2012, the Applicant submitted the Referral to the Constitutional Court. The Referral was registered under No. KI23/12.

6. On 15 November 2012, the President of the Court, by Decision GJR KI23/12 appointed Judge Kadri Kryeziu as Judge Rapporteur and by Decision KSH KI23/12 the President appointed the Review Panel composed of the Judges Altay Suroy (Presiding), Ivan Čukalović and Enver Hasani (members).

7. On 17 June 2013, 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

8. On 12 February 2004, Kosovo Energy Corporation – Pension Fund rendered Decision no. 171/29 concerning the Application for Pension, which is dedicated to the Applicant Mr. Fehmi Krasniqi, by which Mr. Krasniqi's request for early pension with Kosovo Energy Corporation (hereinafter: KEK) was approved and namely that of "B" category, all this in compliance with UNMIK Regulation 2001/35 and the KEK Pension Fund Statute.

9. In the abovementioned decision it was determined that the payment of pension for Mr. Krasniqi would start from 13 February 2004 and it would end on 29 February 2009, while the amount of monthly pension would be 105 Euros. The decision also stated that the unsatisfied party may lodge an appeal within the time limit of 15 days to the "Committee for Reconsideration of Disputes", through the Pension Fund Administration.

10. From the documentation submitted by the Applicant together with the Referral, the Court finds that no appeal was filed against the decision of the Pension Fund.

11. After 1 March 2009, KEK terminated the payment of pension to Mr. Fehmi Krasniqi and this fact is concluded on the basis of the Judgment of the Municipal Court CI. No. 529/2009.

12. On 19 January 2010, the Municipal Court in Prishtina rendered Judgment CI. no. 529/2009, rejecting the statement of claim of the claimant from Prishtina, by which he had requested from the Court to "oblige the respondent KEK to pay to the claimant the pension according to the Decision no. 171/129, dated 23 October 2003, starting from 01.12.2008 until the conditions for payment exist".

13. In the reasoning of this Judgment, the Municipal Court in Prishtina, among others, concluded:

> "*The parties do not dispute the fact that the claimant has realized supplementary pensions for 60 months, at a monthly amount of 105 Euros, nor do they dispute the fact that after 60 months, such payment was terminated to the claimant, namely, upon completion on 01.12.2008.*" The Court also concluded that "*the fact was determined that the respondent fulfilled in entirety its obligations towards the claimant, provided by the claimant's decision on pension"* and that *"it follows that the statement of claim of the claimant on extension of the pension payment even after 1 March 2009 is ungrounded, therefore it decided to reject the same as such."*

14. Mr. Krasniqi filed an appeal against this Judgment with the District Court in Prishtina.

15. On 4 June 2011, the District Court in Prishtina rendered Judgment Ac. no. 343/2010, by which it rejected as ungrounded the appeal of Mr. Fehmi Krasniqi with the reasoning that:

> *"According to this court, the first instance court's conclusion that the statement of claim of claimant is ungrounded is fair. The first instance court judgment is based on a correct and complete determination of factual situation, to which the substantive law was applied correctly."*

16. Against this Judgment, Mr. Krasniqi filed request for revision with the Supreme Court of Kosovo.

17. On 19 December 2011, the Supreme Court of Kosovo, deciding upon the request of the Applicant, rendered Judgment Rev. 317/2011, by which it rejected as ungrounded the revision filed by the Applicant against the Judgment of the District Court in Prishtina.

18. In the reasoning of the Judgment, the Supreme Court stated*:*

> *"The Supreme Court of Kosovo, starting from such a situation of the matter, found that the courts of lower instances have correctly applied the substantive law, when they found that the statement of claim of the claimant is ungrounded."*

Applicant's allegations of constitutional violations

19. The Applicant has not specified any provision of the Constitution of the Republic of Kosovo. He only alleges that by the challenged Judgment injustice was done to him.

Assessment of admissibility of the Referral

20. In order to be able to adjudicate the Applicant's Referral, the Court assesses whether the Applicant has met the admissibility requirements, which are provided by the Constitution and further specified by the Law and Rules of Procedure.

21. 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.*

22. Referring to the Applicant's Referral and the alleged violations of the constitutional rights, the Constitutional Court concludes that the Applicant has exhausted all legal remedies provided by the law, which he had at his disposal, and he has filed his Referral within the legal time limit, provided by Article 49 of the Law on the Constitutional Court, therefore in these circumstances, the Court will examine the merits of the alleged constitutional violations, as presented by the Applicant.

23. In this aspect, the Court states that the Constitutional Court is not a fact finding court and on this occasion it wishes to emphasize that the correct and complete determination of factual situation is full jurisdiction of regular courts, as in this case of the Supreme Court, by

rejecting the claimant's revision or the District Court in Prishtina, by rejecting the appeal of the appellant and that its role (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 fourth instance court" (see*, mutatis mutandis,* i.a., Akdivar v. Turkey, 16 September 1996, R. J. D, 1996-IV, para. 65).

24. The mere fact that the Applicants are unsatisfied with the outcome of the case cannot serve as the right to file an arguable claim on violation of Article 31 of the Constitution or Article 6 of ECHR *(*see *mutatis mutandis* Judgment ECHR Appl. No. 5503/02, Mezotur-Tisazugi Tarsulat v. Hungary, Judgment of 26 July 2005 or Tengerakisv.Cyprus,no.35698/03, decision dated 9 November 2006, §74).

25. The Applicant did not present any valid argument that would substantiate his allegations of violation of Article 49 of the Constitution and, apart from the claim that he had a lawful decision on pension and his request that the pension should continue to be paid, he did not justify how his constitutionally guaranteed right was violated. Furthermore, the regular courts, in regular and legal proceedings had concluded that the obligations that derive from the decision of the respondent KEK and that are favorable to the claimant Mr. Krasniqi have been fulfilled in entirety. In fact, the Applicant did not at all challenge the proceedings and the process in its entirety, but he challenged the final outcome of the court processes, which was not favorable to him.

26. Furthermore, in order for a judgment or a decision of a public authority to be declared unconstitutional, the Applicant should *prima facie* show before the Constitutional Court that, "the decision of the public authority, as such, will be an indicator of a violation of the requirement for a fair trial and if the unfairness of that decision is so evident that the decision can be regarded as grossly arbitrary." (See, ECtHR, Khamidov v. Russia, no. 72118/01, Judgment dated 15 November 2007, § 175).

27. The Constitutional Court did not find elements of arbitrariness or alleged violation of human rights in the Judgment Rev.316/2011 dated 14 June 2012 of the Supreme Court, as alleged by the Applicant.

28. As to the allegation for violation of the right guaranteed by Article 24 of the Constitution (Equality before the Law) which the Applicant alleges that it was violated, substantiating it by the fact that the Supreme Court rendered a different judgment in an identical case, the Court concludes that in the case mentioned by the Applicant, the conducted judicial process was essentially different.

29. In fact, in the case of the Applicant Z. B. (which is alleged to be identical), also a KEK pensioner, the Municipal Court and the District Court had decided in favor of the Applicant Z. B., but after the revision filed by KEK, the Supreme Court Rev. no.152/2009dated 12 April 2010,approved as grounded the revision of KEK, that is, the responding party and not the revision of the claimant, and in these circumstances, the Court cannot conclude that there has been a violation of Article 24 of the Constitution.

30. The Court also states that the Applicant did not present as evidence an act of an individual agreement concluded between him and KEK, as the Applicants in the Referrals filed by a group of KEK employees, also former pensioners of this company, had, where it was stated that the pension would be paid "*until the establishment and functioning of the Pension Disability Insurance Fund of Kosovo*". (See Judgments of the Constitutional Court, dated 23 June 2010 of the Applicant Mr. Imer Ibrahimi and 48 others, and of 23 June 2010 of the Applicant Mr. Gani Prokshi and 15 others), but instead he had a decision on pension for a precisely fixed term, which he accepted and did not challenge it, therefore the Court does not find arguments to treat this Referral as other abovementioned cases of this Court, which were filed by groups of former KEK employees.

31. In these circumstances, the Applicant did not "sufficiently substantiate his claim". Therefore, the Court, pursuant to Rule 36 paragraph (2) item c) and item d), finds that the Referral should be rejected as being manifestly ill-founded, and consequently

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 56 (2) of the Rules of Procedure, on 8 July 2013, unanimously

DECIDES

I. TO REJECT the Referral as inadmissible;

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

III. This Decision is effective immediately.

Judge Rapporteur
Kadri Kryeziu

President of the Constitutional Court
Prof. Dr. Enver Hasani

KI 06/13, Sylejman Mustafa, date 12 December 2013- Constitutional Review of the Decision of the Supreme Court of Kosovo, A. no. 1408/2011, of 27 December 2012

Case KI 06/13, Decision to Strike Out the Referral of 16 October 2013.

Keywords: Individual referral, Decision to strike out the referral

The Applicant in his Referral, submitted on 21 January 2013, requests "constitutional review of the Decision of the Supreme Court of Kosovo, A. no. 1408/2011, of 27 December 2012. The Applicant claims that by decisions of the Ministry of Labor and Social Welfare (hereinafter: the MLSW) was changed his status from the KLA invalid to civil war invalid.

The Court concludes that by taking account the Decision no. 02-02/103, of 24 June 2013, rendered by the MLSW on complete execution of the Judgment of the Supreme Court, A. no. 804/2011, of 12 October 2011, the Court finds that the Applicant does not have now any unresolved case or contest regarding the constitutionality of the MLSW decisions and the case is in fact moot.

DECISION TO STRIKE OUT THE REFERRAL
in
Case no. KI06/13
Applicant
Sylejman Mustafa
Constitutional Review of the Ruling of the Supreme Court of Kosovo
A.no. 1408/2011, of 27 December 2012

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

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

Applicant

1. The Applicant is Mr. Sylejman Mustafa from village Reznik, Municipality of Vushtrri.

Challenged decision

2. The challenged decision is the Ruling of the Supreme Court of Kosovo, A. no. 1408/2011, of 27 December 2012, which as stated by the Applicant was served on him on 18 January 2013.

Subject matter

3. The subject matter of the case submitted to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) on 21 January 2013 is the constitutional review of the Ruling of the Supreme Court of Kosovo A. no. 1408/2011, of 27 December 2012. The Applicant states that by the decisions of the Ministry of Labor and Social Welfare (hereinafter: MLSW) his status was changed from KLA invalid to that of a civil invalid of war.

Legal basis

4. The Referral is based on Article 113.7 of the Constitution, Articles 20, 22.7 and 22.8 of the Law on Constitutional Court of the Republic of Kosovo of 15 January 2009, (hereinafter: the Law) and Rule 32 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

5. On 21 January 2013, the Court received the Referral of Mr. Sylejman Mustafa and registered it under the no. KI 06/13.

6. On 30 January 2013, by Decision No. GJR. KI06/13, the President of the Court appointed Judge Kadri Kryeziu as Judge Rapporteur. On the same day, the President appointed the Review Panel composed of judges: Robert Carolan (Presiding) and judges Almiro Rodrigues and Ivan Čukalović in capacity of the panel members.

7. On 4 March 2013, the Court notified the Supreme Court of Kosovo and the Applicant of the registration of the Referral.

8. On 29 March 2013, the Court requested from MLSW and the Applicant to submit to the Court all MLSW decisions concerning the Applicant's status as KLA invalid, or his status as a civil invalid of the war.

9. On 5 April 2013, the MLSW submitted to the Court all decisions that it possessed regarding the Applicant.

10. On 8 April 2013, the Applicant submitted to the Court all decisions that he possessed regarding the determination of his status as the KLA invalid and as the civil invalid of war.

11. On 28 May 2013, the Court requested from MLSW to inform the Court regarding the actions taken for execution of the Ruling of the Supreme Court A. no. 1408/2011, of 27 December 2012.

12. On 12 June 2013, the MLSW General Secretary submitted an explanatory letter to the Court.

13. On 25 July 2013, the MLSW, through electronic mail, submitted to the Court the MLSW Decision on the recognition of Applicant's right to pension of the KLA invalid.

14. On 23 September 2013, the MLSW submitted to the Court Decision no. 02-02/103 of the MLSW regarding the annulment of the first instance decision, no. 02-02/103 of 24 June 2013.

15. On 26 September 2013, the MLSW through electronic mail submitted a notification to the Court, stating that the Decision no. 02-02/103 of 12 September 2013 was annulled and the same was not executed.

16. On 16 October 2013, 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

17. On 11 October 2002, the MLSW, the Department of Social Welfare, by acting upon the Applicant's request regarding his application for "Benefits of War Invalids", issued the Decision with the file number 02-02/103, based on which the Applicant's application was rejected with justification that the "Central Doctor's Commission found that the disability is below 40%".

18. On 17 February 2003, the MLSW Department of Social Welfare rendered the Decision with file number 02-02/103, based on which the Applicant's appeal was rejected with justification that "after the reassessment of the Doctor's Commission the degree of disability has remained unchanged".

19. On 14 April 2003, the MLSW Department of Social Welfare, acting upon the Applicant's appeal rendered the Decision with the file number 02-02/103, according to which the Applicant's request for benefits of the war invalids was approved.

20. On 15 February 2007, the MLSW Department for Martyrs' Families, War Invalids and Civil Victims rendered Decision no. 02-02/103, by which the Applicant is recognized the right to pension of the KLA invalid.

21. On 20 March 2008, the MLSW Departmentfor Martyrs' Families, War Invalids and Civil Victims rendered the Decision with no.02-02/103, whereby the Applicant is recognized the right to pension of the Civil Invalid of War.

22. On 19 October 2010, the MLSW Departmentfor Martyrs' Families, War Invalids and Civil Victims, rendered the Decision with no.02-02/103, whereby the Applicant is recognized the right to pension of the Civil Invalid of War.

23. On 10 December 2010, the MLSW Departmentfor Martyrs' Families, War Invalids and Civil Victims, acting upon the Applicant's appeal, based on Decision no. 02-02/103, rejected the appeal as ungrounded with justification that the Commission had concluded that the degree of disability was 45 %.

24. On 15 February 2011, the Supreme Court of Kosovo, acting upon the Applicant's claim, rendered the Judgment A.no. 61/2011, whereby it rejected the claim with the reasoning that "the Court concludes that the proceeding which preceded the challenged ruling was correctly conducted by the first instance authority".

25. On 15 April 2011, the Supreme Court of Kosovo, based on Judgment no. A. No. 259/2011, approved the Applicant's claim, thereby annulling the MLSW Decision no. 02-02/103, of 10 December 2010, with the reasoning that "*the Decision has many flaws, which have to do with substantial violations of the provisions of the Law on Administrative Procedure*." In addition, the Supreme Court obliged the responding authority to act in the retrial according to the remarks given in that Judgment and after it has avoided abovementioned flaws to render a fair decision, based on the law.

26. On 18 August 2011, the MLSW, deciding again upon the Applicant's appeal against the annulment of the first instance decision no. 02-02/103, of 19 October 2010, rejected the appeal as ungrounded.

27. On 12 October 2011, the Supreme Court of Kosovo, acting upon the Applicant's lawsuit, rendered Judgment A. no. 804/2011, whereby it approved the lawsuit, by annulling the MLSW Decision no. 02-02/103, of 18 August 2011, with the reasoning that "*the challenged ruling is legally unclear*". Furthermore, the Supreme Court *obliges the responding authority that in the retrial to act according to the remarks given in this Judgment and after it to correct the abovementioned flaws and to render fair decision, based on the law*.

28. On 23 November 2011, Ministry of Labor and Social Welfare, again deciding upon the Applicant's appeal on annulment of the first instance

decision with no. 02-02/103, of 19 October 2010, rejected the appeal as ungrounded.

29. On 27 December 2012, the Supreme Court of Kosovo, again deciding upon the Applicant's claim, rendered the Ruling A. no. 1408/2011, in which case it rejected the claim with reasoning that the lawsuit is inadmissible because this case has been adjudicated.

30. On 12 June 2013, the MLSW Secretary General submitted to the Court a letter, requesting from the Director of the Department for Martyrs' Families and War Invalids to execute the Judgment of the Supreme Court no. 804/2011, of 2 October 2011, in its entirety.

31. On 24 June 2013, the MLSW by the Decision no. 02-02/103, the Applicant was recognized the right to pension of the KLA invalid. In its decision, the MLSW stressed that *"based on the Judgment no. 804/2011 of the Supreme Court of Kosovo of 12.10.2011, it is determined that the request is based on Article 4 paragraph 2 and Article 7 and 8 of the Law on Status and the Rights of Martyr's Families, Invalids, Veterans and KLA members and Families of Civil Victims of War, with degree of disability of 45 %"*.

32. On 23 September 2013, the MLSW rendered Decision no. 02-02/103, rejecting the appeal of the Applicant, who requests from the MLSW the recognition of the right to pension according to the new status, since 2001. The MLSW rejected the appeal and annulled the first instance decision no. 02-02/103 of 24 June 2013, in its entirety, due to "*exceeding of competencies regarding the change of the status of Sylejman Mustafa from war civil invalid to KLA invalid."*

33. On 26 September 2013, the Director of the MLSW Department for Martyrs' Families, War Invalids and Civil Victims, through electronic mail, submitted to the Court the Notification on annulment of the MLSW Decision no. 02-02/103 of 23 September 2013, whereby it upheld the first instance Decision of 24 June 2013, by which the Applicant was recognized the right to the pension of KLA invalid.

Alleged violations of constitutionally guaranteed rights

34. The Applicant alleges that the Ruling of the Supreme Court of Kosovo, A. no. 1408/2011, of 27 December 2012, has violated his constitutionally guaranteed rights. The Applicant has not specified these allegations.

Assessment of admissibility of the Referral

35. In order to be able to adjudicate the Applicant's Referral, the Court first examines whether the Applicant has met all admissibility requirements laid down in the Constitution, Law and the Rules of Procedure.

36. In this case, the Court also takes into account Rule 32 (Withdrawal of Referrals and Replies) of the Rules of Procedure, which provides that:

> *(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.*

37. The Court considers that the rendering of the Decision no. 02-02/103 of 24 June 2013, by MLSW, on the complete execution of the Judgment A. nr. 804/2011, of 12 October 2011, of the Supreme Court, which is the subject matter of the Applicant's Referral, shows that the position of the Applicant has changed significantly and that the Referral now does not have any justification, and the goal which the Applicant wanted to achieve has been completely achieved. In this respect, the Court considers that there is longer any merit to further review this matter.

38. However, the Court has the competence and the duty to address this matter, especially by taking into account its Rules of Procedure.

39. In fact, the Rule 32 (4) of the Rules of Procedure states that the Court may dismiss a Referral when the Court determines that the allegations are moot or do not present a case or controversy. This Rule in its relevant part provides as follows:

> *Rule 32*
>
> *Withdrawal of Referrals and Replies*
>
> *(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.*
>
> *(5) The Secretariat shall inform all parties in writing of any withdrawal, of any decision by the Court to decide the referral despite the withdrawal, and of any decision to dismiss the referral before final decision.*

40. In addition, the European Convention on Human Rights, which according to Article 22 paragraph 1 item 2 of the Constitution of Kosovo is directly applicable in the Republic of Kosovo, in the relevant part provides as follows:

Article 37
'Striking out application'

1. The Court may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that

(a) the applicant does not intend to pursue his application; or

(b) the matter has been resolved; or

(c) for any other reason established by the Court, it is no longer justified to continue the examination of the application.

41. Taking into account the Decision no. 02-02/103 of 24 June 2013, rendered by MLSW on execution of the Judgment A. no. 804/2011 of 12 October 2011 of the Supreme Court in its entirety, the Court concludes that the Applicant does no longer have an unresolved case or a controversy regarding the constitutionality of the MLSW decisions and that the case is effectively moot.

42. The Decision of the Court does not preclude the party from initiating new proceedings with the Constitutional Court in case of emergence of new evidence regarding this matter.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 23 of the Law and Rule 32 of the Rules of Procedure, on 16 October 2013, unanimously

DECIDES

I. TO STRIKE OUT the Referral;

II. TO NOTIFY this Decision to the parties;

III. TO PUBLISH this Decision 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
Kadri Kryeziu

President of the Constitutional Court
Prof. Dr. Enver Hasani

KI 192/13, Hatixhe Avdyli, date 12 December 2013 - Constitutional Review of the Judgment of the Supreme Court, Rev. No. 11/2013, of 23 July 2013

Case KI192/13, Decision on interim measures, of 9 December 2013

Keywords: individual referral, request for interim measures, ungrounded referral

In its Judgment, the Supreme Court approved the revision of the respondent V. A. and amended the Judgments of the Municipal Court in Prishtina and the District Court in Prishtina, thereby rejecting the claim of the Applicant as ungrounded. The Applicant had filed a claim with the Municipal Court in Prishtina to annul the sales contract for the purchase of an Apartment, to confirm that the Applicant has the rights to use the Apartment, and oblige the respondent to allow the Applicant free possession over the Apartment and bear the procedural expenses.

In addition to the request for constitutional review, the Applicant requests the Constitutional Court of the Republic of Kosovo to impose interim measures, namely to suspend any further actions or execution until the Court has rendered a decision regarding the Referral.

The Court notes that the Applicant does not provide any argument nor does the Applicant show any evidence why and how the interim measure is necessary to avoid any risk of irreparable damage, or whether such a measure is in the public interest, as required by Article 27 of the Law on the Constitutional Court. Therefore, the Court concludes that the request for interim measures must be rejected as ungrounded.

This conclusion does not preclude the Constitutional Court's assessment on the admissibility of the Referral.

DECISION ON INTERIM MEASURES
in
Case No. KI192/13
Applicant
Hatixhe Avdyli
Constitutional Review
of the Judgment of the Supreme Court, Rev. No. 11/2013
of 23 July 2013

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Enver Hasani, President
Ivan Cukalovic, Deputy-President
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Kadri Kryeziu, Judge and
Arta Rama-Hajrizi, Judge

Applicant

1. The Applicant is Mrs. Hatixhe Avdyli (hereinafter: the Applicant), with residence in Prishtina, represented by Mr. Skender Musa, a practicing lawyer from Prishtina.

Challenged Decision

2. The Applicant challenges the Judgment of the Supreme Court of Kosovo Rev. No. 11/2013, dated 23 July 2013, which was served on the Applicant on 17 October 2013.

Subject Matter

3. The subject matter is the request for constitutional review of the Judgment of the Supreme Court Rev. No. 11/2013, dated 23 July 2013. In its Judgment, the Supreme Court approved the revision of the respondent V. A. and amended the Judgments of the Municipal Court in Prishtina and the District Court in Prishtina, thereby rejecting the claim of the Applicant as ungrounded. The Applicant had filed a claim with the Municipal Court in Prishtina to annul the sales contract for the purchase of an Apartment, to confirm that the Applicant has the rights to use the

Apartment, and oblige the respondent to allow the Applicant free possession over the Apartment and bear the procedural expenses.

4. In addition, the Applicant requests the Constitutional Court of the Republic of Kosovo (hereinafter, the Court) to impose interim measures, namely to suspend any further actions or execution until the Court has rendered a decision regarding the Referral.

Legal basis

5. The Referral is based on Article 113.7 of the Constitution, Article 22 and 27 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo, of 15 January 2009, (hereinafter: the Law), Rules 54, 55 and 56 (3) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: Rules of Procedure).

Proceedings before the Court

6. On 11 November 2013, the Applicant submitted the Referral to the Court.

7. On 29 November 2013, the President of the Court based on Decision GJR. KI 192/13 appointed Judge Snezhana Botusharova as Judge Rapporteur.

8. On 3 December 2013, the President of the Court based on Decision KSH.KI 192/13 appointed the Review Panel composed of Judges, Altay Suroy (presiding), Kadri Kryeziu and Arta Rama-Hajrizi.

9. On 4 December 2013, the Constitutional Court informed the Applicant of the registration of the Referral. On the same date, the Court also notified the Supreme Court on the Referral.

10. On 5 December 2013, the Review Panel considered the Report of the Judge Rapporteur and recommended to the full Court to reject the Request for Interim Measures pending the final outcome of the Referral.

Brief Summary of the Facts

11. In the period over 1988 and 1989, the Applicant as an employee of the Socially Owned Enterprise“Amortizatorët”(hereinafter: the SOE)was allocated an Apartment in Prishtina. The Decisions on the allocation of

the Apartment were annulled by the Joint Labour Court in Prishtina and upheld by the Joint Labour Court of Kosovo.

12. On 26 July 1990, the provisional organs of the SOE terminated the employment contract of the Applicant.

13. On 8 October 1992, the provisional organs of the SOE decided to allocate the Apartment to employee V. A. and as a result a contract on the use of Apartment was concluded. Based on a sales contract, certified by the Municipal Court in Prishtina of 28 December 1995, V. A. acquired ownership rights over the apartment.

14. After the war in Kosovo, V. A. fled from the Apartment, which was later occupied by the Applicant.

15. On 9 December 2004, the Housing Property Directorate issued an Order (HPCC/REC/41/2004) on the eviction of the Applicant from the Apartment.

16. Consequently, on an unspecified date, the Applicant filed a claim with the Municipal Court in Prishtina, requesting the annulment of the aforementioned sales contract andto confirm that the Applicant has the right to use the Apartment, and oblige the first respondent to allow her free possession over the Apartment.

17. On 10 November 2006, the Municipal Court in Prishtina in its Judgment (C. No. 1502/2005) decided to approve the claim of the Applicant.

18. On 31 October 2008, following an appeal filed by V. A., the District Court in Prishtina with its Judgment (Ac. No. 367/2007) quashed the Decision of the Municipal Court in Prishtina and remanded the case for retrial.

19. On 12 May 2009, the Municipal Court in Prishtina with its Judgment (C. No. 2038/2008) approved the claim of the Applicant as grounded, annulled and voided the sales contract and further confirmed that the Applicant is the holder of the right for the use of the Apartment.

20. On 18 June 2012, the District Court in Prishtina (Ac. No. 1087/2009) rejected the appeal of the respondent V. A. and upheld the Judgment of the Municipal Court in Prishtina (C. No. 2038/2008 of 12 May 2009).

21. On 23 July 2013, following the revision filed by respondent V. A., the Supreme Court in its Judgment Rev. No. 11/2013 decided to approve the revision of the respondent and amend the Judgments of the Municipal Court in Prishtina (C. No. 2038/2008 of 12 May 2009) and the District Court in Prishtina (Ac. No. 1087/2009 of 18 June 2012), thereby rejecting the claim of the Applicant filed with the Municipal Court as ungrounded.

Applicant's allegations and Request for Interim Measures

22. The Applicant alleges that the Judgment of the Supreme Court, by amending the Judgments of the lower court instances violated her rights guaranteed by the Constitution, namely Articles 3 [Equality Before the Law], Article 32 [Right to Legal Remedies], Article 46 [Protection of Property] and Article 54 [Judicial Protection of Rights] of the Constitution of the Republic of Kosovo [hereinafter: the Constitution).

23. The Applicant, in addition to her request to annul the Judgment of the Supreme Court Rev. No. 11/2013 of 23 July 2013, requests the Court to impose interim measures, namely [...]"*withhold any further actions or execution until the Constitutional Court of Kosovo renders a decision regarding the case.*"

24. The Applicant does not provide any argument why the interim measure is necessary.

Assessment of the Request for Interim Measures

25. In order for the Court to grant interim measure pursuant to Rule 55 (4) of the Rules of Procedure, it must find, namely, that:

> *"(a) the party requesting interim measures has shown a prima facie case on the merits of the referral and, if admissibility has not yet been determined, a prima facie case on the admissibility of the referral;*
>
> *(b) the party requesting interim measures has shown that it would suffer unrecoverable damages if the interim relief is not granted; and*
> *(...)*

If the party requesting interim measures has not made this necessary showing, the Review Panel shall recommend denying the application."

26. In this respect, the Court notes that the Applicant does not provide any argument nor does the Applicant show any evidence why and how the interim measure is necessary to avoid any risk of irreparable damage, or whether such a measure is in the public interest, as required by Article 27 of the Law. Therefore, the Court concludes that the request for interim measures must be rejected as ungrounded.

27. This conclusion does not preclude the Constitutional Court's assessment on the admissibility of the Referral.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 27 of the Law, and in accordance with Rules 55 (4) and 56 (3) of the Rules of Procedure, on 5 December 2013, unanimously,

DECIDES

I. TO REJECT the request for interim measures;

II. TO NOTIFY this Decision to the Parties; and

III. TO PUBLISH this Decision in accordance with Article 20(4) of the Law.

IV. TO DECLARE this Decision is effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Snezhana Botusharova	Prof. Dr. Enver Hasani

KI 82/13, Ekrem Musliu, date 17 December 2013 - Constitutional Review of the Decision of the Supreme Court of Kosovo, Rev. 212/2011, of 15 April 2013

Case KI82/13, Resolution on inadmissibility, of 12 December 2013

Keywords: individual referral, protection of property, right to fair and impartial trial, inadmissible referral, manifestly ill-founded.

The Applicant alleges that the abovementioned Decision of the Supreme Court of Kosovo (Rev. 212/2011 of 15 April 2013), which rejected as inadmissible the Applicant's revision because the value of the subject-matter in dispute, as stated by the claimant in his lawsuit, does not exceed the amount of 1.600 DM, respectively 800 c, has violated his rights guaranteed under Article 31 [Right to Fair and Impartial Trial] and Article 46 [Protection of Property] of the Constitution. The Applicant doesn't explain how and why the Decision of the Supreme Court, violated his rights guaranteed by the Constitution.

For these reasons, the Court considers that the facts presented by the Applicant do not in any way justify the allegation of a violation of the constitutional rights and that the Applicant has not sufficiently substantiated his allegation.

RESOLUTION ON INADMISSIBILITY
in
Case no. KI82/13
Applicant
Ekrem Musliu
Constitutional review of the Decision of the Supreme Court of Kosovo, Rev. 212/2011, of 15 April 2013

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Enver Hasani, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Kadri Kryeziu, Judge and
Arta Rama-Hajrizi, Judge.

Applicant

1. The Applicant is Mr. Ekrem Musliu (hereinafter: the Applicant), with residence in Gjilan, represented by Mr. Shemsedin Piraj.

Challenged decision

2. The Applicant challenges the Decision of the Supreme Court of Kosovo, Rev. 212/2011, of 15 April 2013, served on the Applicant on 29 April 2013.

Subject matter

3. The subject matter is the constitutional review of the Decision of the Supreme Court of Kosovo (Rev. 212/2011 of 15 April 2013), which rejected as inadmissible the Applicant's revision because the value of the subject-matter in dispute, as stated by the plaintiff in his lawsuit, does not exceed the amount of 1.600 DM, respectively 800 €.

4. In this respect, the Applicant alleges that the abovementioned Decision has violated his rights guaranteed under Article 31 [Right to Fair and Impartial Trial] and Article 46 [Protection of Property] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution).

Legal basis

5. The Referral is based on Article 113.7 of the Constitution, Article 47 of the Law on the Constitutional Court of the Republic of Kosovo, No. 03/L-121 of 15 January 2009 (hereinafter: the Law) and Rule 56 (2) of the Rules of Procedure of the Court (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

6. On 10 June 2013, the Applicant filed the Referral with the Constitutional Court (hereinafter: the Court) by mail.

7. On 20 June 2013, the President of the Court based on Decision GJR. KI 82/13 appointed Deputy - President Ivan Čukalović as a Judge Rapporteur. On the same date, the President of the Court, based on Decision KSH.KI 82/13 appointed the Review Panel composed of Judges: Altay Suroy (Presiding), Snezhana Botusharova and Arta Rama-Hajrizi.

8. On 2 July 2013, the Court informed the Applicant of the registration of the Referral and requested the submission of the completed Referral form, the authorization for representation before the Constitutional Court and a copy of the Judgment of the District Court Ac. No. 41/11 of 6 May 2011. On the same day, the Court notified the Supreme Court of registration of the Referral.

9. On 23 July 2013, the Applicant submitted to the Court all the requested documents by mail.

10. On 18 November 2013, the Review Panel considered the report of Judge Rapporteur and made a recommendation to the full Court on the inadmissibility of the Referral.

Summary of the facts

11. On an unspecified date, M.B. filed a lawsuit with the Municipal Court in Gjilan requesting the confirmation of the right of permanent use of a portion of the immovable property, cadastral plot no. 3173, with the surface area of 0.00.87 ha.

12. As a result, the Applicant filed a countersuit, requesting the confirmation of ownership of the immovable property, cadastral plot no. 3171 with surface area of 0.02.89 ha, and he also requested that part of this immovable property, with surface area of 0.00.87 ha, which was used by M.B., is to be transferred to the Applicant in possession and ownership.

13. On 3 November 2010, the Municipal Court in Gjilan (Judgment C. no. 81/06) approved the request of M.B. as founded, thereby determining that said person has acquired the right of permanent use of the area of 0.00.87 ha, whereas the countersuit of the Applicant was rejected as unfounded.

14. Against the Judgment of the Municipal Court in Gjilan (C. No. 81/06 of 3 November 2010), the Applicant filed an appeal with the District Court in Gjilan.

15. On 6 May 2011, the District Court in Gjilan by Judgment (Ac. No. 41/11) rejected the Applicant's appeal as unfounded and upheld the Judgment of the Municipal Court in Gjilan (C. No. 81/06 of 3 November 2010).

16. The District Court in Gjilan assessed that [...] "*based on this determined factual situation and based on the provision of Article 470 paragraph 1 of the Law on Property and Other Real Rights, the first instance court found that the statement of claim of the plaintiff – countersued [...] is well-founded, since the plaintiff has used this purchased immovable property since 1966 in an unobstructed manner until 2000 as a lawful and good faith possessor, knowing that this immovable property and also the part of the area of 87 square meters is his, since the same is within the fence, as he had agreed with the former owner – the seller [...]*".

17. The District Court in Gjilan concluded that "*[...] the first instance court, when rendering this Judgment did not violate the provisions of the contested procedure, of which this court mainly takes care, the factual situation was correctly and completely determined, and also the substantive law was correctly applied, therefore, the conclusion of this court is that the appeal's allegations do not stand [...]*".

18. Against the Judgment of the District Court in Gjilan (Ac. No. 41/11 of 6 May 2011), the Applicant filed a revision with the Supreme Court of Kosovo, alleging essential violations of the provisions of the contested procedure and erroneous application of the substantive law.

19. On 15 April 2013, the Supreme Court of Kosovo with its Decision Rev. 212/2011 rejected the Applicant's revision as inadmissible.

20. The Supreme Court of Kosovo in its Decision considered that the request for revision is inadmissible for the reasons that *[...] "from the case file it results that the value of this dispute in the claim of the plaintiff-countersued is 300 DM [...]Pursuant to the provision of Article 382 para. 3 of LCP and Article 2, under item (J) of UNMIK Administrative Direction on allowed currency for use in Kosovo, which entered into force on 21 June 2001, the revision is not admissible in legal-property disputes, in which the statement of claim does not relate to monetary claims, delivery of object or performance of an act, if the value of the subject-matter in dispute, which the plaintiff has stated in his claim, does not exceed the amount of 1.600 DM, respectively €800."*

Applicant's allegations

21. The Applicant alleges that the Decision of the Supreme Court Rev. No. 212/2012 of 15 April 2013 has violated the provisions of the Law on Contested Procedure.

22. According to the Applicant, the abovementioned Decision, by which the Supreme Court rejected as inadmissible the Applicant's revision for the reason that the value of the subject-matter in dispute which was stated by the Applicant in the lawsuit does not exceed the amount of 1.600 DM, respectively 800 EUR, is ungrounded and it has no support in the case file.

23. The Applicant further alleges that the Decision of the Supreme Court, by which the revision was rejected as inadmissible, presents for the Applicant [...]"*a deprivation of the exercise of his fundamental right, therefore as such it should be treated as a violation of Article 31 (Right to Fair and Impartial Trial) and Article 46 (Protection of Property) of the Constitution of the Republic of Kosovo."*

24. The Applicant concludes requesting the Constitutional Court:

> *"I. TO DECLAREthe Referral of the representative of respondent-counterclaimant, Ekrem Musliu from Gjilan, admissible.*

II. TO DECLAREthe Decision of the Supreme Court of the Republic of Kosovo in Prishtina, Rev. no. 212/2011 dated 15 April 2013 unconstitutional.

III. TO ORDERthe Supreme Court of the Republic of Kosovo in Prishtina to proceed with the adjudication of the case according to the revision filed by the representative of the respondent-counterclaimant."

Assessment of the admissibility of the Referral

25. First of all, in order to be able to adjudicate the Applicant's Referral, the Court has to examine whether the Applicants have met all the requirements of admissibility, which are foreseen by the Constitution and further specified by the Law and Rules of Procedure.

26. In this respect, Article 113, paragraph 7 of the Constitution 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. In addition, Article 49 of the Law establishes 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."*

28. In the present case, the Court notes that the Applicant has sought recourse to protect his rights before the District Court in Gjilan and finally the Supreme Court of Kosovo. The Court also notes that the Applicant was served with the Judgment of the Supreme Court on 29 April 2013 and he filed his Referral with the Court on 10 June 2013.

29. Therefore, the Court considers that the Applicant is an authorized party and he has exhausted all legal remedies available to him under the applicable law and the Referral has been submitted within the four month time limit.

30. However, the Court should also take into consideration Rule 36 of the Rules of Procedure which provides:

"(1) The Court may review referrals only if: (c) The referral is not manifestly ill- founded."

"(2) The Court shall reject a Referral as being manifestly ill-founded when it is satisfied that:
[...], or
b) when the presented facts do not in any way justify the allegation of a violation of the constitutional rights, or
[...]

31. The Applicant alleges that the Decision of the Supreme Court, which rejected as inadmissible the Applicant's revision because the value of the subject-matter in dispute, as stated by the plaintiff in his lawsuit does not exceed the amount of 1.600 DM, respectively 800 EUR, is ungrounded and it presents for the Applicant [...] *" a deprivation of the exercise of his fundamental right, therefore as such it should be treated as a violation of Article 31 (Right to Fair and Impartial Trial) and Article 46 (Protection of Property) of the Constitution of the Republic of Kosovo."*

32. However, the Applicant doesn't explain how and why the Decision of the Supreme Court, which rejected the revision as inadmissible, violated his rights guaranteed by the Constitution.

33. In this regard, the Constitutional Court reiterates that under the Constitution it is not its task to act a fourth instance court with respect to decisions taken by the regular courts. The role of the regular courts is to interpret and apply the pertinent rules of both procedural and substantive law (see, *mutatis mutandis, Garcia Ruiz vs. Spain,* No. 30544/96, ECtHR, Judgment of 21 January 1999, paragraph 28; see also case *KI70/11* of the Applicants *Faik Hima, Magbule Hima and Bestar Hima*, Resolution on Inadmissibility of 16 December 2011*).*

34. The Constitutional Court can only consider whether the evidence has been presented in such a manner and the proceedings in general and viewed in its entirety have been conducted in such a way that the Applicant had a fair trial (see *inter alia* Case *Edwards v. United Kingdom*, Application No 13071/87, Report of the European Commission on Human Rights adopted on 10 July 1991).

35. Based on the case file, the Court notes that the reasoning given in the last Decision of the Supreme Court is clear, and after having reviewed all the proceedings, the Court has also found that the proceedings before the regular courts have not been unfair or arbitrary (see, *mutatis*

mutandis, Shub vs. Lithuania,no. 17064/06, ECtHR, Decision of 30 June 2009).

36. For the above-mentioned reasons, the Court considers that the facts presented by the Applicant do not in any way justify the allegation of a violation of the constitutional rights.

FOR THESE REASONS

The Constitutional Court, pursuant to Rules 36 (2), b) and 56 (2) of the Rules of Procedure, on 18 November 2013, unanimously:

DECIDES

I. TO REJECT the Referral as Inadmissible;

II. TO NOTIFY this Decision to the Parties;

III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20 (4) of the Law;

IV. TO DECLARE this Decision effective immediately

Judge Rapporteur
Ivan Čukalović

President of the Constitutional Court
Prof. Dr. Enver Hasani

KI 132/13, Muharrem Shabani, date 17 December 2013- Constitutional Review of the decision of the Trial Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo related matters

Case KI 132/13, Resolution on Inadmissibility of 21 October 2013.

Keywords: individual Referral, constitutional review of the decision of the Trial Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo related matters

The Referral is based on Article 113.7 of the Constitution, Article 47 of the Law on the Constitutional Court of the Republic of Kosovo no. 03/L-121 of 15 January 2009 (hereinafter, the Law), and Rule 56, of the Rules of Procedure of the Constitutional Court (hereinafter, the Rules of Procedure).

On 27 August 2013, the Applicant submitted Referral to the Constitutional Court of Kosovo seeking the constitutional review of the decision of the Trial Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo related matters

The Applicant alleges that the said Decision violates his right to work and his right to human dignity.

The President with Decision (no.GJR. GJR.132/13 of 03 September 2013), appointed Judge Kadri Kryeziu as Judge Rapporteur. On the same day, the President with Decision no.KSH.KI 132/13 appointed the Review Panel composed of Judges: Robert Carolan (Presiding), Almiro Rodrigues and Ivan Čukalović.

After examining the documents in the present case the Court notes that the Applicant has not filed an appeal with the Appellate Panel of the Special Chamber of the Supreme Court against the Decision of the Special Chamber Trial Panel, to which he was entitled under the law.

In that regard, the Court concludes that the Applicant has not exhausted the legal remedies available to him under the applicable law, as it is provided by Article 113.7 of the Constitution and Article 47.2 of the Law.

For all the aforementioned reasons, the Constitutional Court of Kosovo rendered the Referral inadmissible.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI132/13
Applicant
Muharrem Shabani
Constitutional review of the Decision of the Trial Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo related matters, SCEL-09-0001, of 24 February 2011

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

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

Applicant

1. The Applicant is Muharrem Shabani from village Bradash, Municipality of Podujevo (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges the Decision of the Trial Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo related matters (hereinafter: the Trial Panel of the Special Chamber), SCEL-09-0001, of 24 February 2011.

Subject matter

3. The subject matter is the realization of the right to the 20 % share from the privatization of the socially-owned enterprise Ramiz Sadiku (hereinafter: SOE Ramiz Sadiku), in Prishtina.

Legal basis

4. The Referral is based on Articles 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), Articles 20 and 22.7 of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo of 15 January 2009 (hereinafter: the Law) and Rule 56 paragraph 2 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 27 August 2013, the Applicant filed the Referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 3 September 2013, the President appointed Judge Kadri Kryeziu as Judge Rapporteur and the Review Panel composed of the Judges: Robert Carolan (Presiding), Almiro Rodrigues and Ivan Čukalović.

7. On 17 September 2013, the Court informed the Applicant and the Special Chamber of the Supreme Court of the registration of the Referral.

8. On 21 October 2013, 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 established employment relationship with "SOE Ramiz Sadiku" from 15 August 1974 all the way through 10 July 1994.

10. On 8 March 1995, Pension and Invalidity Insurance Fund issued a decision awarding to the Applicant an invalidity pension due to a disease.

11. On 27 June 2006, SOE "Ramiz Sadiku" completed the privatization process.

12. On 27 March 2009, Privatization Agency (hereinafter: the Agency) published the final list of employees who were entitled to the 20 % share from the privatization of SOE "Ramiz Sadiku".

13. On 18 February 2010, the Applicant filed a complaint with the Special Chamber of the Supreme Court against the final list of employees

prepared by the Agency because he, as a former employee, was not included in the list.

14. In the complaint he stated that due to a disease he was not able to file an objection to the preliminary list within the legal deadline.

15. On 24 February 2011, the Trial Panel of the Special Chamber issued Decision SCEL-09-0001 rejecting the Applicant's complaint as inadmissible.

16. In the reasoning of its decision, the Trial Panel of the Special Chamber stated: "*taking into consideration that the Applicant's complaint was received on 18 February 2010, which means after the expiry of the deadline for submission of complaints, there is no possibility to enable the return to previous situation, respectively for the Applicant's complaint to be considered as if it were filed within the deadline. Having that in mind, the Trial Panel of the Special Chamber rejects the Applicant's complaint as inadmissible* ".

Applicant's allegations

17. The Applicant alleges that the said Decision violates his right to work and his right to human dignity because he has worked for 20 years in the above-mentioned enterprise.

18. The Applicant addresses the Constitutional Court with the request:

> *„He wishes that the 20% share from the privatization be awarded also to him as he is entitled to it under the applicable law*".

Assessment of the admissibility of the Referral

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

20. In this regard, the Court notes that Article 113.7 of the Constitution provides:

> *"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."*

> Furthermore, Article 47.2 of the Law provides: *"The individual may submit the referral in question only after he/she has exhausted all the legal remedies provided by the law."*

21. In that regard, the subsidiarity principle means that the Applicant should exhaust all procedural possibilities in a regular proceeding in order to prevent a violation of the Constitution, or if there is a violation, to put right such violation of the fundamental human rights.

22. In the present case, the Court notes that the Applicant has not filed an appeal with the Appellate Panel of the Special Chamber of the Supreme Court against the Decision of the Special Chamber Trial Panel SCEL-09-0001, of 24 February 2011, to which he was entitled under the law.

23. The Court also refers to article 10.6 (Judgments, Decisions and Appeals) of the Law no.04/L-033 on Special Chamber, which provides:

> *"A party shall have the right to appeal any Judgment or Decision of a single judge, sub-panel or specialized panel – or of a court having jurisdiction over a claim, matter, proceeding or case under paragraph 4. of Article 4 of the present law to the appellate panel by submitting to the appellate panel and serving on the other parties its appeal within twenty one (21) days…"*

24. The Court wishes to emphasize that the rationale for the legal remedies 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 legal order of Kosovo will provide an effective legal remedy for the violation of the constitutional rights. (See case, Selmouni v. France, no. 25803/94, ECtHR, Decision of 28 July 1999).

25. In that regard, the Court concludes that the Applicant has not exhausted the legal remedies available to him under the applicable law, as it is provided by 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, Article 20 of the Law and Rule 36 (1) a) of the Rules of Procedure, 21 October 2013, unanimously

DECIDES

I. TO REJECT the Referral as Inadmissible;

II. TO NOTIFY the Parties of this Decision;

III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20 (4) of the Law;

IV. This Decision is effective immediately.

Judge Rapporteur
Kadri Kryeziu

President of the Constitutional Court
Prof. Dr. Enver Hasani

KI 111/13, Ajshe Leka, date 17 December 2013- Constitutional review of judgment of the Supreme Court of Kosovo Rev. no. 250/2012 of 07 June 2013

Case KI-111/13, Resolution on Inadmissibility of 22 October 2013

Keywords: Individual referral, manifestly ungrounded, direct application of international treaties and instruments, human dignity, right to work and exercise profession.

The Applicant has filed a referral in compliance with Article 113.7 of the Constitution of Kosovo, demanding constitutional review of Judgment of the Supreme Court of Kosovo Rev. no. 250/2012 of 07 June 2013, by which the immoveable property dispute was resolved between the Applicant and the Main Family Medicine Centre in Gjilan (hereinafter: MFMC Gjilan), occurring upon a claim suit of the Applicant, demanding that the MFMC Gjilan (respondent) pay 6.000,00 Euros for immaterial damages for spiritual suffering and infringement of applicant's human dignity, with legal interests at the annual rate of 3.5%, and procedural costs at the amount of 623,00.

Deciding upon referral of Applicant Ajshe Leka, the Constitutional Court, upon review of proceedings in entirety, found that relevant proceedings before regular courts were in no way unjust or arbitrary, and that the rulings of regular courts were entirely reasoned. Thus, the Court concluded that the referral is manifestly ungrounded, since the facts presented fail to corroborate the allegations of violation of constitutional rights.

RESOLUTION ON INADMISSIBILITY
in
Case no. KI 111/13
Applicant
Ajshe Leka
Constitutional review of the Judgment of the Supreme Court of Kosovo,
Rev. no. 250/2012, of 7 June 2013

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

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

Applicant

1. The Applicant is Ms. Ajshe Leka,from Gjilan (hereinafter: the Applicant), represented by Mr. Shabi Isufi, a practicing lawyer from Gjilan.

Challenged decision

2. The challenged decision is the Judgment of the Supreme Court of Kosovo Rev. no. 250/2012 of 7 June 2013, by which approved the respondent's revision as grounded and modified the Judgment of the District Court in Gjilan, Ac. no. 198/2011, of 8 May 2012, and the Judgment of the Municipal Court in Gjilan, C. no. 442/2007, of 22 April 2012, thereby rejecting as unfounded the Applicant's claim. That Judgment, according to the Applicant's allegations, has violated a number of Articles of the Constitution of the Republic of Kosovo.

Subject matter

3. The subject matter is constitutional review of the Judgment of the Supreme Court of Kosovo Rev. no. 250/2012 of 7 June 2013 which ended a legal property dispute between the Applicant and the Main

Center of Family Medicine in Gjilan (hereinafter: MCFM in Gjilan), which originated following a claim filed by the Applicant requesting that the MCFM in Gjilan (the respondent) pay the Applicant, in the name of the non-material damage for the mental anguish and violation of the dignity, the amount of 6000,00 €, with the interest of 3.5% per year, as well as the expenses of the proceedings in the amount of 623,00 €.

Legal basis

4. The Referral is based on Article 113.7 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 (hereinafter: the Law) and Rule 56 paragraph 2 of the Rules of Procedure (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

5. The Applicant filed the Referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) on 23 July 2013.

6. The President, by Decision (No. GJR. 111/13 of 5 August 2013), appointed Judge Kadri Kryeziuas Judge Rapporteur. On the same day, the President, by Decision No. KSH. 111/13, appointed the Review Panel composed of Judges: Robert Carolan (Presiding), Almiro Rodrigues and Ivan Čukalović.

7. On 12 September 2013, the Court notified the Applicant and the Supreme Court of the registration of Referral.

8. On 22 October 2013, after considering the report of the Judge Raporteur Kadri Kryeziu, the Review Panel, composed of Judges: Robert Carolan (Presiding), Almiro Rodrigues and Ivan Čukalović, made a recommendation to the Court on the inadmissibility of the Referral.

Summary of the facts

9. On 13 February 2006, the MCFM in Gjilan by Decision No. 04-164 discharged the Applicant from the position of the head nurse in MCFM in Gjilan. And by Decision of MCFM in Gjilan No. 04-467 of 28 February 2007, Applicant's employment relationship with the MCFM in Gjilan was terminated.

10. Against the Decision of MCFM in Gjilan No. 04-467 of 28 February 2007, the Applicant filed an appeal with the Independent Oversight Board of Kosovo.

11. Independent Oversight Board of Kosovo issued Decision No. A. 02/58/2007 of 3 July 2007, quashing both decisions of the MCFM in Gjilan and obliging the employment authority – Municipality of Gjilan to enable the realization, within 15 days of the receipt of the appealed decision, on the basis of the employment contract No. 04-370, of 25 March 2005.

12. Considering that the MCFM in Gjilan did not execute the Decision of the Independent Oversight Board No. A.02/58/2007 of 3 July 2007, the Applicant filed a proposal for execution with the Municipal Court in Gjilan for the execution of the Independent Oversight Board Decision.

13. On 6 March 2007, the Municipal Court in Gjilan by Decision E. no. 861/06, of 8 December 2006 and by Decision Ac. No. 143/07, of 25 April 2007, allowed the execution and obliged the MCFM in Gjilan to reinstate the Applicant to her work place with all the rights and obligations deriving from the employment relationship.

14. On 5 July 2007, the Applicant was reinstated at her work place.

15. On 18 July 2007, the Applicant filed a lawsuit with the Municipal Court in Gjilan for the compensation of the material and non-material damage against the MCFM in Gjilan (respondent), whereas on 17 August 2007, the Applicant through her authorized representative Shabi Isufi, a practicing lawyer from Gjilan, specified and supplemented the lawsuit and the claim against the said the respondent.

16. The Municipal Court in Gjilan, by Judgment C. No. 442/07, of 22 April 2011, partially approved the lawsuit of the Applicant. In the enacting clause of the Judgment the court obliged the MCFM to pay the Applicant the amount of 6.000,00 € in the name of the non-material damage for the mental anguish and violation of the dignity of the Applicant as well as the expenses of the proceedings in the amount 623,00 €.

17. On 13 May 2011, MCFM in Gjilan filed an appeal against the Judgment of the Municipal Court in Gjilan, C. No. 442/07, of 22 April 2011.

18. The District Court in Gjilan, by Judgment Ac. No. 198/11, of 28 May 2012, rejected the appeal of MCFM in Gjilan and upheld the Judgment of the Municipal Court in Gjilan, C. No. 442/07, of 22 April 2011.

19. On 1 June 2012, the MCFM in Gjilan filed a request for revision with the Supreme Court of Kosovo.

20. On 7 June 2012, the Applicant by proposal E. No. 1156/12 requested from the Municipal Court in Gjilan approval of the execution of the final Judgment of the Municipal Court in Gjilan, C. No. 442/07 of 22 April 2011.

21. On 28 June 2012, MCFM in Gjilan (the respondent), now a debtor filed an objection with the Municipal Court in Gjilan against the proposal of the Applicant E. No. 1156/12. In the objection MCFM in Gjilan stated: „*it has submitted within the legal time a request for revision to the Supreme Court in Prishtina, and in practice it often happens that the Supreme Court of Kosovo, when deciding upon revision, quashes or modifies the judgments of lower instances.*"

22. On 20 July 2012, the Municipal Court in Gjilan issued Decision E. No. 1156/2012, rejecting the objection of MCFM in Gjilan as unfounded.

23. On 31 July 2012, the Municipal Court in Gjilan issued Decision E. No. 1156/2012, "*APPROVING the execution of the Judgment of the Municipal Court in Gjilan C. no. 442/2007, of 22.04.2011, and OBLIGING the Ministry of Economy and Finance – Treasury in Prishtina to transfer funds from the account of the Municipality of Gjilan to the account 1150090462000105 PCB-Branch in Gjilan which belongs to the creditor Ajshe Leka from Gjilan, namely the amount of 6.000,00 € in the name of non-material damage and the amount of 854,68 € in the name of the expenses of the contested and execution proceedings, all that in the total amount 6.854,68 € (six thousands eight hundred fifty four Euro and sixty eight cents)*".

24. On 31 July 2012, the MCFM in Gjilan filed an appeal against the Decision of the Municipal Court E. No. 1156/2012 of 20 July 2012.

25. On 6 August 2012, the Applicant filed a reply to the appeal of MCFM in Gjilan (respondent) of 31 July 2012.

26. On 19 September 2012, the District Court in Gjilan issued Decision rejecting the appeal of MCFM in Gjilan (respondent-debtor) as unfounded and upholding in its entirety the Decision of the Municipal Court in Gjilan E. No. 1156/2012, of 31 September 2012.

27. On 7 June 2013, the Supreme Court of Kosovo in Prishtina, by Judgment Rev. No. 250/12, approved as well-founded the revision of MCFM in Gjilan (respondent- debtor) and modified the Judgment of the District Court in Gjilan, Ac. No. 198/2011, of 28 May 2012 and the Judgment of the Municipal Court in Gjilan, C. No. 442/2007, of 22 April 2011, thereby rejecting as unfounded the claim of the Applicant (plaintiff) requesting that MCFM in Gjilan (respondent) pay the Applicant in the name of the non-material damage for the mental anguish and violation of the dignity the amount of 6000,00 €, with the interest of 3.5% per year, as well as the expenses of the proceedings in the amount of 623,00 €.

28. In the reasoning of the Judgment, the Supreme Court states*:* "*Considering that there has occurred a complete return to the previous situation, as the claimant has been reinstated at her position as head nurse, where she was previously employed, the difference between this position and the position as nurse where she had been appointed by the respondent's decision has been compensated, the Supreme Court of Kosovo finds that the claimant's statement of claim for mental anguish and the violation of the claimant's dignity and authority by the respondent upon changing her position is not grounded since this would be in violation of Article 200 of the LCT, that envisages the monetary compensation for mental anguish, because approving the claimant's statement of claim for mental anguish in this particular case favors the claimant's intentions that are not compatible to the nature and social purpose of this type of compensation envisaged in this legal provision. The Supreme Court finds that in no way has the claimant's dignity and authority been violated when her position was changed from head nurse to nurse, thus this court has found that the claimant's statement of claim is not grounded and because the lower instance courts had erroneously applied the substantive law, both Judgments of those courts had to be modified and the statement of claim as such had to be rejected as unfounded"*

29. On 10 July 2013, MCFM in Gjilan as a respondent based on the Judgment of the Supreme Court of Kosovo in Prishtina filed a proposal with the Basic Court in Gjilan for counter-execution of the Judgment and the decisions of the lower courts.

Applicant's allegations

30. The Applicant alleges that the Decision of the Supreme Court Rev. No. 250/2012, of 7 June 2013, violates the provisions of Articles 22, 23, 27, 49 and 54 of the Constitution in the following manner:

> *"Violation of the claimant's dignity consists in the fact that the Supreme Court of Kosovo in Prishtina did not take into consideration the fact that Municipal Court and District Court in Gjilan with their Judgments have correctly applied the provisions of the Law on Contested Procedure and the Law of Contract and Torts, because by dismissing the claimant while she was pregnant, mental anguish was inflicted on her that resulted in giving birth through cesarean section, and on the other hand according to the Psychiatry expert, the claimant has also suffered loss of her dignity and prestige in the society due to the gossip relating to her dismissal without legal grounds."*
>
> *"Violation of Article 27 of the Constitution of the Republic of Kosovo consists in the fact that the claimant Ajshe Leka after an inhuman and degrading treatment by the respondent's director on 08.02.2007, the next day on 09.02.2007 she was suspended and a decision on suspension was issued to her.*
>
> *"Violation of Article 49 of the Constitution of the Republic of Kosovo consists in the fact that the respondent's actions and the Judgment of the Supreme Court of Kosovo violate the claimant's right to work and exercise her profession as a nurse."*
>
> *"Violation of Article 54 of the Constitution of the Republic of Kosovo consists in the fact that the Supreme Court of Kosovo in Prishtina through its Judgment by erroneously applying the provisions of Articles 199, 200 and 202 of the Law of Contract and Torts (old Law), rejects the statement of claim unjustly, by approving an illegal act so that the claimant Ajshe Leka from Gjilani was denied the judicial protection, thereby her rights guaranteed by the Constitution and the law are violated, and consequently there is definitely a violation of the rights under Article 22 of the Constitution of the Republic of Kosovo, that is related to the direct implementation of international agreements and instruments."*

31. The Applicant addresses the Constitutional Court requesting the following:

> *"Protection of Applicant's human rights, constitutional review of the Judgment Rev.no.250/2012 of 07.06.2013 of the Supreme Court of Kosovo in Prishtina regarding the correct application of the laws and protection of the substantive law."*

Assessment of the admissibility of Referral

32. The Applicant alleges that Articles 22 (Direct Applicability of International Agreements and Instruments), 23 (Human Dignity), 27 (Prohibition of Torture, Cruel, Inhuman or Degrading Treatment), 49 (Right to Work and Exercise Profession) and 54 (Judicial Protection of Rights) of the Constitution are the basis for her Referral.

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

34. Article 48 of the Law on the Constitutional Court of the Republic of Kosovo provides:

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

35. Under the Constitution, the Constitutional Court is not a court of appeals when reviewing decisions taken by the regular courts. The role of the regular courts is to interpret the law 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 of Human Rights [ECtHR] 1999-I).

36. The Applicant has not submitted any *prima facie* evidence indicating a violation of her constitutional rights (see Vanek vs. Slovak Republic, ECHR decision as to the admissibility, Application no. 53363/99 of 31 May 2005). The Applicant does not state in what way Articles 22, 23, 27, 49 and 54of the Constitution support her Referral, as prescribed by Article 113.7 of the Constitution and Article 48 of the Law.

37. The Applicant alleges that her rights (Judicial Protection of Rights) have been violated due to the erroneous application of the law by the Supreme Court without stating clearly in what manner that Judgment has violated the Applicant's constitutional rights.

38. In the present case, the Applicant has been provided numerous opportunities to present her case and to challenge the interpretation of the law, which she considers as being incorrect, before the Supreme Court of Kosovo. After having reviewed 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).

39. Finally, the admissibility requirements have not been met in this Referral. The Applicant has failed to point out and substantiate the allegation that her constitutional rights and freedoms have been violated by the challenged decision.

40. Consequently, the Referral is manifestly ill-founded in accordance with 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, pursuant to Article 113.7 of the Constitution, Article 20 and Article 48 of the Law, and Rule 36. (2b) of the Rules of Procedure, in the session held on 22 October 2013, 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. Decision is effective immediately.

Judge Rapporteur
Kadri Kryeziu

President of the Constitutional Court
Prof. Dr. Enver Hasani

KI 99/13, Liman Maloku, date 17 December 2013- Constitutional review of the Judgment of the Supreme Court of Kosovo, Rev. No. 195/2011, of 28 February 2013

Case KI 99/13, Resolution on Inadmissibility of 17 December 2013

Keywords: Individual Referral, manifestly ill-founded, Resolution on Inadmissibility.

In his Referral submitted on 10 July 2013, the Applicant requests "constitutional review of the decision of the Supreme Court, affirming the decisions of the regular courts. Those decisions declared invalid the contracts on sale-purchase of immovable property, concluded between the Applicant and the owners of the parcels.

The Court finds that the Applicant has not justified the allegation of a violation of his constitutional rights and the Applicant has not sufficiently substantiated his allegations.

RESOLUTION ON INADMISSIBITY
in
Case no. KI99/13
Applicant
Liman Maloku
Constitutional Review of the Judgment of the Supreme Court of Kosovo, Rev. No. 195/2011, of 28 February 2013

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

Composed of:

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

Applicant

1. The Applicant is Mr. Liman Maloku from the Municipality of Klina, who is represented with power of attorney by Mr. Xhafer Maloku from the Municipality of Klina.

Challenged decision

2. Applicant challenges the Judgment of the Supreme Court of Kosovo, Rev. No. 195/2011, of 28 February 2013, which was served to the Applicant on 28 June 2013.

Subject matter

3. The subject matter has to do with Constitutional review of the decision of the Supreme Court Rev. No. 195/2011, of 28 February 2013, affirming the decisions of the regular courts. Those decisions declared invalid the contracts on sale-purchase of immovable property, concluded between the Applicant and the owners of the parcels.

Legal basis

4. The Referral is based on Article 113.7 of the Constitution, Article 20 of the 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 Rules of Procedure.

Proceedings before the Court

5. On 10 July 2013, the Applicant submitted this Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 5 August 2013, the President by Decision GJR. No. 99/13, appointed Judge Robert Carolan, as Judge Rapporteur. On the same day, the President, by Decision no. KSH.99/13, appointed Review Panel composed of judges: Snezhana Botusharova (Presiding), Kadri Kryeziu and Arta Rama-Hajrizi.

7. On 26 August 2013, the Constitutional Court notified the Applicant and the Supreme Court on registration of this Referral.

8. On 26 September 2013, the Court requested from the Basic Court in Peja and from the Applicant, to submit to the Court the receipt , which proves when the Applicant received the Judgment of the Supreme Court of Kosovo, Rev. No. 195/2011, of 28 February 2013.

9. On 4 October 2013, the Basic Court in Peja submitted to the Court a letter which proves that the Applicant received the Judgment of the Supreme Court of Kosovo, Rev. No. 195/2011, of 28 February 2013, on 26 June 2013.

10. On 21 October 2013, 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 7 January 2003, the Applicant concluded four contracts on the sale and purchase of immovable property with the sellers of the following parcels:

- D. B from Klina, the cadastral plot no. 1933/2, with area 0.14,29 ha, registered in the possession list no. 452 CZ Drsnik;

- D. V from Klina, the cadastral plot no. 1933/5, with area 0.18,92 ha, registered in the possession list no. 453 CZ Drsnik;

- D. S from Klina, the cadastral plot no. 1933/3, with area 0.14,29 ha, registered in the possession list no. 450 CZ Drsnik;

- D. R from Klina the cadastral plot no. 1933/4, with area 0.14,29 ha registered in the possession list no. 451 CZ Drsnik (hereinafter; the sellers of immovable property).

In the name of all these sellers of immovable property, the contracts were signed by Mr. M. M, with a general power of attorney dated 8 January 2003.

12. On 7 October 2009, the Municipal Court in Klina, by Judgments:

- C. No. 196/06,

- C. No. 197/06,

- C. No. 149/06 and

- C. No. 198/06,

acted upon the claim of D. B, D. V, D. S and D. R for annulment of the aforementioned contracts in paragraph 11, due to the fact that the sellers of the immovable property alleged that they have not signed the power of attorney, according to which Mr. M. M signed the contracts in their names, the Municipal Court in Klina approved their claim.

13. The Municipal Court in Klina declared invalid the contracts on the sale-purchase of immovable property and ordered that in records of the Municipality of Klina that all abovementioned parcels in paragraph 11, in the cadastral books be returned in the names of the sellers of immovable property. The Municipal Court in its reasoning in the judgments above, after reviewing the facts, further held:

"The Transaction Contract lacks the will of consent of one of the contracting parties and it was found that it was not binding agreement (Article 26 of the LOR). Thus, the Transaction Contract is declared invalid pursuant to Article 103, paragraph 1 of the LOR."

14. The Applicant filed an appeal in the District Court in Peja against the Judgments of the Municipal Courts in Klina, which are specified in the paragraph 12.

15. The District Court in Peja, acting upon the appeal rendered the following Judgments:

- Ac. no. 19/10, of 7 February 2011,
- Ac. no. 20/2010, of 9 March 2011,
- Ac. no. 22/2010 of 9 March 2011,
- Ac. nr. 21/10, of 7 February 2011,

which, in their reasoning are completely the same, and rejected the Applicant's appeal as ungrounded. The District Court in Peja in its reasoning held that:

> *"The challenged Judgment did not contain substantial violations of the provisions of contested procedure, which are investigated by the second instance court ex officio pursuant to Article 194 of the LCP. Likewise, the factual situation was determined by the first instance court correctly and completely so that the accuracy of the factual situation is not doubted by any of the appealed allegations and for this reason the first instance court has also correctly applied the substantive law. The District Court took this stance, due to the fact that the contract, which was annulled was not duly concluded as provided by Article 26 of the Law on Obligations Relationship (LOR)... From the abovementioned reasons, pursuant to Article 103 of LOR, the first instance court has rightly annulled the contract in question, which is contrary to legal order provided by the Constitution, the mandatory provisions and the moral of society."*

16. From the facts presented in the Referral form, it results that the Applicant addressed the Supreme Court with the request for revision, only against the Judgment of the District Court in Peja Ac. no. 21/10 of 7 February 2011.

17. On 28 February 2013, the Supreme Court, by deciding on the Applicant's request for revision, rendered the Judgment Rev. no. 195/2011, whereby rejecting the revision, against the Judgment of the District Court in Peja Ac. No. 21/10 of 7 February 2011, as ungrounded. In its reasoning, the Supreme Court further stated:

> *"... the Supreme Court completely approved legal point of view of lower instance courts since the Judgments do not contain either essential violations of the provisions of contentious procedure, which this Court notices ex officio, or violations pursuant to Article 182, paragraph 2 of the Law on Contested Procedure, that the revision referred to... According to the findings of the Supreme Court, in the present case, the challenged contract is absolutely null and void, given that the seller has not authorized anyone to conclude contract, which in fact was concluded without his knowledge and his will, therefore it is contrary to the law and other imperative provisions."*

Applicant's allegations

18. The Applicant alleges that by the Judgment of the Supreme Court of Kosovo Rev. No. 195/2011, of 28 February 2013, his rights, protected by the Constitution, Article 31 (Right to Fair and Impartial Trial) and Article 24 (Equality Before the Law) of the Constitution were violated.

19. The Applicant requests from the Constitutional Court a decision, which would:

> *"I want to have a fair and impartial trial, and this is achieved only if I confront with Bllagoje Dabizhleviq, when the truth will be brought to light...".*

20. The Applicant also asks to have a trial where B. D can be confronted to establish that he paid 175000 Euros to B. D.

Assessment of the admissibility of the Referral

21. In order to be able to adjudicate the Applicant's Referral, the Court should 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. In this respect, Article 113, paragraph 7 of the Constitution 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."

Regarding these referral, the Court notes that the Applicant is a natural person, and that he is an authorized party in compliance with Article 113.7 [Jurisdiction and authorized parties] of the Constitution.

23. The Court should also determine whether the Applicant, in compliance with the requirements of Article 113 (7) of the Constitution, and Article 47 (2) of the Law, has exhausted all legal remedies. In present case, the Applicant has exhausted all available legal remedies according to the law in force.

24. The Applicant should also show that he has met requirements of Article 49 of the Law, regarding the submission of referrals within the legal time limit. From the case file there is no evidence that would rebut the Applicant's allegations that he received the judgment of the Supreme Court of Kosovo on 28 June 2013. Therefore, the Referral was submitted within the time limit of four (4) months, as it is provided by the Law and Rules of Procedure.

25. Regarding the Referral, the Court also takes into account Rule 36.2 of the Rules of Procedure, which provides that:

(2) The Court shall reject a Referral as being manifestly ill-founded when it is satisfied that:

[...], or

(b) when the presented facts do not in any way justify the allegation of a violation of the constitutional rights, or

[...], or

(d) when the Applicant does not sufficiently substantiate his claim;"

26. In this respect, The Constitutional Court reiterates that, under the Constitution, it is not its task 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*, Garcia Ruiz v. Spain, no. 30544/96, ECHR, Judgment of 21 January 1999, para. 28, see also Case no. KI70/11, Applicants Faik Hima, Magbule Hima and Bestar Hima, Resolution on Inadmissibility of 16 December 2011).

27. 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 has had a fair trial (see, *inter alia,* Edwards v. United Kingdom App. No. 13071/87, Report of the European Commission on Human Rights, of 10 July 1991).

28. From the case file, the Court notes that the reasoning, of the judgments rendered by the District Court in Peja is clear, and after the review of all proceedings, the Court also found that the proceedings in the Supreme Court were fair and not arbitrary (See, *mutatis mutandis*, Shub v. Lithuania,no. 17064/06, ECHR, Decision of 30 June 2009). Furthermore, the Judgment of the Supreme Court of Kosovo Rev. No. 195/2011, of 28 February 2013, is clear and well-reasoned. The courts specifically addressed the Applicant's request to have B. D testify at trial and reasoned that his testimony would not be relevant even if he could be found and brought to the trial to testify because there was no dispute that the Applicant paid the money in a fraudulent scheme. The courts reasoned that the only issue is whether the attorney in fact had the authority to sell the immovable property in dispute.

29. In addition, 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)

30. The facts submitted by Applicant have not justified the allegation of a violation of his constitutional rights and the Applicant has not sufficiently substantiated his allegations.

FOR THESE REASONS

The Constitutional Court pursuant to Article 113.7 of the Constitution, Article 20 of the Law and Rule 36.2 (b) and (d) of Rules of Procedure, on 21 October 2013, unanimously,

DECIDES

I. TO REJECT the Referral as Inadmissible;

II. TO NOTIFY the parties of this Decision;

III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20.4 of the Law: and,

IV. This Decision is effective immediately.

Judge Rapporteur
Robert Carolan

President of the Constitutional Court
Prof. Dr. Enver Hasani

KO 115/13, Ardian Gjini and 11 other deputyes of the Assembly of the Republic of Kosovo, date 17 December 2013- Constitutional Review of the Conclusion No. 04-P-170 of the Assembly Presidency of the Republic of Kosovo of 22 July 2013

Case KO115/13, Resolution on Inadmissibility , of 14 November 2013.

Keywords: referral submitted by 12 deputies of the Assembly of the Republic of Kosovo, *ratione materiae*, resolution on inadmissibility

In their Referral, submitted on 29 July 2013, the Applicants request constitutional review of the Conclusion of the Assembly Presidency. The Applicants argue that the challenged Conclusion is not in compliance with Article 67 of the Constitution.

The Court concludes that the Applicants have not raised a constitutional matter within the legal framework provided by Article 113.7, therefore, pursuant to Article 36, paragraph 3 (f), the Referral is declared inadmissible because it is incompatible *ratione materiae* with the Constitution.

RESOLUTION ON INADMISSIBILITY
in
Case No. KO115/13
Applicants
Ardian Gjini and eleven other deputies of the Assembly of the Republic of Kosovo
Constitutional Review of the Conclusion No. 04-P-170 of the Assembly Presidency of the Republic of Kosovo of 22 July 2013

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Enver Hasani, President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Kadri Kryeziu, Judge
Arta Rama-Hajrizi, Judge

Applicants

1. The referral was filed by Ardian Gjini, Daut Haradinaj, Ramiz Kelmendi, Time Kadrijaj, Kymete Bajraktari, Ramiz Lladrovci, Donika Kada-Bujupi, Ahmet Isufi, Xhevdet Neziraj, Teuta Haxhiu, Blerim Shala and Burim Ramadani; all of them are Deputies of the Assembly of the Republic of Kosovo.

Challenged decision

2. The Applicants challenge the constitutionality of the Conclusion of the Assembly Presidency of the Republic of Kosovo (hereinafter: the Assembly Presidency) No. 04-P-170 of 22 July 2013.

Subject matter

3. The subject matter of this referral is the Constitutionality of the Conclusion of the Assembly Presidency. Applicants argue that the challenged Conclusion is not in compliance with Article 67 of the Constitution.

Legal basis

4. The Referral is based on Articles 113.5 and 67 of the Constitution, and Article 42 of the Law and Rule 36 of the Rules of Procedure.

Proceedings before the Court

5. On 29 July 2013, the Applicants submitted the Referral to the Court.

6. On the same day, by Decision No.GJR. KO 115/13, the President appointed Judge Robert Carolan as Judge Rapporteur. Also, on the same day, by Decision No. KSH. KO 115/13, the President appointed the Review Panel composed of Judges Altay Suroy (Presiding), Almiro Rodriguez and Arta Rama-Hajrizi.

7. On 5 August 2013, the Court notified the Applicants that the referral had been registered with the Court.

8. On the same day, the Court notified the President of the Assembly of the referral and invited the Assembly to respond and/or submit any documents it considered necessary within the period of thirty days.

9. On 7 August 2013, the Court received the following documents from the President of the Assembly: transcript of the meeting of the Presidency held on 22 July 2013, minutes of the meeting of the Presidency also held on 22 July 2013 and Conclusion No. 04-P-170 dated 22 July 2013.

10. On 14 November 2013, the Review Panel made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts presented by the Applicants:

11. After the elections of 2010, the Alliance for the Future of Kosovo (AAK) entered the Assembly with 13 Deputies forming the AAK Parliamentary Group, to be decreased later to 12 Deputy members after the withdrawal of Deputy Ukë Rugova.

12. After the same elections, the Vetëvendosje Movement entered the Assembly in a coalition with the Movement for Unification forming together a Parliamentary Group of 14 deputy members.

13. The Vetëvendosje Movement then became the third largest party and AAK the forth largest party in the Assembly of Kosovo.

14. In September 2011, the Movement for Unification, with its two Deputies, withdrew from the Parliamentary Group of Vetëvendosje.

15. On 5 July 2013, Deputy Alma Lama, publicly confirmed her withdrawal from the Parliamentary Group Vetëvendosje.

16. The withdrawals of two Deputies from the Movement for Unification and Deputy Alma Lama left the Vetëvendosje Parliamentary Group with 11 Deputy Members, one less than the AAK Parliamentary Group. At that moment, the AAK Parliamentary Group became third largest Parliamentary Group in the Assembly.

17. On 15 July 2013, the AAK Parliamentary Group filed a request in the Assembly Presidency, that reads as follows:

> "*Based on Article 67. 3 of the Constitution of the Republic of Kosovo as well as after the change of the number of MPs in the Parliamentary Groups, I request from you to conduct the procedures in accordance with the Constitution up to the appointment of a Deputy President of the Assembly from the lines of the Parliamentary Group of the Alliance for the Future of Kosovo.*
> *Since the Rules of Procedure of the Assembly has not been harmonized with the Constitution, then the principle of legal hierarchy in Kosovo should be respected.*
> *The order of speech, the seating order in the Assembly and the ranking in the official documents should be made according to the current political force in the Assembly."*

18. In the referral the Applicants submitted a copy of the request to the Assembly Presidency of 15 July 2013 and entitled it as an "evidence no.1."

19. On 22 July 2013, the Assembly Presidency after reviewing the request rendered the challenged Conclusion that reads as follows:

> *"The Presidency does not support the request of the Parliamentary Group of the AAK on the appointment of the Deputy President of the Assembly among the MPs of this parliamentary group".*

20. In support of their referral the Applicant also submitted a copy of challenged Conclusion of 22 July 2013 and entitled it as an "evidence no. 2."

Arguments Presented by the Applicant

21. The Applicants argue that the referral satisfies the admissibility requirements provided in Article 113.5 of the Constitution which reads as follows:

> *"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."* **[the Serbian version differs from the English and Albanian versions]**

22. The Applicants, *inter alia*, claim that "*the definition of the term 'the decision of the Assembly' as it used in Article 113.5 of the Constitution, was provided neither in the Constitution or in the Law on the Constitutional Court that govern the procedures provided by Article 113.5 of the Constitution…"* The Applicants argue that it is necessary to analyze the constitutional and legal qualities of the Conclusion and of the body that rendered the Conclusion, the Assembly Presidency.

23. After a series of arguments in the referral, the Applicants concluded that the challenged Conclusion of the Assembly Presidency in the present case should be interpreted as a "*…decision adopted by the Assembly…."* described in Article 113.5 of the Constitution.

24. The Applicants argue that the Conclusion of the President of the Assembly is a decision on the constitutional rights of the political entity because it was rendered in response to the request of a parliamentary group for establishment of a right allegedly guaranteed by the Constitution.

25. Further, the Applicants allege that the Conclusion presents a decision, that has legal and constitutional consequences for a political entity in three ways:

    i. *The Conclusion presents a decision of a final nature that has to do with the issue and/or the constitutional right which is under exclusive jurisdiction of the Constitutional Court.*

    ii. *The Conclusion cannot be appealed or become the subject of control of the regular courts, since it has to do with constitutional matters that are under the exclusive jurisdiction of the Constitutional Court.*

iii. As a result, pursuant to items (i) and (ii) above, the Conclusion may be appealed only in the Constitutional Court.

26. Finally, the Applicants argue that the decisions of the Assembly Presidency should be considered as a "*...decision adopted by the Assembly..*"in interpreting of Article 113.5 of the Constitution. In that respect the Applicants stated:

> *"We evaluated that the fact that the composition of the authority that has rendered the Conclusion reflects the composition of the Assembly, makes that the Conclusion has constitutional and legal qualities of "decision of the Assembly" as it is stipulated by Article 113.5 of the Constitution. Namely, pursuant to Article 67 of the Constitution, the Assembly presidency reflects the composition of the Assembly as the political strength and size of the parliamentary groups, represented in the Assembly. For this reason, in case when decision of the Assembly cannot be reviewed or become subject of deciding by the Assembly this decision for the purpose of Article 113.5 should be qualified as the Assembly decision*."

27. With regard to the merits of the case, the Applicants allege that after the withdrawal of three Deputy Members of the Parliamentary Group Vetëvendosje leaving it with a total of 11 Deputies, the AAK Parliamentary Group, with 12 Deputies, became the third largest party in the Assembly. Therefore, according to the Applicants, the AAK Parliamentary Group has the right to have its representative in the Assembly Presidency instead of the Parliamentary Group Vetëvendosje.

28. The Applicants also claim that the right derived from Article 67 of the Constitution *"belongs exclusively to the Parliamentary Groups and not individuals or political parties"* and that these groups are living bodies which may change at times in composition or size including the dissolution or creation of a new parliamentary group after the beginning of the legislature. In support of their argument they rely upon Article 20.2 of the Assembly Rules of Procedure. That rule states:

> *"... the Member of Assembly shall have the right to take part equally in a Parliamentary Group, leave the group, to form a new parliamentary group, join another group or act as an independent Member of Assembly".*

29. The Applicants also allege that:

> "*... the rights of the Parliamentary Groups are not acquired only by the establishment of the new legislature.... they become subject to the dynamics which goes through a parliamentary group during the duration of the legislature. This means that one Parliamentary Group which order is changes by its size, or which is dissolved, cannot continue to keep the posts that it had only because of its order or size at the moment such a post or the possibility to be proposed in such a post was given to a member of this parliamentary group.*"

30. The Applicants conclude that:

> *"... when changes occur in the ranking of the parliamentary groups 'the President of the Assembly and/or the Assembly Presidency are obliged ex-officio to initiate the proceedings to fill the vacant position with the candidate proposed by the parliamentary group that meets the constitutional and legal requirements, laid down in Article 67 of the Constitution."*

Assessment of the Admissibility of the Referral

31. In order to determine whether this Referral can be considered by the Constitutional Court an assessment must be made s to whether it is admissible.

32. The Applicants made their Referral pursuant to Article 113.5 of the Constitution, which provides as follows:

> *"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".*

33. The procedure for cases defined under Article 113. 5 of the Constitution is further elaborated in the Law on Constitutional Court, in particular Article 42 that defines Accuracy of the Referral, which states:

> "*1. In a referral made pursuant to Article 113, Paragraph 5 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; and*

1.3. *presentation of evidence that supports the contes*t."

34. The Court notes that the referral was made by 12 Deputies of the Assembly of Kosovo which is more than the minimum required by Article 113.5 of the Constitution.

35. The Court further notes that the challenged Conclusion was adopted on 22 July 2013 by the Assembly Presidency, and that referral was submitted on 29 July 2013, within the time limit prescribed by Article 113.5 of the Constitution.

36. The question posed by this referral is whether the Conclusion of the Assembly Presidency is a *"... decision adopted by the Assembly..."*

37. Article 113.5 of the Constitution only allows the Constitutional Court to decide the Constitutionality of *"... any law or decision adopted by the Assembly...*". It does not authorize the Court to decide whether other internal acts or decisions of the Assembly are compatible with the Constitution.

38. Article 80.1 of the Constitution defines how decisions are adopted by the Assembly as follows:

> "*...decisions...are adopted by the Assembly by a majority vote of deputies present and voting, except when otherwise provided by the Constitution.*"

39. There are no other provisions in the Constitution defining decisions adopted by the Assembly.

40. The Court further notes that Article 70.1 of the Constitution provides:

> *"Deputies of the Assembly are representatives of the people and are not bound by any obligatory mandate."*

41. Therefore, the Deputies of the Assembly are representatives of the people with an individual mandate, and the Assembly they form has the legislative power as specified in Article 4.2 of the Constitution.

42. Article 67.6 of the Constitution provides that:

> "*The Presidency is responsible for the administrative operation of the Assembly as provided in the Rules of Procedure of the Assembly".*

43. Therefore, the mandate of the Deputies of the Assembly and the authority of the Assembly is distinguishable from the responsibility and the authority of the Presidency of the Assembly.

44. In this respect the Court would like to recall that the mandate of the Deputies was already addressed in its Judgment of 30 March 2011 (the Case No.KO 29/11, Sabri Hamiti and other Deputies) as follows:

> *"79. In this respect, the Court refers to Article 70 [Mandate of Deputies] of the Constitution, stipulating that the 'Deputies of the Assembly are representatives of the people [... Furthermore, as to their obligation as deputies, Article 74 [Exercise of Function] of the Constitution provides that 'the deputies of the Assembly of Kosovo shall exercise their function in the best interest of the Republic of Kosovo and pursuant to the Constitution, Laws and Rules of Procedure of the Assembly.'*

45. Moreover, in the Judgment in case No KO -98/11 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 recalls that:

> *"88. The Constitution also uses the term "mandate" in relation to the deputies of the Assembly whereby as representatives of the people they are not bound by any obligatory mandate. Each deputy has an individual mandate which commences on the date of the certification of the results of the election. While the mandate of the Assembly commences on the constitutive session of the newly elected Assembly the mandate of each deputy may commence earlier. The mandate for a deputy ends at the occurrence of any of the circumstances set out in Article 70 (3) of the Constitution. The mandate of the deputy embodies his/her representative function.* "

46. The "decision" of the Presidency of the Assembly, is different than a decision of the Assembly requiring a majority vote of the deputies present and voting.

47. In order for an act of the Assembly to be a decision, it has to go to the

voting process in the Assembly as foreseen by Article 65.1 of the Constitution.

48. The Conclusion of the Presidency, dated 22 July 2013, was not adopted by a majority vote of the members of the Assembly.

49. It should also be noted that, as prescribed by Article 67 of the Constitution, while three Deputy Presidents are proposed by the three largest Parliamentary Groups, they must actually be elected by a majority vote of all deputies as prescribed in Article 67.3 of the Constitution.

50. Therefore, the Court's jurisdiction, or authority, to interpret Constitutional referrals cannot be extended to include internal acts of the Assembly's bodies or decisions of individual members or officers of the Assembly.

51. 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, on 14 November 2013:

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;

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
Robert Carolan

President of the Constitutional Court
Prof. Dr. Enver Hasani

KI 109/13, Nurije Salihu, date 19 December 2013- Request for constitutional review of the Judgment of the Court of Appeal of Kosovo, Ac. No. 1717/2012, dated 22 April 2013.

Case KI109/11, Resolution on Inadmissibility 27 December 2013

Keywords: Individual referral, manifestly ill-founded

The subject matter is the assessment of the constitutionality of the Judgment of the Court of Appeal by which the Applicant's constitutional rights were violated in respect to the non-payment of compensation for additional work, which the applicant performed in the District Commercial Court in Prishtina. The work concerned cleaning the building from 17 July 2003 until 01 October 2003 and from 1 December 2003 until 15 December 2003.

The Applicant claims that the judgments of the first and the second instance courts, "*violated her legitimate right to be awarded monetary compensation for the work done",* without providing any further clarification as to how this amounts to a constitutional violation.

In these circumstances, the Applicant has not sufficiently substantiated her allegation, and it cannot be concluded that the Referral is grounded. Therefore, the Court pursuant to Rule 36 paragraph 2 item c ,d, finds that the Referral should be rejected as manifestly ill-founded.

RESOLUTION ON INADMISSIBILITY
in
Case no. KI109/13
Applicant
Nurije Salihu
Request for constitutional review of the Judgment ,Ac. No. 1717/2012, of the Court of Appeal of Kosovo, of 22 April 2013

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Enver Hasani, President
Ivan Čukalovič, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Kadri Kryeziu, Judge and
Arta Rama-Hajrizi, Judge

Applicant

1. The Applicant is Mrs. Nurije Salihu (hereinafter; the Applicant) from Prishtina, The Applicant requested that her identity not to be disclosed.

Challenged decision

2. The challenged decision is Judgment Ac. no. 1717/2012, of the Court of Appeal of Kosovo of 22 April 2013, served on the applicant on 15 June 2013.

Subject matter

3. The subject matter is the assessment of the constitutionality of the Judgment of the Court of Appeal by which the Applicant's constitutional rights were violated in respect to the non-payment of compensation for additional work, which the applicant performed in the District Commercial Court in Prishtina. The work concerned cleaning the building from 17.07.2003 until 01.10.2003 and from 1.12.2003 until 15.12.2003.

Legal basis

4. Article 113.7 of the Constitution of Republic of Kosovo (hereinafter the Constitution), Article 22 of the Law No. 03/L-121 of 15 January 2009 on the Constitutional Court of Republic of Kosovo (hereinafter the Law), and Rule 29 of the Rules of Procedure of the Court (hereinafter the Rules of procedure).

Proceedings before the Constitutional Court

5. On 19 July 2013, the Applicant submitted the Referral to the Court

6. On 06 August 2013, the President of the Court appointed the Judge Snezhana Botusharova as Judge Rapporteur, and the Review Panel composed of Judges: Robert Carolan (Presiding), Almiro Rodrigues and Enver Hasani.

7. On 6 September 2013, the Constitutional Court notified the Applicant and the Court of Appeal of the registration of Referral.

8. On 21 October 2013, 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 was hired by the District Commercial Court in Prishtina with the work duties of a cleaning lady.

10. The applicant was asked by the President of the Court to perform additional work of cleaning from 17.07.2003 until 1.10.2003 and 1.12.2003 until 15.12.2003, in order to replace her colleague. The Applicant was promised that she would receive compensation for this additional work.

11. On 19.11.2004, the Applicant filed an appeal with the Appeal Committee of the Ministry of Public Services, claiming the unpaid compensation, but she never received any response.

12. On 11.01.2005, the Applicant also addressed the Independent Oversight Board, but she did not receive any response from the Board.

13. On 03 December 2007, the applicant filed a claim in the Municipal Court of Prishtina for compensation of the material damage in the amount of 540 Euro, not compensated by her employing authority.

14. On 10 November 2009, the Municipal Court in Prishtina with its Judgment CI. no. 517/2007, rejected the claim of the claimant of the applicant as unfounded. In the reasoning of the judgment, the court stated *"The provision of Article 376, para.1 of the Law on Obligational Relationships (LOR) provided that the "claim for damages shall expire three years after the party sustaining the injury became aware of the injury of the person that caused it." In the present case, the respondent requests compensation of salaries for the overtime work for the period from 17.07.2003 until 1.10.2003 and from 1.12.2003 until 15.12.2003, which was never made and that for this compensation addressed the court by claim on 3.12.2007, which means that after expiry of the time limit of three years which makes the claim for compensation time-barred, which belongs to the category of the compensation of material damage, therefore the court rejected the same in entirety pursuant to the provision of LOR, cited above."*

15. On 22 April 2013, the Court of Appeal in Prishtina with its the Judgment Ac. no. 1717/2012, in deciding on the appeal of applicant, *rejected* as ungrounded the claimant's appeal, while upholding the Judgment of the Municipal Court of Prishtina CI 517/2007 of 10.11.2009. The Court of Appeal held that "*According to this state of the matter, the court of appeal found that the first instance court by presenting necessary evidence has correctly and completely determined the factual situation and with correct assessment of the evidence, has correctly applied the material law, when it found that the claim is unfounded and in the judgment gave sufficient legal and factual reasons on relevant facts, important for the correct adjudication of this matter, which are accepted by this court, too. "*

Applicant's allegations

16. The Applicant claims that the judgments of the first and the second instance courts, "*violated her legitimate right to be awarded monetary compensation for the work done"*, without providing any further clarification as to how this amounts to a constitutional violation.

17. In this respect, the Applicant argues that the judgments of the first and the second instance courts violated Article 28.2 of the Constitution (forced labour).

18. Applicant also asked that her identity to be protected due to personal reasons

Assessment of admissibility of the Referral

18. In order to be able to adjudicate the Applicants' Referral, the Court examines whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution, and as further specified in the Law and the Rules of Procedure of the Court.

19. Regarding this, 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.*

20. In this respect, the Court considers that the Referral, was submitted to the Court by an individual, within the time limit of 4 months as provided by article 49 0f the law, and after the exhaustion of available legal remedies, and is appropriate to be reviewed in the Constitutional Court.

Assessment of the Referral

21. The Court notes that the Applicant challenges the Judgment of the Court of Appeal, Ac.nr.1717/2012 of 22 April 2013, by which her appeal against the Judgment of the Municipal Court of Prishtina, CI no.517/2007 of 10.11.2009, was rejected as ungrounded.

22. The Court emphasizes that the Constitutional Court is not a fact-finding court and that the correct and complete determination of the factual situation is within the full jurisdiction of the regular courts. In the present case, the Court of Appeal decided upon the Applicant's appeal, and rendered the Judgment Ac.no.1717/2012 of 22 April 2013. The role of the Constitutional Court is only to secure compliance with the rights guaranteed by the Constitution and therefore, it cannot act as "the court of the fourth instance" (see, *mutatis mutandis,* i.a., Akdivar against Turkey, 16 September 1996, R.J.D, 1996-IV, para. 65).

23. The Court finds that the Judgment of the Court of Appeal is well reasoned and has dealt with the Applicant's complaint in a regular court

process, rendered without any violation of human rights guaranteed by the Constitution of Kosovo.

24. Furthermore, to declare a decision of a public authority as unconstitutional, the Applicant should *prima facie* show before the Constitutional Court that the "Decision of a public authority, as such, will be an indicator of a violation of the request to a fair trial and if the unfairness of that decision is so evident that the decision may be considered as extremely arbitrary" (see ECHR, Khamidov against Russia, no. 72118/01, Judgment dated 15 November 2007, § 175).

25. The Constitutional Court found no elements of arbitrarinessin the Judgment of the Court of Appeal Ac.no.1717/2012 of 22 April 2013, nor any violation of human rights, as alleged by the Applicant.

26. Regarding the allegation of the Applicant that by the Judgment of the Court of Appeal were violated her legitimate rights guaranteed by the Constitution pursuant to Article 28.2 of the Constitution, the Court concludes that Article 28 of the Constitution [Prohibition of Slavery and Forced Labor] has clearly specified that:

> *"1. No one shall be held in slavery or servitude.*
>
> *2. No one shall be required to perform forced labor. Labor or services provided by law by persons convicted by a final court decision while serving their sentence or during a State of Emergency declared in compliance with the rules set forth in this Constitution shall not be considered as forced labor.*
>
> *3. Trafficking in persons is forbidden."*

27. Taking into account this constitutional norm, the Court notes that definition of "forced labor" as used in this norm cannot be interpreted separately from the full content of Article 28 of the Constitution and in this respect, the constitutional terminology used refers to those situations, when the labor is imposed by force, or under the threat of force, and with consequences to the person if this work is not performed. Forced labour, within this meaning, is forbidden (in slavery, trafficking, etc) and the work needs to have been carried out in an involuntary manner. Therefore, in these circumstances, the Court does not find that in the Applicant's case constituted a violation of Article 28 of the Constitution, as alleged in this Referral

28. The European Court on Human Rights (which law case, pursuant to Article 53 of the Constitution, the Constitutional Court is obliged to apply when adjudicating on human rights) in cases Karol Mihal v. Slovakia and Van der Mussele v. Belgiumconcluded that when determining whether the service required from the Applicant falls within the definition of forced labor", the court will take into account all circumstances of the case in the light of the basic objectives of Article 4 of Convention" and to respond to the questions of the concrete case whether the finished work, performed by the Applicant was "forced " and "compulsory ", the court should take into account if the work performed by the Applicant was performed under the threat of a punishment, whether the work was performed against the will of the Applicant and whether the Applicant volunteered to perform that work (see Karol Mihal v. Slovakia, (Application no. 23360/08, para. 43, and Van der Mussele v. Belgium, para. 34), therefore, the Constitutional Court applied the same requirements, holding that the additional work, performed by Ms. Salihu does not fall within the framework of Article 28.2 of the Constitution of Kosovo, because it was not carried out under the threat of a punishment, was not forcefully ordered and was a part of the normal work, but with an increased volume.

29. From the information provided by the Applicant, the Court concludes that the Applicant has initiated a procedure to claim monetary compensation for the work she performed during the mentioned time periods. The regular court dealt with her claim within the Law on Obligation. The Court finds that the Applicant has not been able to provide facts before this Court on the connection between non-monetary compensation and a violation of Article 28.2 (Forced labour) of the Constitution. The Court considers that these two issues in relation with the constitutional assessment are fundamentally different issues.

30. In these circumstances, the Applicant has not sufficiently substantiated her allegation, and it cannot be concluded that the Referral is grounded. Therefore, the Court pursuant to Rule 36 paragraph 2 item c ,d, finds that the Referral should be rejected as manifestly ill-founded.

31. Regarding the request of the applicant that applicant`s identity not be disclosed, the Court notes that in the Referral form she emphasized that the reasons are of "completely personal nature" without providing any further explanation .In these circumstances, the Court does not find that her request is grounded and cannot grant the right to non-disclosure of identity without any justifiable reason.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113 7 of the Constitution, Article 47 of the Law on Court and Rule 36 (1.c) and Rule 56 (2) of the Rules of Procedure, on 21 October 2013, unanimously

DECIDES

I. TO REJECT the Referral as Inadmissible;

II. To REJECT request for not disclosing identity of the applicant

III. TO NOTIFY the Parties of this Decision;

IV. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20 (4) of the Law;

V. TO DECLARE this Decision effective immediately.

Judge Rapporteur
Snezhana Botusharova

President of the Constitutional Court
Prof. Dr. Enver Hasani

KI 116/13, Isni Thaçi, date 19 December 2013- Request for constitutional review of the Judgment of the Supreme Court of Kosovo, PML. No. 91/2013, dated 21 June 2013

Case KI116/13, Resolution on Inadmissibility dated 27 December 2013

Keywords: Individual referral, manifestly ill-founded

The subject matter of the Referral is the assessment of the constitutionality of the Judgment of the Supreme Court by which the request for protection of legality was rejected and the Decision of the Appeals Court is upheld. This Judgment left in force the imposition of detention on the Applicant. TheApplicant alleges that this decision has not been reasoned in a legal manner.

The Applicant alleges that the Judgment of the Supreme Court, PML. no. 91/2013 has violated Article 53 of the Constitution (Interpretation of Human Rights Provisions) and Article 5.1 and 5.3 of the European Convention on Human Rights "as a result of inadequate reasoning of the Judgment issued regarding the rejection of the request for protection of legality".

Furthermore, the Constitutional Court cannot find a violation of Article 53 of the Constitution when the Supreme Court issued its decision, which is the act that has been explicitly challenged by the Applicant, also due to the fact that the Applicant in his request for protection of legality never raised a violation of human rights as guaranteed under the Constitution.

The applicant based his request for protection of legality on a violation of Article 103.2 of the Constitution which establishes the legal basis for decision making of the courts in Kosovo and on a violation of provisions of the Criminal Procedure Code, which in fact are legality issues and not constitutional issues.

The Court, pursuant to Rule 36 paragraph 2 item c and d, finds that it must reject the Referral as manifestly ill-founded.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI116/13
Applicant
Isni Thaçi
Request for constitutional review of the Judgment of the Supreme Court of Kosovo, PML. No. 91/2013, of 21 June 2013

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Enver Hasani, President
Ivan Cukalovic, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Kadri Kryeziu, Judge and
Arta Rama-Hajrizi, Judge

Applicant

1. The Applicant is Mr. Isni Thaçi from the village of Burojë, Municipality of Skenderaj. He is represented by the Law Firm "Sejdiu & Qerkini", with offices in Prishtina.

Challenged decision

2. The challenged decision is the Judgment PML. No. 91/2013, of 21 June 2013, of the Supreme Court of Kosovo. This Judgment was served on the Applicant on the same day,

Subject matter

3. The subject matter of the Referral is the assessment of the constitutionality of the Judgment of the Supreme Court by which the request for protection of legality was rejected and the Decision of the Appeals Court is upheld. This Judgment left in force the imposition of detention on the Applicant. The Applicant alleges that this decision has not been reasoned in a legal manner.

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 (hereinafter the Law), of 15 January 2009, and Rule 29 of the Rules of Procedure (hereinafter the Rules of Procedure) .

Proceedings before the Constitutional Court

5. On 29 July 2013, the representative of the Applicant filed the Referral with the Court.

6. On 5 August 2013, , the President of the Court appointed Judge Snezhana Botusharova as the Judge Rapporteur and the Review Panel composed of judges: Robert Carolan (Presiding), Almiro Rodrigues and Enver Hasani

7. On 9 September 2013, the Constitutional Court notified the Applicant and the Supreme Court of the registration of the Referral.

8. On 22 October 2013, 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. On 24 May 2013, the Applicant was arrested on suspicion of having committed in co-perpetration the criminal offence "war crimes against civilian population with multiple counts of charges".

10. On 24 May 2013, the pre-trial judge with Ruling GJPP no. 27/2012 rejected the request of the prosecutor of 24 May 2013 for imposing detention on remand and ORDERED "*security measure of HOUSE DETENTION against the accusedHysni Thaçi in duration of one (1) month, from 23 May 2013 until 23 June 2013*.

11. The Special Prosecutor of the Republic of Kosovo filed an appeal with the Court of Appeal against this Ruling.

12. On 31 May 2013, the Court of Appeal issued Ruling KP/KV no. 766/2013, deciding upon the appeal of the Prosecutor, and modified the Ruling of the Basic Court in Mitrovica. The Court of Appeal imposed

detention on remand against the accused for the duration of one month, instead of the measure of house detention.

13. The Ruling of the Court of the Appeal imposing detention on remand against the Applicant has not been attached to the Referral filed with the Constitutional Court by the Applicant.

14. On 4 June 2013, the representative of the Applicant filed a "request for protection of legality" with the Supreme Court of Kosovo against the Ruling KP/KV no. 766/2013, on the basis of violations of Article 103.2 of the Constitution, Article 187 of the Criminal Procedure Code (No. 04/L-125) and Article 384.2 of the Criminal Procedure Code of Kosovo.

15. On 21 June 2013, the Supreme Court REJECTED the request for protection of legality and UPHELD the Ruling of the Court of the Appeal KP/KV No. 766/2013 of 31 May 2013.

Applicant's allegations

16. The Applicant alleges that Judgment No 91/2013 of the Supreme Court has violated Article 53 of the Constitution (Interpretation of Human Rights Provisions) and Article 5.1 and 5.3 of the European Convention on Human Rights "*as a result of inadequate reasoning of the Judgment issued regarding the rejection of the request for protection of legality".*

Assessment of the admissibility of the Referral

17. The Court first examines whether the party has met the admissibility requirements, laid down in the Constitution, the Law on the Constitutional Court and the Rules of Procedure

18. Regarding this, 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".*

19. In this regard, in assessing the formal requirements of admissibility, the Court finds that the Referral has been filed by an authorized party, within the time limits prescribed by Article 49 of the Law on the Constitutional Court and after the exhaustion of legal remedies available

at this stage of criminal proceedings that is conducted against the Applicant, therefore the Referral is suitable for review by the Court.

20. The Court notes that the Applicant specifically challenges the Judgment PML. No 91/2013 of the Supreme Court of 21 June 2013, which rejected as unfounded the request for protection of legality and upheld the Ruling of the Court of Appeal KP/KV No. 766/2013, of 31 May 2013, on the basis of which the measure of detention on remand was imposed against the Applicant.

21. The Applicant expressly alleges that the Judgment of the Supreme Court has violated Article 53 of the Constitution and Article 5.1 and 5.3 of the European Convention on Human Rights.

The content of the constitutional provision and of the challenged provisions of the European Convention on Human Rights

22. a) the Constitution of the Republic of Kosovo

Article 53 [Interpretation of Human Rights Provisions]

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

b) European Convention on the Human Rights

Article 5 .1– Right to liberty and security

1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

a. the lawful detention of a person after conviction by a competent court;

b. the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfillment of any obligation prescribed by law;

c. the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority

on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
d. the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;

e. the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;

f. the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition;

[.....]

5.3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

23. In response to the allegations made by the Applicant of the violation of above quoted provisions ,the Court emphasizes:

The Constitution of the Republic of Kosovo provides that:

Article 102 [General Principles of the Judicial System]

1. Judicial power in the Republic of Kosovo is exercised by the courts
[.....]
3. Courts shall adjudicate based on the Constitution and the law.

Article 103 [Organization and Jurisdiction of Courts]

2. The Supreme Court of Kosovo is the highest judicial authority

Criminal Procedure Code of Kosovo provides that:

Article 432 -Grounds for filing a request for protection of legality

1. A request for protection of legality against a final judicial decision or against judicial proceedings which preceded the rendering of that decision may, after the proceedings have been completed in a final form, be filed in the following instances:

1.1. on the ground of a violation of the criminal law;

1.2. on the ground of a substantial violation of the provisions of criminal procedure provided for in Article 384, paragraph 1, of the present Code; or

1.3. on the ground of another violation of the provisions of criminal procedure if such violation affected the lawfulness of a judicial decision.

2. A request for protection of legality may not be filed on the ground of an erroneous or incomplete determination of the factual situation, nor against a decision of the Supreme Court of Kosovo in which a request for the protection of legality was decided upon.

3. Notwithstanding the provisions under paragraph 1 of the present Article, the Chief State Prosecutor may file a request for protection of legality on the grounds of any violation of law.

4. Notwithstanding the provisions under paragraph 1 of the present Article, a request for protection of legality may be filed during criminal proceedings which have not been completed in a final form only against final decisions ordering or extending detention on remand.

24. Article 435 of the Criminal Procedure Code of Kosovo (No. 04/L-123) in paragraph 1 has provided: *A request for protection of legality shall be considered by the Supreme Court of Kosovo in a session of the panel."*

25. Taking into consideration the allegations of constitutional violations as presented by the Applicant and based on the above quoted legal provisions the Constitutional Court concudes:

As to the allegation of the violation of Article53 of the Constitution:

26. The interpretation of the constitutionally guaranteed human rights under the Constitution should always be done consistently with the decisions of the European Court of Human Rights (ECtHR) and this constitutional obligation concerns all institutions of the Republic of Kosovo when deciding on matters falling within their jurisdiction and concerning human rights.

27. The Applicant in his Referral has emphasized the violation of this constitutional provision but the Court notes that he did not present facts related to this violation. Emphasizing Article 53 without providing concrete facts as to the type of violation, possible extent of the violation, consequences caused by the violation, cannot, in itself, constitute a violation or diminishing of a right guaranteed under the Constitution or non-compliance with ECHR case law.

28. Furthermore, the Constitutional Court cannot find a violation of Article 53 of the Constitution when the Supreme Court issued its decision, which is the act that has been explicitly challenged by the Applicant, also due to the fact that the Applicant in his request for protection of legality never raised a violation of human rights as guaranteed under the Constitution.

29. The applicant based his request for protection of legality on a violation of Article 103.2 of the Constitution which establishes the legal basis for decision making of the courts in Kosovo and on a violation of provisions of the Criminal Procedure Code, which in fact are legality issues and not constitutional issues.

30. Nevertheless, the Court notes that if the proceedings are viewed in their entirety, the courts, and in particular the first instance court, to a considerable extent refer to the case law of the ECHR, (for example ”Punzelt v Czech Republic”, ,,Stogmuller v Austria”, etc.) therefore under such circumstances it cannot be concluded that there has been a violation of Article 53 of the Constitution.

As to Article 5.1 and 5.3 of ECHR

31. Also for the alleged violations of Article 5.1 and 5.3 of the European Convention on Human Rights which pursuant to Article 22 of the Constitution of Kosovo is directly applicable in the Republic of Kosovo, the Applicant does not provide facts with regard to the legal basis of the violation, incompatibility of the Judgment with the provisions of the Convention or convincing legal arguments for the arbitrariness of this Judgment.

32. The Applicant has emphasized that according to ECHR case law, decisions of the courts must be reasoned and they must address the issues raised by complainants and for this very reason he alleges that the Judgment of the Supreme Court has violated Applicant's human rights.

33. The Court on this occasion recalls that the request for protection of legality pursuant to the Criminal Procedure Code *"may not be filed on the ground of an erroneous or incomplete determination of the factual situation*" and whether the measure of arrest or detention on remand was imposed in accordance with the law it depends on the fulfillment of the conditions foreseen by the law and the complete and correct determination of the factual situation which is the duty of the regulars courts.

34. However the Applicant has not challenged these two decisions before the Constitutional Court and furthermore he has not submitted together with his Referral the Ruling of the Court of Appeal by which detention on remand was ordered and wherein the reasons for this Ruling were given. Onthe other hand, the Supreme Court in its Judgment, concluded that the reasoning in the Ruling of the Court of Appeal was clear and entirely in accordance with the law.

35. By failing to attach the Ruling of the Court of Appeal, the Applicant has not sufficiently substantiated his allegation of a constitutional violation.

36. In the reasoning of its Judgment, the Supreme Court stated, *inter alia* :*"The Supreme Court finds that the challenged Ruling of the Court of Appeals in general provides sufficient explanations on all material facts. The Court of Appeals proved in detail the grounded suspicion against the accused when it explicitly referred to the findings of the Basic Court in relation to this matter. The Court of Appeals has also explained completely and in detail why the detention on remand is the only possible measure in the current situation.*

37. Therefore, the Supreme Court finds that all the conditions pursuant to Article 187 of the Procedure Code have been completely met by the Court of Appeals in its reasoning. Finally, the Supreme Court finds that the Ruling has been compiled in full accordance with Article 370 and that there are no procedural violations in the challenged Ruling against any other Article of the Criminal Procedure Code."

37. Furthermore, the Supreme Court added that: "*The law does not define the use of any ordinary legal remedy against the Rulings of the Court of Appeals. The Ruling is considered final, against which if it is related to the imposing of detention on remand, a request for the protection of the legality may be submitted pursuant to Article 432, paragraph 4 of the CPC. Therefore, the Supreme Court finds that there has been no procedural violation in relation to this issue.*"

38. In relation to all the allegations made by the Applicant with regard to the Judgment of the Supreme Court of Kosovo, the Court considers that: "the Constitutional Court is not a fact finding court and on this occasion it wishes to reiterate that the complete and correct determination of the factual situation is within the full jurisdiction of the regular courts. In the concrete case the factual circumstances weredetermined by the Court of Appeal in its ruling KP/KV No766/2013 of 31 May 2013 issued upon appeal filed by the Prosecutor in the case, and by the Supreme Court in its Judgment PML. No. 91/2013 of 21 June 2013. The role of the Constitutional Court is only to ensure compliance with the rights guaranteed by the Constitution and therefore it cannot act as "a fourth instance court", (see, *mutatis mutandis,* i.a., Akdivar v. Turkey, 16 September 1996, R.J.D, 1996-IV, para. 65).

39. The Court further considers that in order to declare a Judgment or a Ruling by a public authority incompatible with Constitution, the Applicant should prove *prima facie* before the Constitutional Court that *"the decision of the public authority as such will be an indicator of the violation of the requirement for a fair trial, and the unreasonableness of that decision is so striking that the decision can be regarded as grossly arbitrary*" (see ECHR, Khamidov v. Russia,no. 72118/01, Judgment of 15 November 2007, § 175).

40. The Constitutional Court did not find elements of arbitrariness or of the alleged violation of human rights in the Judgment of the Supreme Court PML. No. 91/2013, of 21 June 2013, as alleged by the Applicant.

41. In these circumstances, the Applicant has not sufficiently substantiated his claim, consequently, the Court, pursuant to Rule 36 paragraph 2 item c and d, finds that it must reject the Referral as manifestly ill-founded and

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113 7 of the Constitution, Article 48 of the Law on Court and Rule 36 (1.c) and Rule 56 (2) of the Rules of Procedure, on 16 December 2013 , unanimously

DECIDES

I. TO REJECT the Referral as Inadmissible

II. TO NOTIFY the Parties of this Decision;

III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20 (4) of the Law;

IV. TO DECLARE this Decision effective immediately.

Judge Rapporteur
Snezhana Botusharova

President of the Constitutional Court
Prof. Dr. Enver Hasani

KI 88/13, Nazmi Mustafi, date 24 December 2013 -Constitutional review of the decision of the Kosovo Court of Appeals K.P./K.V. no-186/2013 of 01 June 2013.

Case KI-88/13, Resolution on Inadmissibility of 22 October 2013.

Keywords: Individual referral, manifestly ill-founded, criminal procedure, bail, detention.

The Applicant has filed his referral in compliance with Article 113.7 of the Constitution of Kosovo, challenging the decision of the Kosovo Court of Appeals K.P./K.V. no-186/2013 of 01 June 2013, by which the Court amended the measure of securing presence of the defendant in criminal procedure, by removing the measure of bail in the amount of 25000 Euros, and imposing detention as measure of securing presence of defendant in criminal procedure.

The Applicant alleges infringement of the Article 5 of the Convention for Protection of Human Rights and Fundamental Freedoms, violation of the Constitution of the Republic of Kosovo, violations of Articles 274, 275 paragraph 1, Article 276 and Article 277 (exceptionally paragraph 4), also in conjunction with Article 39.3 paragraph 1, Article 281, paragraph 1 and 2, and sub-paragraph 1, items (i), (ii), (iii) of the Criminal Procedure Code of Kosovo.

Deciding upon the referral of applicant Nazmi Mustafi, the Constitutional Court, upon review of proceedings, has not found that relevant proceedings were in any way unjust or arbitrary, and that rulings of regular courts were entirely reasoned. Therefore, the Court found that the referral, is manifestly ungrounded, since the facts presented fail to corroborate the allegations of violation of constitutional rights.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI88/13
Applicant
Nazmi Mustafi
Constitutional review of the Decision of the Court of Appeal of Kosovo
K.P./K.V. No-186/2013, of01 June 2013

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Enver Hasani, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Kadri Kryeziu, Judge and
Arta Rama-Hajrizi, Judge.

Applicant

1. The Applicant is Mr. Nazmi Mustafifrom Prizren.

Challenged decision

2. The Applicant challenges the Decision K.P./K.V. no. 186/2013 of the Court of Appeal of Kosovo, dated of 01 June 2013, rejecting as ungrounded his appeal.

Subject matter

3. The subject matter is the review of constitutionality of the challenged Decision on replacingbail with detention on remand, which allegedly violated the Applicant's right to liberty and security, as guaranteed by Article 29 of the Constitution of the Republic of Kosovo (hereinafter, the Constitution) and Article 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter, the European Convention).

Legal basis

4. The Referral is based on Articles 113 (7) of the Constitution, on Articles 22 and 47 of the Law no. 03/L-121 on the Constitutional Court of the Republic of Kosovo dated 15 January 2009 (hereinafter, the Law) and Rule 29 of the Rules of Procedure of the Constitutional Court (hereinafter, the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 19 June 2013, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).

6. On 24 June 2003, the President appointed Judge Almiro Rodriguesas Judge Rapporteur and the Review Panel composed of judgesRobert Carolan (Presiding), Altay Suroy and Enver Hasani.

7. On 22 October 2013, the Review Panel considered the report of the Judge Rapporteur and recommended to the Court the inadmissibility of the Referral.

Summary of facts

8. On 2 April 2012, the Applicant was arrested and ordered his detention on remand, which has been reviewed and extended for different times.

9. On 3 December 2012, the main hearing before the District Court in Peja started.

10. On 14 February 2013, conditional release of the Applicant was allowed under the condition of bail and delivery of his travel documents.

11. On 23 May 2013, after the Applicant having been sentenced with the penalty of imprisonment, the District Court in Peja (P.no.346/12) imposed the detention on remand against the Applicant until the Judgment becomes final.

12. The District Court reasoned its decision as follows:

> *(...) the defendant Nazmi Mustafi is now in a completely different situation. He is punished for the serious criminal offences and he has been imposed with a unique punishment of 5 years imprisonment. He should also pay a hefty fine which could be transformed in imprisonment time if not paid. He is also forbidden*

> *to hold public office for a period of 3 years after his release. In the end being that he is punished his employment at the SPRK will now be terminated. The panel considers that all these circumstances combined together give us an image of the defendant now stripped and this on the other hand presents substantial danger of flight.*
> *(...)*
> *The panel must also prove whether alternative measures would not be sufficient to obtain the presence of the defendant in Kosovo until the moment the Judgment becomes final. The panel considers that the new position of the defendant has now changed dramatically thus any other measure but detention on remand would not be appropriate because such measures would provide the opportunity of flight and would be insufficient to obtain the presence of the defendant in Kosovo in order to submit an appeal and eliminate the abovementioned dangers.*

13. The Applicant filed an appeal against the Judgment, mainly because "*the decision that imposed the detention on remand against Nazmi MUSTAFIT contains logical inconsistencies and contradictions in its reasoning, and that there are no conditions that show there is danger of flight, on the contrary, there are specific circumstances that oppose that risk and that the previous Ruling on bail is still in force*".

14. On 1 June 2013, the Court of Appeal of Kosovo (K.P./K.V. no. 186/2013) rejected as ungrounded the Applicant's appeal.

Applicant's allegations

15. The Applicant claims that the Decision of the Court of Appeal of Kosovo (K.P./K.V. no. 186/2013) of 01 June 2013, resulted in three violations:

> *"Violation of Article 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms, Violation of the Constitution of the Republic of Kosovo, Violation of provisions of Articles 274, 275 paragraph 1, Articles 276 and 277 (particularly important violation of paragraph 4), in conjunction with Article 393, paragraph 1, Article 281, paragraph 1 and 2, subparagraph 1, items (i), (ii), (iii), of the Criminal Procedure Code of Kosovo".*

16. The Applicant specifically argues that

> *"The Rulings of the Basic Court in Peja and the Appeal Court of Kosovo are legally not grounded without the legal reasoning on the enacting clause, they are compiled based on assumptions, copy of one another, politically motivated, discriminatory, motivated to protect the criminals, with millions of Euros abused, aiming to prevent the disclosure of truth, of those that I have investigated and prosecuted, and I am a victim of dirty work and failure of justice in Kosovo".*

Assessment of admissibility of the Referral

17. The Applicant claims mainly that Article 5 (Right to liberty and security) of the ECHRand a number of Articles of the Criminal Procedure Code have been violated.

18. First of all, the Court examines whether the Applicant has fulfilled the Referral admissibility requirements which are laid down in the Constitution and further specified in the Law on the Constitutional Court and the Rules of Procedure.

19. In that respect, Article 113 of the Constitution establishes:

> 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. In addition, Article 49 of the Law provides:

> *The referral should be submitted within a period of four (4) months. The deadline shall be counted from the day upon which the claimant has been served with a court decision.*

21. In the instant case, the Court notes that the Applicant has sought recourse to protect his rights beforethe Court of Appeal of Kosovo. The Court also notes that the Judgment of the Court of Appeal is dated 23 May 2013 and the Applicant filed his Referral with the Court on 19 June 2013.

22. Thus, the Court considers that the Applicant is an authorized party, has exhausted all legal remedies provided by law and submitted the Referral within the four months time limit.

23. However, the Court also must take into account Article 48 of the Law which provides:

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

24. Furthermore, Rule 36 of the Rules of Procedure foresees:

> *(1) The Court may review referrals only if: (c) The referral is not manifestly ill- founded.*
>
> *(2) The Court shall reject a Referral as being manifestly ill-founded when it is satisfied that:*
>
> *[...], or*
>
> *(b) the presented facts do not in any way justify the allegation of a violation of the constitutional rights, or*
>
> *[...], or*
>
> *(d) the Applicant does not sufficiently substantiate his claim.*

25. The Applicant alleges in general that the decision of the Appeal Court is *legally not grounded (...) compiled based on assumptions, (...), politically motivated* (...). In fact, the Applicant does not submit an argument on the constitutionality grounds; he only disagrees with the decision of the Appeal Court and refers to a *"Violation of Article 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms"* and a *"Violation of the Constitution of the Republic of Kosovo"*.

26. 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 regular courts, unless and in so far as they may have infringed rights and freedoms protected by the Constitution (constitutionality).

27. The Court notes that Court of Appeal rejected as ungrounded the Applicant's appeal, with the reasoning that follows.

> *'The court agrees with the finding of the first instance court that the only relevant circumstance for the determination of restrictive measures against the defendant is the danger of flight, whereas the other conditions pursuant to Article 281, paragraph 1, sub-paragraph 2, items ii) and iii) of the CPCK (reasons to believe that the defendant will obstruct the progress of the criminal proceedings and the risk of repeating the criminal offense) do not further exist since the Prosecutor has finished presenting the evidences."*
>
> *"The first instance court correctly gave the main weight to the change of circumstances caused by the conviction of all defendants and expected severe punishments if the Judgment becomes final. With this, the previously confirmed risk has increased considerably*."
>
> *"Regarding Nazmi MUSTAFI* [the Applicant]*, in particular his access to sufficient financial resources and his contacts abroad are main factors that present danger of flight. His arguments that he should take care of his sick family members and that he is the only provider for the family were not convincing since in case the imprisonment punishment against him becomes final, he would be separated from his family while serving the sentence. In this situation he would no longer be able to provide for his family either."*
>
> *"The fact that he has responded to all the invitations and has participated in all hearing sessions while he was free on bail was taken into consideration to his benefit by the first instance court. However, with the last conviction a new situation has been created that leads to the conclusion that the motivation of the defendant to escape from justice cannot be sufficiently controlled by bail alone."*
>
> *"The allegation that the ruling on bail is still in force is not grounded. It is clear that the new ruling after rendering the Judgment pursuant to Article 393, paragraph 3 in conjunction with Article 281, paragraph 1 of the Provisional Criminal Procedure Code of Kosovo (PCPCK), exceeds and substitutes the previous Ruling on bail."*
> *(...)*

"Considering the danger of flight, the court sees no alternative measure or any combination that would be sufficient to eliminate the danger."

28. The Court notes that the Court of Appeal "*gave the main weight to the change of circumstances caused by the conviction"* of the Applicant, considered that supervening circumstance leadsto *"the conclusion that the motivation of the defendant to escape from justice cannot be sufficiently controlled by bail alone"* and that the decision on detention *"exceeds and substitutes the previous Ruling on bail"*.

29. The Court considers that the justification provided by the Decision of the Court of Appeal, in answering to the allegations made by the Applicant, is clear and well reasoned. In fact, the Court of Appeal fully answered the allegation of the Applicant on that the *imposed detention on remand (...) contains logical inconsistencies and contradictions in its reasoning*, and on that there is no danger of flight.

30. The Court further considers that the Applicant has not substantiated and proved that his supervening conviction does not constitute a new circumstance with relevant weight to change the factual situation under which bail alone is not enough to prevent the risk of flight.

31. Thus, the allegation that the Judgment of the Court of Appeal has infringed his rights and freedoms protected by the Constitution and Article 5 of the ECHR is ungrounded. (See Vanek v. Slovak Republic, ECtHR Decision as to the Admissibility of Application no. 53363/99 of 31 May 2005).

32. The Court reminds that the Constitutional Court is not a court of appeal, when considering decisions rendered 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 [ECtHR] 1999-I).

33. Therefore, 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_17064/06 of 30 June 2009).

34. In sum, the Referral is manifestly ill-founded and as such it is inadmissible.

FOR THESE REASONS

The Constitutional Court of Kosovo, pursuant to Article 113 (7) of the Constitution, Article 48 of the Law and Rule 36 (1) and (2) b) and d) of the Rules of Procedure, at the session held on 22 October 2013, by majority

DECIDED

I. TO REJECT the Referral as Inadmissible;

II. TO NOTIFY this Decision to the Parties;

III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20 (4) of the Law on the Constitutional Court;

IV. TO DECLARE this Decision effective immediately.

Judge Rapporteur
Almiro Rodrigues

President of the Constitutional Court
Prof. Dr. Enver Hasani

KI 101/13, Veton Berisha, date 24 December 2013 - Constitutional review of the Judgment of the Special Chamber of the Supreme Court of Kosovo ASC-09-0005, ASC-09-0007, ASC-09-0008, of 9 August 2012.

Case KI 101/13, Resolution on Inadmissibility of 24 December.

Keywords: Individual Referral, manifestly ill-founded, Resolution on Inadmissibility.

In his Referral submitted on 7 July 2013, the Applicant requests constitutional review of the challenged decision by which the Applicant was allegedly violated the right to fair and impartial trial, guaranteed by Article 31 of the Constitution of the Republic of Kosovo (hereinafter: Constitution) as well as Article 6 of the European Convention on Protection of Human Rights and Freedoms (hereinafter: European Convention).

The Court finds that the Applicant has not proved his allegation on constitutional basis and he has not provided evidence that his fundamental rights and freedoms were violated by the Special Chamber of the Supreme Court.

RESOLUTION ON INADMISSIBILITY
In
Case No. KI 101/13
Applicant
Veton Berisha
Constitutional review of the Decision ASC-10-0038 of the Special Chamber of the Supreme Court, of 14 May 2013

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

Composed of

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

The Applicant

1. The Referral was submitted by Mr. Veton Berisha, with residence in Prishtina, who is the owner and represents the Construction Company "Exterier" (hereinafter, the Applicant).

Challenged Decision

2. The Applicant challenges the Decision ASC-10-0038 of the Special Chamber of Supreme Court, of 14 May 2013.

Subject matter

3. The subject matter is the constitutional review of the challenged Decision, which allegedly violated the Applicant's right to fair trial as guaranteed by Article 31 of the Constitution of the Republic of Kosovo (hereinafter, the Constitution), as well as Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter, the European Convention).

Legal basis

4. The Referral is based on Article 113 (7) and Article 21 (4) 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, the Law) and Rules 29 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 July 2013, the Applicant submitted his Referral to the Court.

6. On 5 August 2013, the President appointed Judge Almiro Rodrigues as Judge Rapporteur and the Review Panel composed of judges Altay Suroy (Presiding), Kadri Kryeziu and Arta Rama-Hajrizi.

7. On 16 September 2013, the Court notified the Special Chamber of the Supreme Court of Kosovo on registration of the Referral.

8. On 16 September 2013, the Court requested from the Applicant to submit the power of attorney for representing the Company „Exterier".

9. On 18 September 2013, the Applicant submitted to the Court "Information About Business", indicating that the Applicant is the owner of the Construction Company „Exterier".

10. On 18 October 2013, 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 30 January 2001, the Construction Company „Exterier" from Prishtina concluded a contract with Prishtina Airport on performance of construction works for building a residential building in Prishtina.

12. On 26 April 2005, the Construction Company „Exterier" requested to the Special Chamber of the Supreme Court to render a decision on some additional expenses, which were made for the construction of the abovementioned building.

13. On 14 February 2007, the Special Chamber of the Supreme Court (Judgment SCC-05-0132) rejected the request as ungrounded. Item 3 of the enacting clause of the Judgment states that "*The Judgment is final, binding and non-appealable".*

14. On 7 May 2007, the Applicant filed with the Public Prosecution Office of Kosovo *"the request for protection of legality to the Supreme Court of Kosovo by the Public Prosecutor of Kosovo, against the Judgment of the Special Chamber of the Supreme Court of Kosovo SCC-05-0132 of 14 February 2007"*, because of "*Erroneous application of substantive law- Article 356 of LCP"*.

15. On 9 October 2007, the Public Prosecution Office in Kosovo stated that *"in our request for submitting the case file from Special Chamber of the Supreme Court of Kosovo, for examination of the latter, in relation to your initiative for filing the request for protection legality against the abovementioned judgment in request, this file was not forwarded to us, with a justification that every judgment, which the Special Chamber brings is final, therefore such requests should be rejected.*"

16. On 30 June 2009, 22 February 2010 and 29 March 2010, the Applicant requested the Special Chamber to reconsider the Judgment SCC-05-0132, of 14 February 2007, due to the adoption of UNMIK Regulation 2004/04 and UNMIK Administrative Instruction 2008/06 of 11 June 2008, which allows the right to appeal to the Special Chamber of the Supreme Court.

17. On 14 May 2013, the Appellate Panel of the Special Chamber of the Supreme Court (Decision ASC-10-0038) rejected the request as inadmissible reasoning that the Applicant*"has not used the legal time limit to submit request for repetition of the procedure, which is 30 days, therefore the request is rejected as inadmissible"*.

Applicant's allegations

18. The Applicant alleges that the challenged Decision of the Appellate Panel of the Special Chamber violated his rights protected by the Constitution, namely Article 31 (Right to Fair and Impartial Trial), Article 53 (Interpretation of Human Rights Provisions) as well as Article 6 of the European Convention.

19. The Applicant requests from the Constitutional Court to *"quash the decision of the Special Chamber of the Supreme Court ASC- 10—0038 of 14 May 2013 and enable retrial of the case in the Special Chamber of the Supreme Court"*.

Admissibility of the Referral

20. The Court examines whether the Applicant has met the admissibility requirements laid down in the Constitution, the Law and the Rules of Procedure.

21. In that respect, the Court refers to Article 113 of the Constitution, which establishes:

> *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.*

22. The Court also refers to Article 48 of the Law which provides:

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

23. The Court also takes into account the 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.*

24. The Court notes that "erroneous application of substantive law- Article 356 of LCP" was the main allegation made by the Applicant in his request for protection of legality. The Applicant alleges for the first time before the Constitutional Court that the Decision of the Appellate Panel of the Special Chamber violated his rights protected by the Constitution, namely Article 31 (Right to Fair and Impartial Trial), Article 53 (Interpretation of Human Rights Provisions) as well as Article 6 of the European Convention.

25. However, the Court notes that, further to mentioning the constitutional legal provisions, the Applicant does not explain how and why the Decision of the Appellate Panel of the Special Chamber, on concluding

that *"the Judgment is final, binding and non-appealable",* has violated his rights to fair and impartial trial.

26. In fact, the Court notes that the Appellate Panel of the Special Chamber concluded that "the Judgment is final, binding and non-appealable", explained that the Applicant "has not used the legal time limit to submit request for repetition of the procedure" and the State Prosecutor also stated that "*every judgment, which the Special Chamber brings is final*"

27. The Court further considers that the Decision SCC-05-0132, of 14 February 2007, the Decision ASC-10-0038 of 14 May 2013 of the Special Chamber and the notification of the State Prosecutor are well justified and reasoned in answering to the claim of the Applicant. The mere reference to a violation of his right to a fair and impartial trial is not enough to substantiate an allegation on the ground of constitutionality.

28. Thus, the Constitutional Court cannot 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*, Garcia Ruiz v. Spain [GC], no. 30544/96, para. 28, European Court of Human Rights [ECHR] 1999-I).

29. The Constitutional 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 has had a fair trial (see, among other, the Report of the European Commission on Human Rights in the case Edwards v. United Kingdom App. No 13071/87, adopted on 10 July 1991)

30. Therefore, the Constitutional Court considers that relevant proceedings were fair and justified (see *mutatis mutandis*, Shub v. Lithuania, ECHR Decision on Admissibility of Application No. 17064/06 of 30 June 2009).

31. In sum, the Applicant has not substantiated an allegation on a constitutional basis and has not proved that any of his fundamental rights and freedoms were violated by the Special Chamber of the Supreme Court.

32. It follows that the Referral is inadmissible as manifestly ill-founded.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113 (1) and (7) of the Constitution, Article 48 of the Law and the Rule 36 (1) c) of the Rules of Procedure, on 18 October 2013, unanimously

DECIDES

I. TO REJECT the Referral as Inadmissible;

II. TO NOTIFY this Decision to the Parties;

III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20 (4) of the Law;

IV. TO DECARE this Decision effective immediately

Judge Rapporteur
Almiro Rodrigues

President of the Constitutional Court
Prof. Dr. Enver Hasani

KI 119/13, Milija Mirković, date 26 December 2013- Constitutional review of the Decision of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo, ASC-11-0003-A0001, of 16 May 2013

Case KI-119/13, Resolution on Inadmissibility of 21 October 2013.

Keywords: Individual referral, manifestly ill-founded, right to fair and impartial trial, protection of property.

The Applicant has filed a referral in compliance with Article 113.7 of the Constitution of Kosovo, demanding constitutional review of the decision of the Appeal Panel of the Special Chamber of the Supreme Court of Kosovo, ASC-11-0003-A0001 of 16 May 2013, which concluded the immoveable property dispute between the Applicant and a number of legal persons, in relation to immoveable property, cadastral parcels no. 622, surface area of 0.87.83 ha and no. 1387, surface area of 0.93.31 ha, registered in the possession list no. 162, taken from the legal predecessors of the Applicant by decision on expropriation of land on 21 December 1964, based on land maximum.

The Applicant alleged that the above-mentioned decision of the Special Chamber of the Supreme Court of Kosovo violated the principle of fair and impartial trial, guaranteed by the Constitution and international convention on human rights and freedoms, considering that the Court itself proposed the extension of claim suit to another respondent, and further rejected the claim due to lack of passive legitimacy, which means that the Court deceived the party, and as a result, rejected the claim suit, thereby violating the principle of fair and impartial trial.

Deciding on the referral of Applicant MilijaMirković, the Constitutional Court, upon review of proceedings in entirety, found that relevant proceedings before regular courts were in no way unjust or arbitrary, and that the rulings of regular courts were entirely reasoned. Thus, the Court concluded that the referral is manifestly ungrounded, since the facts presented fail to corroborate the allegations of violation of constitutional rights.

RESOLUTION ON INADMISSIBILITY
in
Case no. KI119/13
Applicant
MilijaMirković
Constitutional review of the Decision of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo, ASC-11-0003-A0001, of 16 May 2013

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

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

Applicant

1. The Applicant is Mr. Milija Mirković from village Brnica, Municipality of Prishtina (hereinafter: the Applicant), represented by Mr. Shefki Sylaj, a practicing lawyer from Prishtina.

Challenged decision

2. The challenged decision is the Decision of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo, ASC-11-0003-A0001, of 16 May 2013, which upheld the Judgment of the Special Chamber of the Supreme Court of Kosovo SCC-09-155 of 16 December 2010. That Decision, according to Applicant's allegations, has violated Article 46 of the Constitution of the Republic of Kosovo.

Subject matter

3. The subject matter is constitutional review of the Decision of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo, ASC-11-0003-A0001, of 16 May 2013 which ended a legal property

dispute between the Applicant and several legal persons regarding an immovable property, that is cadastral plots No. 622, with surface area of 0.87.83 ha and No. 1387, with surface area of 0.93.31 ha, registered under possession list No. 162, which were taken from Applicant's legal predecessors by Decision on taking of land on 21 December 1964 on the basis of the land maximum.

Legal basis

4. The Referral is based on Article 113.7 of the Constitution, Articles 20 and 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 (hereinafter: the Law) and Rule 56 paragraph 2 of the Rules of Procedure (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 5 August 2013, the Applicant filed the Referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. The President, by Decision No. GJR. 119/13 of 30 August 2013, appointed Judge Arta Rama-Hajrizias Judge Rapporteur. On the same day, the President by Decision No. KSH. 119/13 appointed the Review Panel composed of Judges: Altay Suroy (Presiding), Snezhana Botusharova and Kadri Kryeziu.

7. On 4 October 2013, the Court notified the Applicant and the Supreme Court of the registration of the Referral.

8. On 21 October 2013, after having considered the report of the Judge Rapporteur Arta Rama-Hajrizi, the Review Panel composed of Judges: Altay Suroy (Presiding), Snezhana Botusharova and Kadri Kryeziu made a recommendation to the full Court on the inadmissibility of the Referral.

Summary of the facts

9. On 21 December 1964, by Decision on taking of land on the basis of the land maximum, cadastral plots No. 622, with surface area of 0.87.83 ha and No. 1387, with surface area of 0.93.31 ha, registered under possession list No. 162, were taken from Stanoje Mirković, the legal predecessor of the Applicant.

10. On 10 August 2009, pursuant to 1991 Law on Return of Agriculture Land, the Applicant filed a lawsuit with the Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency Related Matters against the respondent AIC "Kosova Export Import" with office in Fushë Kosovë.

11. The Applicant in his claim requested the recognition of the right of ownership over the immovable property, registered as cadastral plot No. 622, at the place called „Deja", with surface area of 0.87.28 ha and cadastral plot No. 1387, at the place called „Pojatište Lazovi", with surface area of 0.97.31 ha and the registration of the cadastral plots in his name in the cadastral registers of the Cadastral Office of the Municipality of Prishtina.

12. The Special Chamber of the Supreme Court of Kosovo, by Decision SCC-09-0155, of 1 April 2010, proposed extension of the claim also against the Agricultural Cooperative SOE "Devet Jugovića" in Bardhosh.

13. The Applicant acting as per the court's proposal extended the claim also against the Agricultural Cooperative SOE "Devet Jugovića" in Bardhosh.

14. The extension of the claim was challenged by the representative of the Privatization Agency of Kosovo as the administrator of the socially-owned enterprise (SOE) „AIC Kosova Export" inFushë Kosovë and by the representative of the Agricultural Cooperative.

15. By Judgment of the Special Chamber of the Supreme Court of Kosovo SCC-09-155, of 16 December 2010, Applicant's claim was rejected due to lack of passive legitimacy of the first respondent, the socially owned enterprise (SOE) "AIC Kosova Export" in Fushë Kosovë, at the same the Applicant's request to extend the lawsuit against the AC „Devet Jugovića" was rejected because neither the Privatization Agency of Kosovo as a *de facto* manager of AIC „Kosova Export" (main respondent) nor SOE „Devet Jugovića" have given consent in relation to the request for extension of the lawsuit against the new respondent - SOE „Devet Jugovića".

16. The Applicant filed an appeal against the Judgment of the first instance court, SCC-09-155, of 16 December 2010, to the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo. However, the Appellate Panel, by Judgment ASC-11-003-A 001, of 16 May 2013, rejected the appeal for the same reasons, due to lack of passive

legitimacy, thereby referring to Articles 192 and 196 of the Law on Contested Procedure, stating that:

> *"…Articles 192 and 196 of the Law on Contested Procedure are so clear that there is no room for interpretation. The consent of the new respondent is obligatory in order for the claim to be extended against him/her. This does not depend on the Court, as the representative of the claimant said. Furthermore, in case that the respondent has already entered into dispute on the principal matter, the consent of the first/main respondent is also obligatory."*

Applicant's allegations

17. The Applicant considers that *"…for the sake of rationality of the proceedings and just adjudication of the dispute, the extension of the claim should not have been rejected, considering that the filing of a new lawsuit only against the socially owned enterprise "Devet Jugovića" requires expenses and additional time until such lawsuit is adjudicated, and it is very well known the delay of proceedings in the courts."*

18. The Applicant further alleges "*…that in the abovementioned proceedings before the Special Chamber of the Supreme Court of Kosovo the principle of the fair and impartial trial which is guaranteed by the Constitution and the international convention on human rights and freedoms has been violated, taking into consideration that the Court itself proposed extension of the claim against the second respondent, and then it rejected the lawsuit due to lack of passive legitimacy which means that the Court has misled the party, and as a result of that, it rejected the claim, therefore the principle of the fair and impartial trial has been violated.*"

19. The Applicant underlines that in this manner Article 46 of Constitution of the Republic of Kosovo which guarantees the right to property has also been violated:

> *"The claimant's right to property has been violated in an arbitrary manner when his property was taken on the basis of the land maximum and it was transferred to the Fund of Agricultural Land AIC „Kosova Export", in Fushë Kosovë. The return of this property is guaranteed by 1991 Law on Return of the Land. "*

20. The Applicant addresses the Constitutional Court with the following request:

> *"We request that the Judgment of the Special Chamber of the Supreme Court of Kosovo, SCC-09-0155, of 10.09.2009 and the Decision of the Appellate Panel of SCSCK, ASC-11-0003-A0001, of 16.05.2013, be declared null and void and the case be remanded for reconsideration."*

Assessment of the admissibility of Referral

21. The Applicant alleges that Articles 31 (Right to Fair and Impartial Trial) and 46 (Protection of Property) of the Constitution are the basis for his Referral.

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

23. Article 48 of the Law on the Constitutional Court of the Republic of Kosovo provides:

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

24. Under the Constitution, the Constitutional Court is not a court of appeals when reviewing decisions taken by the regular courts. The role of the regular courts is to interpret the law 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 of Human Rights [ECtHR] 1999-I).

25. The Applicant has not submitted any *prima facie* evidence indicating a violation of his constitutional rights (see Vanek vs. Slovak Republic, ECHR decision as to the admissibility, Application no. 53363/99 of 31 May 2005). The Applicant does not state in what way Articles 31 and 46 of the Constitution of the Republic of Kosovo support his Referral, as prescribed by Article 113.7 of the Constitution and Article 48 of the Law.

26. The Applicant alleges that his rights (Protection of Property) have been violated due to erroneous application of the law by the Special Chamber of the Supreme Court, without specifying in what manner that Judgment has violated the Applicant's constitutional rights.

27. In the present case, the Applicant has been provided opportunities to present his case and to challenge the interpretation of the law, which he considers as being incorrect, before the Special Chamber of the Supreme Court of Kosovo and the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo. After having reviewed 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).

28. Finally, the admissibility requirements have not been met in this Referral. The Applicant has failed to point out and substantiate the allegation that her constitutional rights and freedoms have been violated by the challenged decision.

29. Consequently, the Referral is manifestly ill-founded in accordance with 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, pursuant to Article 113.7 of the Constitution, Articles 20 and 48 of the Law and Rule 36 (2b) of the Rules of Procedure, in its session held on 21 October 2013, unanimously,

DECIDES

I. TO REJECT the Referral as Inadmissible;

II. This Decision shall be notified to the Parties and it 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
Arta Rama-Hajrizi

President of the Constitutional Court
Prof. Dr. Enver Hasani

KI 42/13, Shahire Beqiraj, date 26 December 2013- Constitutional review of the Judgment of the Supreme Court of Kosovo, Rev. no. 170/2010, of 7 February 2013

Case KI 42/13, Resolution on Inadmissibility of 16 December 2013.

Keywords: Individual Referral, manifestly ill-founded, Resolution on Inadmissibility.

The Applicant alleges that the Judgment of the Supreme Court Rev.no.170/2010, of 7 February 2013 has violated Article 22 (Direct Applicability of International Agreements and Instruments) and Article 31 (Right to Fair and Impartial Trial) of the Constitution of the Republic of Kosovo due to a disagreement over the right to property between the Applicant and A.B with regardto the determination of the right to the property registered as cadastral plots no. 510/2, 870/1 and 892/2 under possession list no. 213 CZ in village Vrellë.

The Court finds that the facts presented by the Applicant did not justify in any way the allegation of a violation of the constitutional rights and the Applicant has not sufficiently substantiated her claims, therefore the Referral is manifestly ill-founded.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI42/13
Applicant
Shahire Beqiraj
Constitutional review of the Judgment of the Supreme Court of Kosovo, Rev. no. 170/2010, of 7 February 2013

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:
Enver Hasani, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Kadri Kryeziu, Judge and
Arta Rama-Hajrizi, Judge

Applicant

1. The Applicant is Mrs. Shahire Beqiraj from village Vrellë, Municipality of Istog.

Challenged decision

2. The Applicant challenges the Judgment of the Supreme Court of Kosovo, Rev. no. 170/2010, of 7 February 2013. The Applicant did not specify when she received it.

Subject matter

3. The subject matter is the constitutional review of the Judgment of the Supreme Court Rev. no. 170/2010, of 7 February 2013, which, according to Applicant's allegations, has violated Article 22 (Direct Applicability of International Agreements and Instruments) and Article 31 of the Constitution (Right to Fair and Impartial Trial) of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) due to a disagreement over the right to property between the Applicant and A. B. with regard to the determination of the right to the property registered as cadastral plots no. 510/2, 870/1 and 892/2 under possession list no. 213 CZ in village Vrellë.

Legal basis

4. The Referral is based on 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: the Law) and Rule 56 paragraph 2 of the Rules of Procedure.

Proceedings before the Court

5. On 20 March 2013, the Applicant filed the Referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 25 March 2013, the President, by Decision no. 42/13, appointed Judge Arta Rama-Hajrizi as the Judge Rapporteur. On the same date, the President, by Decision no. KSH. 42/13, appointed the Review Panel composed of the Judges: Altay Suroy (Presiding), Snezhana Botusharova and Kadri Kryeziu.

7. On 4 April 2013, the Court informed the Applicant and the Supreme Court of the registration of Referral.

8. On 19 June 2013, the Applicant submitted to the Court an additional document- "Minutes from questioning the injured party".

9. On 21 October 2013, the Review Panel considered the preliminary report and made a recommendation to the Court on the inadmissibility of the Referral.

Summary of the facts

10. On 26 February 1982, the Municipal Court in Istog, deciding upon the proposal of R. B. for the physical division of his property, issued Decision no. 28/82 and decided on the separation of the joint household between R. B., C. B. and Sh. B.

11. On 28 June 1988, the Municipal Court in Istog issued Decision N.no.125/88, approving the proposal for physical division of the property of R. B., thereby ¼ part of the house and the entire plot that is registered under possession list no. 213 CZ Vrellë, and ½ of the 1/10

part of the land of all the plots that are registered under possession list no. 269 CM- Vrellë belonged to the Applicant.

12. On 12 September 2008, the Municipal Court in Istog, deciding in the legal-civil dispute of the plaintiff A. B. for confirmation of ownership, issued Judgment on the basis of inheritance C. No. 41/02, determining that:

> "*A. B., on the basis of the physical separation of the joint household and the property, is the owner of the immovable property which consists of cadastral plots no. 510/2..., no. 870/1... and no. 892/4... based on possession list no. 213 CZ Vrellë*".

Further, in its reasoning, the Municipal Court in Istog stated that "*this court deemed that the plaintiff's claim is well-founded and it has been approved as such, as in the enacting clause of this judgment*.

13. On 22 April 2010, the District Court in Peja, acting upon the appeal filed by the Applicant and her sister R. Q. against Judgment C. No. 41/02 of 12 September 2008, issued Judgment Ac. No. 490/08 rejecting the Applicant's appeal as unfounded. In its reasoning, the District Court in Peja stated:

> "*... the legal stance of the first instance court is approved by the second instance court as being correct and based on Law, for the reason that the challenged judgment does not contain essential violations of the provisions of contested procedure under Article354 paragraph 2 of LCP which the second instance court examines ex officio pursuant to Article 365 paragraph 2 of LCP*".

14. On 14 June 2010, the Applicant and R. Q., through their authorized representative approached the Prosecutor of the Republic of Kosovo requesting that he/she file "a Request for Protection of the Legality" after he/she finds "*... essential violations of the provisions of the contested procedure by the second instance court under Article 194 of LCP, because it has tolerated first instance court's essential violations of the procedural provisions under Article 182 paragraph 2 item 1 of LCP...*".

15. In the case file there is no document showing whether or not the Prosecutor of the Republic of Kosovo has decided on the request for protection of the legality.

16. On 7 February 2013, the Supreme Court of Kosovo, deciding on the revision of the Applicant and her sister, by Judgment Rev. No. 170/2010 rejected the revision as unfounded. In its reasoning, the Supreme Court stated:

> *"... the lower instance courts, by correctly and completely determining the factual situation, correctly and completely applied the factual situation, correctly applied the provisions of the contested procedure and the substantive law, when they found that the claim is well-founded. The judgment of the first instance court and the challenged judgment contain sufficient reasons for the relevant facts, valid for a fair adjudication of this legal matter and they are acceptable for this court too..."*

Applicant's allegations

17. The Applicant challenges the Judgment of the Supreme Court of Kosovo Rev. no. 170/2010 of 7 February 2013, alleging a violation of Article 22 (Direct Applicability of the International Agreements and Instruments) and Article 31 of the Constitution (Right to Fair and Impartial Trial)" of the Constitution and she requests from the Constitutional Court the following:

> *"I wish that it is enabled to me to prove that the procedure before the regular courts was not conducted based on the law and the Constitution and this had an epilogue which was detrimental to me and brought unjust property benefits to my opponent".*
>
> *"Respectively, to be concluded that the court procedure in relation to me was not conducted in a way that it would ensure equality of parties to proceedings".*

Assessment of the admissibility of the Referral

18. Firstly, in order to adjudicate the Applicant's Referral, the Court needs to examine whether the Applicant has met all the admissibility requirements, laid down in the Constitution and further specified in the Law and the Rules of Procedure.

19. In this respect, Article 113, paragraph 7 of the Constitution provides:

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."

With regard to this requirement, the Court notes that the Applicant is a natural person and she is an authorized party in accordance with Article 113.7 [Jurisdiction and Authorized Parties] of the Constitution.

20. The Court should also determine whether the Applicant has exhausted all legal remedies in accordance with requirements of Article 113 (7) of the Constitution and Article 47 (2) of the Law. In the present case, the Applicant has presented facts showing that she has exhausted all legal remedies available under the applicable law.

21. The Applicant should also prove that she has complied with the requirements of Article 49 of the Law regarding the submission of the Referral within the set deadline. From the case file it can be seen that the Referral has been submitted within the four (4) month deadline, as prescribed by the Law and the Rules of Procedure.

22. With regard to the Referral, the Court also takes into account Rule 36.2 of the Rules of Procedure which provides that:

"The Court shall reject a Referral as being manifestly ill-founded when it is satisfied that:

[...], or

b) when the presented facts do not in any way justify the allegation of a violation of the constitutional rights, or

[...], or

d) when the Applicant does not sufficiently substantiate his claim."

23. In this regard, the Court reiterates that under the Constitution it is not its task to act a fourth instance court with respect to decisions taken by the regular 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, paragraph 28, European Court of Human Rights [ECtHR], 1999-I; see also Resolution on Inadmissibility in case KI70/11, Applicants Faik Hima, Magbule

Hima and Bestar Hima, Constitutional review of the Judgment of the Supreme Court, A. No. 983/08, of 7 February 2011).

24. The Constitutional Court can only consider whether the evidence has been presented in a correct 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 *inter alia* European Commission on Human Rights, Case Edwards v. United Kingdom, Application No. 13071/87, of 10 July 1991).

25. From the case file, the Court notes that the reasoning given in the Decision issued by the District Court in Peja is clear and after having reviewed all the proceedings, the Court has also found that the proceedings before the Supreme Court have not been unfair or arbitrary (See, *mutatis mutandis,* Shub v. Lithuania,no. 17064/06, ECtHR Decision as to the admissibility of the application, of 30 June 2009). Furthermore, the Judgment of the Supreme Court Rev. no. 170/2010 of 7 February 2013 is clear and well reasoned.

26. In addition, the Applicant has not submitted any *prima facie* evidence indicating a violation of her constitutionally guaranteed rights (See, Vanek v. Slovak Republic, ECtHR Decision as to the admissibility of the application No. 53363/99 of 31 May 2005). The Applicant does not present arguments as to how Articles 22 and 31 of the Constitution have been violated.

27. For all the foregoing reasons, the Court is satisfied that the facts presented by the Applicant did not justify in any way the allegation of a violation of the constitutional rights and the Applicant has not sufficiently substantiated her claims, therefore the Referral is manifestly ill-founded.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 20 of the Law and Rule 36 (2) b) and d) of the Rules of Procedure, on 21 October 2013, unanimously

DECIDES

I. TO REJECT the Referral as Inadmissible;

II. TO NOTIFY the Parties of this Decision;

III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20. 4 of the Law;

IV. This Decision is effective immediately.

Judge Rapporteur
Arta Rama-Hajrizi

President of the Constitutional Court
Prof. Dr. Enver Hasani

KI 98/13, Muharrem Alija, date 26 December 2013 - Constitutional Review of the Judgment of the Supreme Court of Kosovo, Rev. 121/2010 of 19 February 2013

Case KI98/13, Resolution on Inadmissibility, of 12 December 2013

Keywords: individual referral, protection of property, equality before the law, inadmissible referral, manifestly ill-founded

The Applicant requests constitutional review of the Judgment of the Supreme Court (Rev. No. 121/2010, of 19 February 2013), which upheld the Judgments of the Municipal Court in Gjakova and of the District Court in Peja.

The Judgment of the Municipal Court in Gjakova rejected the claim of the Applicant and other claimants for confirmation of the ownership over immovable properties of their predecessors, or exchange with other properties, or pecuniary compensation.

The Applicant alleges that the Judgment of the Supreme Court (Rev. No. 121/2010 of 19 February 2013) violates his rights guaranteed by the Constitution, respectively Article 46 [Protection of Property], Article 3 [Equality before the Law], and Article 24.1 [Equality before the Law] of the Constitution.

The Court considered that the facts presented by the Applicant do not in any way justify the allegation of a violation of the constitutional rights and the Applicant has not sufficiently substantiated his allegation.

RESOLUTION ON INADMISSIBILITY
in
Case no. KI98/13
Applicant
Muharrem Alija
Constitutional review of the Judgment of the Supreme Court of Kosovo, Rev. 121/2010 of 19 February 2013

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Enver Hasani, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Kadri Kryeziu, Judge and
Arta Rama-Hajrizi, Judge.

Applicant

1. The Applicant is Mr. Muharrem Alija (hereinafter: the Applicant), with residence in Peja.

Challenged decision

2. The Applicant challenges the Judgment of the Supreme Court of Kosovo, Rev. 121/2010, of 19 February 2013, served on the Applicant on 11 March 2013.

Subject matter

3. The subject matter is the request for constitutional review of the Judgment of the Supreme Court (Rev. No. 121/2010, of 19 February 2013), which upheld the Judgments of the Municipal Court in Gjakova and of the District Court in Peja.

4. The Judgment of the Municipal Court in Gjakova rejected the claim of the Applicant and other claimants for confirmation of the ownership over immovable properties, or exchange with other properties, or pecuniary compensation.

Legal basis

5. The Referral is based on Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), on Article 47 of the Law on Constitutional Court of the Republic of Kosovo, No. 03/L-121, of 15 January 2009 (hereinafter: the Law) and Rule 56 (2) of the Rules of Procedure of the Court (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

6. On 10 July 2013, the Applicant submitted the Referral with the Constitutional Court (hereinafter: the Court).

7. On 5 August 2013, the President of the Court based on Decision GJR.KI 98/13 appointed Judge Arta Rama-Hajrizi as Judge Rapporteur. On the same date, the President of the Court based on Decision KSH. KI 98/13 appointed the Review Panel composed of Judges: Altay Suroy (Presiding), Snezhana Botusharova and Kadri Kryeziu.

8. On 27 August 2013, the Court notified the Applicant of the registration of the Referral, and requested from Applicant to submit the return receipt, which shows the date when the Judgment of the Supreme Court of Kosovo Rev. No. 121/2010, of 19 February 2013, was served on him. On the same date, the Court notified the Supreme Court of registration of the Referral.

9. On 29 August 2013, the Applicant submitted to the Court the copy of the return receipt, which shows that the Judgment of the Supreme Court, Rev. No. 121/2010, of 19 February 2013, was served on the Applicant on 11 March 2013.

10. On 19 Novmeber 2013, the Review Panel considered the report of Judge Rapporteur and made a recommendation to the full Court on the inadmissibility of the Referral.

Summary of facts

11. The Applicant together with his brother D. A. and his niece XH. K., in their capacity of heirs of the deceased M. A. against Water Supply Company *"Hidrosistemi Radoniq"* and Irrigation Company *"Radoniq-Dukagjin"* in Gjakova had filed a claim in the Municipal Court in Gjakova, thereby claiming confirmation of co-ownership in equal shares

over immoveable property registered as parcel no. 933, surface area of 0.92.00 ha and parcel no. 933/2, surface area of 0.14.68 ha.

12. According to the Applicant, the abovementioned immoveable property was owned by his father, who used the same while he was alive, further claiming that his descendants also continued to use the property until it was flooded by the lake of Radoniqi.

13. In the claim it was further specified that the Water Supply Company *"Hidrosistemi Radoniq"* and the Irrigation Company *"Radoniq-Dukagjin"* in Gjakova [...] *"are ordered to accept this, and for these parts of parcels mentioned, to transfer the ownership to the claimants, as substitution and compensation, of another equivalent immoveable property, or pay the amount of 33.952,00 €, in compensation of value of the aforementioned parcels [...]*"

14. According to the records of the Service for Cadastre and Real Estate in Gjakova (No. 01-952-2-58, of 16 February 1995), upon changes in status of immoveable property pursuant to administrative decisions of 1933 (the year when the property was registered in the name of the Applicant's father) and further on, parcels no. 933 and 933/2, pursuant to expropriation decisions of the Secretariat of the Municipality of Gjakova of 18 December 1978 and 7 March 1978, for the development needs of the hydro-system *"Radoniq"* were transformed to socially-owned property of the Socially Owned Enterprise, Economic Water Organization *"Metohija"*, the predecessor of the Socially Owned Enterprise *"Hidrosistemi Radoniq"* in Gjakova. In 1993, parcels no. 933 and 933/2 were joined in the possession list no. 1, in the name of the Socially Owned Enterprise *"Hidrosistemi Radoniq"*.

15. On 26 May 2008, the Municipal Court in Gjakova rendered Judgment (C. no. 495/05) thereby rejecting the Applicant's claim as ungrounded in its entirety.

16. The Municipal Court in Gjakova in its Judgment (C. No. 495/05, of 26 May 2008) reasoned that the first respondent's legal predecessor, respectively the Socially Owned Enterprise of potable water "Hidrosistemi Radoniq"in Gjakova acquired the property in terms pursuant to [...] "*valid legal works, in an original acquisition manner, from the MA Gjakova. This stance of the court is made more reliable by the fact that pursuant to Article 3 para.1 of the Law on registration of real properties in social ownership (Official Gazette of SAP of Kosovo no. 37/71), a Law also applicable according to UNMIK Regulation no. 1999/24, it is provided that "registration of real property in social*

ownership shall be carried out on the basis of: an effective court decision or other administrative body decision (in the present case the administrative body) which determines that real property has passed to social ownership. […] In the present case, it is also worth mentioning the fact that the real property in question, before being flooded by waters of the Hydro-system, the legal predecessor of the first respondent, was socially-owned by the Local Community Gergoc, and an uncategorized public road, which is a separate category of ownership, upon which natural persons cannot acquire ownership, due to their public use."

17. The Municipal Court also considered that the Applicant and the claimants had not proved that they have fulfilled their obligation, respectively the payment of regular annual taxes and until the conclusion of the main hearing they had not managed to prove to the Court that they have inherited the real estate in question from their legal predecessor.

18. Against the Judgment of the Municipal Court in Gjakova (C. No. 495/05, of 26 May 2008), the Applicant, D. A. and XH. K., filed an appeal with the District Court in Peja.

19. On 10 December 2009, the District Court in Peja with Judgment (Ac. No. 223/09) rejected as ungrounded the complaint of the Applicant and other claimants, and upheld the Judgment of the Municipal Court in Gjakova (C. No. 495/05, of 26 May 2008).

20. The District Court in Peja found that the first instance court determined in a full and correct manner the factual situation, by concluding that in 1978, the real property was transformed into social ownership, pursuant to a final decision of the competent authority, thereby also finding that the substantive law was applied in a correct manner.

21. The District Court in Peja also concluded that the property restitution claim was filed for the first time by the claimants in 1996, respectively 18 years from the time real property was transformed into social ownership, and was held permanently in possession by legal persons, thereby finding that […] *"property rights of claimants' predecessors and claimants had ceased to exist pursuant to Article 45 of the Law on Basic Property Relations. This is due to the fact that pursuant to Article 226 (228) of the Law on Joint Labor, it is explicitly provided that if real property is transformed into socially owned property and in the*

present case, social property without legal basis, the restitution of the latter can be required within the time limit of 5 years, starting from the day of becoming aware and at the latest, within the time limit of 10 years".

22. Against the Judgment of the District Court (Ac. No. 223/09 of 10 December 2009), the Applicant and other claimants filed a revision with the Supreme Court of Kosovo, with allegation for substantial violation of the contested procedure provisions and erroneous application of substantive law.

23. On 19 February 2013, the Supreme Court of Kosovo rendered a Judgment (Rev. No. 121/2010), thereby rejecting as ungrounded the revision filed against the Judgment of the District Court (Ac. No. 223/2009 of 10 December 2009).

24. The Supreme Court of Kosovo found that [...]*"the lower instance courts, based on correct and complete determination of factual situation, have correctly applied contested procedure provisions and substantive law, and that the challenged judgment and the judgment of the first instance court do not contain substantial violations of the contested procedure reviewed ex officio by this Court, and that the courts of lower instance have provided sufficient reasons on relevant facts for a fair adjudication of this legal matter, which are accepted also by this court."*

25. The Supreme Court of Kosovo in its Judgment further held that [...] *"lower instance courts have correctly assessed that the first respondent acquired the property in an original acquisition manner, based on final decision of the competent authority, in the present case, the administrative authority."*

Applicant's allegations

26. The Applicant alleges that the Judgment of the Supreme Court (Rev. No. 121/2010 of 19 February 2013) violates his rights guaranteed by the Constitution, respectively Article 46 [Protection of Property], Article 3 [Equality before the Law], and Article 24.1 [Equality before the Law] of the Constitution.

27. Regarding his allegation for violation of Article 46 [Protection of Property], of the Constitution, the Applicant claims that his right guaranteed by the Constitution was denied because the owner of the

contested real property was his predecessor and that he and other claimants are his legal heirs.

28. Regarding his allegation for violation of Article 3 [Equality before the Law] and Article 24.1 [Equality before the Law] of the Constitution, the Applicant alleges that the principle of equality before the law was not respected, because in the present case, priority was given to [...]*"social organizations of former Yugoslavia rather than claims by natural persons."*

29. The Applicant concludes by requesting from the Constitutional Court that: *"the Judgment of the Supreme Court of Kosovo Rev. No. 121/2010 of 19.02.2013 to be declared unconstitutional and as such to be quashed with a suggestion that the claimants' request for compensation, either by another property or monetary compensation, to be approved."*

Assessment of admissibility of the Referral

30. First of all, in order to be able to adjudicate the Applicant's Referral, the Court has to examine whether the Applicants have met all the requirements of admissibility, which are foreseen by the Constitution and further specified by the Law and Rules of Procedure.

31. In this respect, Article 113, paragraph 7 of the Constitution 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."*

32. In addition, Article 49 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*."

33. In the present case, the Court notes that the Applicant sought recourse to protect his rights before the Municipal Court in Gjakova and District Court in Peja and finally before the Supreme Court of Kosovo. The Court also notes that the Applicant was served with the Judgment of the Supreme Court on 11 March 2013 and that he submitted the Referral to the Court on 10 July 2013.

34. Therefore, the Court considers that the Applicant is an authorized party and that he has exhausted all regal remedies available under the applicable law and that his Referral was submitted within the time limit of four months.

35. Nevertheless, the Court should also takes into account Rule 36 of the Rules of Procedure, which provides that:

> *"(1) The Court may only deal with Referrals if: (c) the Referral is not manifestly ill-founded."*
> *"(2) The Court shall reject a Referral as being manifestly ill-founded when it is satisfied that:*
> *[...], or*
> *b) when the presented facts do not in any way justify the allegation of a violation of the constitutional rights, or*
> *[...], or*
> *d) when the Applicant does not sufficiently substantiate his claim"*

36. The Applicant alleges that the Judgment of the Supreme Court (Rev. No. 121/2010 of 19 February 2013) by which were upheld the Judgment of the Municipal Court in Gjakova (C. No. 495/2005 of 26 May 2008) and of the District Court in Peja (Ac. No. 223/2009 of 10 December 2009) violates his rights, guaranteed by the Constitution, respectively Article 46 [Protection of Property], Article 3 [Equality Before the Law] and Article 24.1 [Equality Before the Law] of the Constitution, by claiming that the said Judgments *[...]" disregard the property right as a fundamental right guaranteed by the Constitution of the Republic of Kosovo and by the European Convention on human rights as well as the fact that there was no procedure regarding the expropriation."*

37. In this regard, the Constitutional Court reiterates that under the Constitution it is not its task to act as a fourth instance court with respect to decisions taken by the regular courts. It is a duty for the regular courts to interpret and apply the pertinent rules of both procedural and substantive law (see, *mutatis mutandis,* Garcia Ruiz vs. Spain, No. 30544/96, ECtHR, Judgment of 21 January 1999; see also case KI70/11of the Applicants *Faik Hima, Magbule Hima and Bestar Hima*, Resolution on Inadmissibility of 16 December 2011*).*

38. The Constitutional Court can only consider whether the evidence has been presented in a correct 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 *inter aliaCase Edwards v. United*

Kingdom, Application No. 13071/87, Report of the European Commission on Human Rights adopted on 10 July 1991).

39. Based on the case file, the Court notes that the reasoning given in the last Judgment of the Supreme Court is clear, and after having reviewed all the proceedings, the Court has also found that the proceedings before the regular courts have not been unfair or arbitrary (see, *mutatis mutandis,* Shub vs, Lithuania,no. 17064/06, ECtHR, Decision of 30 June 2009).

40. Moreover, the Supreme Court in its Judgment confirmed that "*the lower instance courts have rightly assessed that the first respondent has originally acquired the ownership on the basis of the final decision of the competent organ […]*".

41. For the foregoing reasons, the Court considers that the facts presented by the Applicant do not in any way justify the allegation of a violation of the constitutional rights and the Applicant has not sufficiently substantiated his allegation.

FOR THESE REASONS

The Constitutional Court, pursuant to Rules 36 (2) b) and d) and 56 (2) of the Rules of Procedure, on 19 November 2013, unanimously:

DECIDES

I. TO REJECT the Referral as Inadmissible;

II. TO NOTIFY this Decision to the Parties;

III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20 (4) of the Law;

IV. TO DECLARE this Decision effective immediately

Judge Rapporteur
Arta Rama-Hajrizi

President of the Constitutional Court
Prof. Dr. Enver Hasani

KI 97/13, Tahir Bytyqi, date 26 December 2013- Constitutional review of Judgment of the Supreme Court of Kosovo, Pml. no. 13/2013 of 30 April 2013

Case KI97/13, Resolution on Inadmissibility of 16 October 2013

Keywords: individual referral, constitutional review of the Judgment of the Supreme Court

The Applicant filed the Referral based on Article 113.7 of the Constitution of the Republic of Kosovo, Article 47 of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo and Rules 28 and 54 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo.

The Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo on 8 July 2013, requesting constitutional review of the Judgment of the Supreme Court of Kosovo.
The Applicant alleged that the Judgment of the Supreme Court of Kosovo has violated Article 31 [Right to Fair and Impartial Trial] of the Constitution of Kosovo.

By Decision of the President, (No.GJR. KI97/13 of 5 May 2013), Judge Kadri Kryeziu was appointed as Judge Rapporteur. On the same day, by Decision of the President no.KSH.KI97/13, the Review Panel was appointed, composed of judges: Altay Suroy (Presiding), Almiro Rodrigues and Ivan Čukalović.
During the case review, the Court has found that there is nothing in the Referral to indicate that the proceedings were partial or that the proceedings were unfair; the Applicant has failed to explain why and how his rights were violated, he has failed to substantiate *prima facie* the allegation on constitutional grounds and he failed to provide evidence showing that his rights and freedoms, such as his right guaranteed by Article 31 of Constitution were violated by regular courts. Hence, the Court found that the Applicant's allegations were not substantiated and therefore they should be rejected as manifestly ill-founded.

Taking into consideration all the circumstances of the Referral, the Constitutional Court of Kosovo, in the session of 16 October 2013, decided to reject the Referral as inadmissible since the presented facts do not in any way justify the allegation of a violation of the constitutional rights.

RESOLUTION ON INADMISSIBILITY
in
Case no. KI 97/13
Applicant
Tahir Bytyqi
Constitutional review of Judgment of the Supreme Court of Kosovo, Pml. no. 13/2013 of 30 April 2013

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

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

Applicant

1. The Applicant is Mr. Tahir Bytyqi from the village Shkoza, Municipality of Malisheva (hereinafter: the "Applicant"), who is represented before the Constitutional Court by lawyer Mr. Rexhep Hasani from Prizren.

Challenged decision

2. The applicant challenges the decisionJudgment of the Supreme Court of Kosovo Pml. no. 13/2013 of 30 April 2013 served on him on 23. May 2013, which rejected the request for protection of legality, submitted by the Applicant.

Subject matter

3. The subject matter of the Referral is the constitutional review of the Judgment of the Supreme Court of Kosovo Pml. no. 13/2013 of 30 April 2013. The Applicant alleges that these Judgment have violated his right to a fair and impartial trial.

4. The Applicant requests from the Constitutional Court of Kosovo the imposition of interim measures: *"halt-suspension of the beginning of serving the sentence until the final decision of the Constitutional Court is rendered."*

Legal basis

5. The Referral is based on Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), Articles 27 and 48 of the Law no. 03/L-121 on the Constitutional Court of the Republic of Kosovo of 15 January 2009,(hereinafter: the Law) and Rules 28 and 54 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules).

Proceedings before the Constitutional Court

6. On 8 July 2013, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

7. On 5 May 2013, by Decision of the President (no. GJR. KI 97/13), Judge Kadri Kryeziuwas appointed as Judge Rapporteur. On the same day, by Decision of President no. KSH. KI 97/13, the Review Panel was appointed, composed of judges: Altay Suroy (Presiding), Almiro RodriguesandIvan Čukalović.

8. On 30 August 2013, the Constitutional Court notified the Applicant and the Supreme Court of Kosovo that the procedure for the constitutional review of the judgment in the Case no. KI 97/13 has been initiated.

9. On 16 October 2013, after having considered the report of the Judge Rapporteur Kadri Kryeziu, the Review Panel made a recommendation to the full Court on the inadmissibility of the Referral.

10. At the same time, the Review Panel proposed to the full Court to reject the Applicant's request for interim measure with the reasoning that the Applicant has not attached any convincing evidence that would justify the imposition of the interim measure as being necessary to avoid any irreparable damage, or any proof that such measure is in the public interest.

Summary of the facts

11. On 17 November 2011, the District Public Prosecutor's Office in Prizren filed the indictment P.P. no. 256/2011 against the Applicant due to

grounded suspicion that on 27 September 2011, he committed the criminal offences of attempted murder under Article 146, in conjunction with Article 20, and unauthorized ownership, control, possession or use of weapons under Article 328 paragraph 2 of CCK.

12. On 2 February 2012, the District Court in Prizren, by Judgment P. no. 283/2011 confirmed the indictment P.P. no. 256/2011 of 17 November 2011 and the Applicant was found guilty of the criminal offences of attempted murder under Article 146, and of unauthorized ownership, control, possession or use of weapons under Article 328 paragraph 2 of CCK and he was punished by an aggregate imprisonment in duration of 3 (three) years and 6 (six) months.

13. On 23 March 2012, against the Judgment of the District Court in Prizren P. no. 283/2011, of 2 February 2012, the Applicant timely filed an appeal through his defense counsels Hysen Gashi and Rexhep Hasani, challenging the judgment on several legal grounds.

14. On 26 September 2012, acting upon the appeal, the Supreme Court of Kosovo, by Judgment A.P. no. 162/2012, rejected the appeal filed by the Applicant as ungrounded and upheld the Judgment of the District Court in Prizren P. no. 283/2011, of 2 February 2012.

15. On 15 January 2013, the Applicant filed an extraordinary legal remedy, the request for protection of legality with the Supreme Court of Kosovo, due to substantial violations of the provisions of the CPCK due to erroneous application of the provisions of the CCK, with a proposal to approve the request protection of legality as grounded, as well as to quash the challenged judgments (P. no. 283/2011, of 2 February 2012 and A. P. br. 162/2012) and to return the case for retrial.

16. On 30 April 2013, the Supreme Court of Kosovo, by Judgment Pml. No. 13/2013, rejected the request for protection of legality – the extraordinary legal remedy - as ungrounded. The Supreme Court held that the questions raised by the Applicant in his request for protection of legality on violation of law to the detriment of the convict were ungrounded.

> *"The allegations of the convict's defense T. B. do not stand the same did not have intention to deprive of life unknown person R.T., but undertook actions due to negligence and in the affect, since as it is seen from the photo-documentation and other evidence the target*

of the attack was not vehicle first of all but the injured R.T. For the intent of the accused also speak the facts that being unable to stop the vehicle by hitting it with an axe, the convict fired with gun several times in direction of the vehicle, which was in move, on which occasion hits him in different parts of his head, in the most vital body and as a consequence causes him serious injuries, therefore in the present case we cannot talk about the actions of the convict due to negligence and in the condition of mental distress, as alleged by the convict's defense."

"As far as the allegations of the convict defense Tahir Bytyqi that the injured was not heard at any stage of criminal proceedings when he would testify about all facts and circumstances of the case with much weight, this court assesses that in this aspect neither, were made procedure violations neither by the first, nor by the second instance court due to the fact that the convict Rrahman Telaku was impossible to be questioned and make a statement before the prosecution, be that in the courts sessions, due to his serious health condition, while by other evidence that are in the case file, it was determined the factual situation for what was given sufficient reasons on the page nine of the first instance judgment, approved by the second instance court and as such were approved by the panel of this court too."

Applicant's allegations

17. The Applicant requests:

"that the abovementioned judgments, attached to this Referral, be annulled for the sole purpose of determination of the constitutional right under Article 31 paragraph 4 of the Constitution of the Republic of Kosovo, respectively the right to confront with the person (...) because of whom he was accused and convicted, was violated to him."

Request for interim measure

18. The Applicant requests:

"that the Constitutional Court of the Republic of Kosovo render DECISION on imposition on interim measure towards Basic Court in Gjakova, Branch in Malisheva on halt-suspension of the execution of sentence imprisonment in duration of 3 years and 6 months of the convict Tahir Bytyqi, the punishment imposed by the

final judgment of the District Court in Prizren P.no.283/2011 dated 02.02.2012, now in jurisdiction of the Basic Court in Gjakova with execution number PED.no.4/13."

19. The Court also takes into account Article 27 of the Law, which provides:

"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."

20. The Review Panel proposed to the full Court to reject Applicant's request for interim measure with the reasoning that the Applicant has not attached any convincing evidence that would justify the imposition of the interim measure as being necessary to avoid any irreparable damage, or any proof that such measure is in the public interest.

Assessment of the admissibility of the Referral

21. In the present case, the Court refers to Article 113 [Jurisdiction and authorized parties] which 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 exhausting all legal remedies provided by law."

22. The Court also refers to Article 48 of the Law, which provides:

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

23. Furthermore, Rule 36 (2) b) of the Rules of Procedures, 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.

24. The Applicant mainly alleges that the judgment of the first instance and the judgments of the second instance court have violated his right guaranteed by Article 31 paragraph 4 of the Constitution [Right to Fair and Impartial Trial].

25. The Applicant filed the appeal with the Supreme Court against the judgment of the District Court in Peja *"due to substantial violations of the criminal procedure, incorrect and incomplete determination of factual situation, violation of the criminal law and decision on punishment, with a proposal that the same is modified in terms of legal qualification, so that much more lenient sentence is imposed against the accused."*

26. The Supreme Court, after comprehensive analysis of the grounds of appeal, found that *"the above mentioned appealed allegations are ungrounded."*

27. The Applicant submitted a request for protection of legality against the judgment of the Supreme Court*, "due to substantial violations of the provisions of CPCK and erroneous application of the provisions of CCK with the proposal to approve the request for protection of legality as grounded and to quash challenged judgments and to return for retrial."* TheSupreme Court (Pml. no. 13/13 of 30 April 2013) after considering the request for protection of legality found that the request is ungrounded.

28. The Constitutional Court further notes that the District Court in Prizren (P. no. 283/2011 of 02 February 2012) was reasoned and this Court has not noticed that during the trial in this case there were procedural violations that would result in a violation of the Applicant's fundamental rights guaranteed by the Constitution. The Applicant was provided ample opportunities to defend himself throughout the trial in the case.

29. As far as the Applicant's Referral for the examination of witnesses is concerned, on page 9 of the judgment of the first instance court, we can see the statement of the forensic expert who, in a court hearing, stated that: "*even if the injured was heard, his testimony depending on his health condition, because from his injuries there is a doubt that his mental ability was affected, the testimony of that witness would be put into question and this fact is confirmed by the public prosecutor who was in the University Clinical Centre of Kosovo in Prishtina to question the injured R.T. and he saw by himself that his hearing was impossible (...). Therefore, the trial panel taking into account that the factual*

situation was completely determined and taking into account the impossibility of hearing the injured R.T. due to the reasons mentioned above, did not question the latter in the court hearing, because even without his questioning, the factual situation according to the opinion and the conclusion of this Court was determined in a complete manner."

30. The Court considers that the Applicant did not substantiate and did not support with evidence the alleged violation of his rights by the District Court and Supreme Court.

31. Furthermore, the Court notes that, for a *prima facie* case to meet the requirements for the admissibility of the Referral, the Applicant must show that the proceedings before the District Court and the Supreme Court, viewed in their entirety, were conducted in a manner that did not afford the Applicant a fair trial or that other violations of the constitutional rights may have been committed by the regular courts during the trial.

32. 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 regular courts, unless and in so far as they may have infringed rights and freedoms protected by the Constitution (constitutionality).

33. Thus, the Court is not to act as a court of third instance, in the present case, when considering the decisions taken by regular courts. It is the role of regular
courts to interpret and apply the applicable rules of 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).

34. Furthermore, the Applicant has failed to explain why and how his rights were violated, he has failed to substantiate *prima facie* the allegation on constitutional grounds and he failed to provide evidence showing that his rights and freedoms, such as his right guaranteed by Article 31 of Constitution and Article 6 in conjunction with Article 13 of the ECHR, were violated by regular courts.

35. Thus, the Constitutional Court cannot consider that the relevant proceedings before the District Court and the Supreme Court were in any way unfair or arbitrary (see *mutatis mutandis*, Shub v. Lithuania,

ECHR Decision as to the Admissibility of Application No. 17064/06 of 30 June 2009).

36. Therefore, the Court concludes that the Applicant has neither established nor shown a *prima facie* case on either the admissibility or the merits of the Referral.

37. The Court concludes that the Referral is inadmissible as manifestly ill-founded.

FOR THESE REASONS

The Constitutional Court of Kosovo, pursuant to Article 113.7 of the Constitution, Articles 27 and 48 of the Law and Rule 36 (2) b) of the Rules of Procedure, in the session held on 16 October 2013, unanimously

DECIDES

I. TO REJECT the Referral as Inadmissible;

II. TO REJECT the request for imposing interim measures;

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

IV. This Decision is effective immediately.

Judge Rapporteur
Kadri Kryeziu

President of the Constitutional Court
Prof. Dr. Enver Hasani

KI 54/13, Gani Alidema, date 27 December 2013- Constitutional review of the Judgment of the Supreme Court of Kosovo Rev. no. 177/2010 of 8 January 2013

Case 54/13, Resolution on Inadmissibility of 16 October 2013

Keywords: Individual Referral, constitutional review of the Judgment of the Supreme Court

The Applicant filed the Referral based on 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.

On 10 April 2013, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo, requesting constitutional review of the Judgment of the Supreme Court of Kosovo.

The Applicant claimed that by the Judgment of the Supreme Court of Kosovo, the following articles of the Constitution of Kosovo were violated: Articles 24 [Equality before the Law] and 31 [Right to a Fair and Impartial Trial] of the Constitution of the Republic of Kosovo as well as Article 6 (Right to a Fair Trial) of the European Convention on Human Rights and Article 10 (Right to equality in fair and public hearings) Universal Declaration on Human Rights.

With the Decision of the President (no.GJR. KI 54/13, of 16 April 2013), Judge Ivan Čukalović was appointed as Judge Rapporteur. On the same day, with the Decision of the President KSH 54/13, was appointed the Review Panel composed of judges: Altay Suroy (Presiding), Snezhana Botusharova and Arta Rama Hajrizi.

Upon the case review, the Court determined that the applicant has not provided necessary evidence that would substantiate his allegation that the Supreme Court and other competent judicial bodies have violated his fundamental human rights guaranteed under the Constitution. It follows that the Applicant's Referral is manifestly ill-founded.

Taking into account all the circumstances of the Referral, the Constitutional Court, on the session of 16 October 2013, decided to reject the Referral as inadmissible since the presented facts do not in any way justify the allegation of a violation of the constitutional rights.

RESOLUTION ON INADMISSIBILITY
in
Case no. KI54/13
Applicant
Gani Alidema
Constitutional review of the Judgment of the Supreme Court of Kosovo Rev. no. 177/2010 of 8 January 2013

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

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

Applicant

1. The Applicant is Mr. Gani Alidema from village Pozharan, Municipality of Vitia (hereinafter: the "Applicant), represented before the Constitutional Court of the Kosovo by Mr. Gafur Elshani, practicing lawyer from Prishtina.

Challenged decision

2. The challenged decision is the Judgment of the Supreme Court of Kosovo Rev. no. 177/2010 of 8 January 2013.

Subject matter

3. The subject matter is constitutional review of the Judgment of the Supreme Court of Kosovo Rev. no. 177/2010 of 8 January 2013, which according to the Applicant's allegations has violated Articles 24 and 31 of the Constitution of the Republic of Kosovo as well as Article 6 of the European Convention on Human Rights (hereinafter: ECHR) and Article 10 Universal Declaration on Human Rights (hereinafter: UDHR).

Legal basis

4. The Referral is based on Articles 113.7 of the Constitution, Article 22of the Law no. 03/L-121 on the Constitutional Court of the Republic of Kosovo of 15. january 2009(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 Constitutional Court

5. On 10 April 2013, the Applicant filed a Referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. The President, by Decision no. GJR.54/13 of 16 April 2013, appointed Judge Ivan Čukalovićas a Judge Rapporteur. On the same day, the President, by Decision no. KSH.KI54/13, appointed a Review Panel composed of Judges: Altay Suroy(Presiding), Snezhana BotusharovaandArta Rama-Hajrizi.

7. On 05. June 2013, the Constitutional Court notified the Applicant and the Supreme Court of Kosovo that proceedings of constitutional review of decisions related to case no. KI54/13 had been initiated.

8. On 16 October 2013, after reviewing the report of Judge Ivan Čukalović, the Review Panel recommended to the full Court the inadmissibility of the Referral.

Summary of the facts

9. On 22 October 2008, B. R. filed with the Municipal Court in Gjilan a lawsuit for the confirmation of the ownership against the Applicant requesting that it be determined that B. R. is the owner of the business premises no. 19, which is located in Gjilan, „Dardania I str." - Trade center, ground floor, with surface area of 51.21 m², built on cadastral plot no. 3299, 3300, 3302, 3304 and 3307, CZ Gjilan, on the basis of the sale-purchase contract.

10. On 6 November 2008, the Applicant filed a reply in writing to the lawsuit whereby it rejected entirely the claim of B.R. and proposed to the court to reject the claim as legally unfounded.

11. Municipal Court in Gjilan, by Judgment C. no. 564/08 of 28 April 2009, approved the lawsuit of B. R. and determined that B. R. is the owner of said immovable property.
12. On 18 June 2009, the Applicant filed an appeal against the said Judgment with District Court in Gjilan, proposing that the Judgment of the Municipal Court C. no. 564/08 of 28 April 2009 be quashed and the case be remanded to the first-instance court for retrial.

13. Deciding upon the appeal of the Applicant the District Court in Gjilan, by Judgment Ac. no. 198/2009 of 6 April 2010 rejected the appeal of the Applicant as unfounded and upheld the Judgment of the Municipal Court in Gjilan C. Nr. 564/08, of 28 April 2009.

14. Against the Judgment of the District Court in Gjilan Ac. no. 198/2009, of 06. April 2010, the Applicant filed a revision with the proposal that the judgments of the lower courts, that is, the Judgment of the Municipal Court in Gjilan C. no. 564/08 and the Judgment of the District Court in Gjilan Ac. no. 198/09 be quashed and the case be remanded for reconsideration and retrial.

15. The Supreme Court of Kosovo, by Judgment Rev. No. 177/2010 of 1 January 2013, rejected as unfounded the Applicant's revision filed against the Judgment of the District Court in Gjilan Ac. No. 198/2009 of 6 April 2010.

Applicant's allegations

16. The Applicant alleges that Articles 24 (Equality before the Law) and Article 31 (Right to Fair and Impartial Trial) of the Constitution, Article 6 (Right to a Fair Trial) of the European Convention on Human Rights and Article 10 (Right to equality in fair and public hearings) Universal Declaration of Human Rights have been violated by this Judgment of the Supreme Court and he alleges the following:

> *"*(…) *the applicant considers that the above quoted decisions have violated his rights to a fair and impartial trial, because the parties to the proceedings were not treated equally and that the courts did not evaluate the evidence and facts provided by the applicant*(…).*"*

17. The Applicant also alleges that:

> *(…) "by revision Judgment Rev.177/2010 dated 08.01.2013 the Revision Court in page 3 of the Judgment reasoning invokes inexistent evidence that the party filing the revision has allegedly*

purchased premises no. 13 and not premises no.19, although during the whole procedure, the dispute between the litigants was about premises no. 19 (...)"

18. The Applicant requests from the Constitutional Court:

"to annul the said judgments and remand the case so that it would be retried impartially and in accordance with evidence."

Assessment of the admissibility of Referral

19. In order to be able to adjudicate the Applicants complaint, the Court first examines whether they have fulfilled the admissibility requirements laid down in the Constitution as further specified in the Law and the Rules of Procedure.

20. In this respect the Court refers to Article 48 of the Law on the Constitutional Court of the Republic of Kosovo which provides:

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

21. Furthermore, Rule 36 (2b) of the Rules of Procedures, provides:

"(2) TheCourt shall reject a Referral asbeing manifestly ill-foundedwhenitissatisfiedthat:
b)
t h e presentedfactsdonotinanywayjustifytheallegationofaviolationo fthe constitutional right."

22. The Applicant's allegation referring to*:"... inexistent evidence that the party filing the revision has allegedly purchased premises no. 13 and not premises no.19, although during the whole procedure, the dispute between the litigants was about premises no. 19 (...)",* are related to the erroneous and incomplete determination of the material evidence by the regular courts.

23. 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 regular courts, unless and in so far as they may have infringed rights and freedoms protected by the Constitution (constitutionality).

24. The Court's duty is to examine whether the proceedings, in their entirety, have been fair and in accordance with protection measures clearly established in the Constitution. Therefore, after having examined the proceedings in their entirety, the Constitutional Court has not found that the relevant proceedings were in any way unfair or arbitrary (See, *mutatis mutandis*, Shub vs. Lithuania, ECtHR Decision as to the Admissibility of Application no. 17064/06 of 30 June 2009).

25. Thus the Court is not to act as a court of third instance, in the present case, when considering the decisions taken by regular courts. It is the role of regular courts to interpret and apply the applicable rules of 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. In the present case there is no *prima facie* evidence that the Supreme Court has erroneously assessed the evidence presented by the Applicant (See, Vanek vs. Slovak Republic, Decision of ECtHR on the admissibility of the Application, no. 53363/99 of 31 May 2005). In fact, the Applicant has failed to prove that the Supreme Court of Kosovo has violated Article 6 of the European Convention on Human Rights, Articles 24 and 31 of the Constitution and Article 10 of the Universal Declaration of Human Rights. The Applicant has not provided necessary evidence that would substantiate his allegation that the Supreme Court and other competent judicial bodies have violated his fundamental human rights guaranteed under the Constitution.

27. It follows that the Applicant's Referral is manifestly ill-founded.

FOR THESE REASONS

The Constitutional Court, pursuant to Articles 20 and 48 of the Law and Rule 36 (2) b) of the Rules of Procedure, on 16 October 2013, 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
Ivan Čukalović

President of the Constitutional Court
Prof. Dr. Enver Hasani

KI 151/13, Sitkije Morina, date 27 December 2013 – Constitutional Review of the Judgment of the Supreme Court, Rev. No. 176/2012, of 18 April 2013

Case KI151/13, Resolution on Inadmissibility, of 23 December 2013

Keywords: individual referral, equality before the law, right to fair and impartial trial, inadmissible referral, premature referral, manifestly ill-founded

In its Judgment, the Supreme Court, in the part related to compensation for material damage, decided to uphold the judgments of lower court instances, whereby the Insurance Company was obliged to pay to the Applicant the compensation plus the specified interest rate. In the the part related to compensation for non-material, namely the rehabilitation costs and specified interest, it decided to remand the case for retrial to the first instance court.

The Applicant alleges violation of Article 24.2 [Equality before the Law], Article 31 [Right to Fair and Impartial Trial] and Article 102.3 [General Principles of the Judicial System] of the Constitution as well as the provisions of the Law on Contested Procedure.

The Court considered that the Applicant cannot claim to be a victim of violation of constitutional rights while the proceedings related to material damage are still pending before the Court and, furthermore, the decision of the Supreme Court to uphold the Judgments of the lower instance courts related to non-material is a decision in her favor.

In sum, the Court concluded that the Applicant's Referral is inadmissible

RESOLUTION ON INADMISSIBILITY
in
Case No. KI151/13
Applicant
Sitkije Morina
Constitutional Review
of the Judgment of the Supreme Court, Rev. No. 176/2012
of 18 April 2013

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

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

The Applicant

1. The Referral is submitted by Mrs. Sitkije Morina (hereinafter: the Applicant), represented by Mr. Sahit Bibaj.

Challenged decision

2. The challenged Decision is the Judgment of the Supreme Court, Rev. No. 176/2012 of 18 April 2013, which was served on the Applicant on 24 May 2013.

Subject matter

3. The subject matter is the request for constitutional review of the Judgment of the Supreme Court Rev. No. 176/2012 dated 18 April 2013. In its Judgment, the Supreme Court, in the part related to compensation for material damage, decided to uphold the judgments of lower court instances, whereby the Insurance Company was obliged to pay to the Applicant the compensation in the amount of 1,500.00 € plus the specified interest rate. Whereas for the part related to compensation for

non-material, namely the rehabilitation costs and specified interest, it decided to remand the case for retrial to the first instance court.

Legal basis

4. The Referral is based on Article 113.7 of 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: 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 Constitutional Court

5. On 24 September 2013, the Applicant filed the Referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 30 September 2013, the President appointed Judge Snezhana Botusharova as Judge Rapporteur. The Review Panel composed of Judges: Altay Suroy (presiding), Almiro Rodrigues and Enver Hasani.

7. On 17 October 2013, the Court informed the Applicant of the registration of the Referral and requested to submit the power of attorney for representation before the Constitutional Court.

8. On 23 October 2013, the Applicant submitted to the Court the power of attorney.

9. On 28 October 2013, the Court notified the Supreme Court of the registration of the Referral.

10. On 5 December 2013, the Review Panel considered the report of Judge Rapporteur and made a recommendation to the full Court on the inadmissibility of the Referral.

Summary of facts

11. On 3 June 2005, the Applicant, as a co-passenger in a car was the victim of a traffic accident, suffering bodily injuries.

12. On 2 May 2007, the Applicant with the Municipal Court in Rahovec filed a claim against the Insurance Company for damage compensation.

13. On 17 October 2007, the Municipal Court in Rahovec in its Judgment (C. No. 129/07) approved the claim of the Applicant.

14. As a result of an appeal filed by the Insurance Company, on 8 June 2009, the District Court in Prizren in its Judgment (Ac. No. 82/08) partially upheld the Judgment of the Municipal Court in Rahovec (C. No. 129/07, dated 17 October 2007) concerning the material damage, whereas the part referring to the bodily disfigurement and rehabilitation was remanded for retrial.

15. Consequently, on 27 August 2009, the Municipal Court in Rahovec, with its Judgment (C. No. 188/09) approved the claim of the Applicant and obliged the Insurance Company to pay to the Applicant the compensation in the amount of 1,500.00 € for the bodily disfigurement and 1,200.00 € for the physiotherapeutic-climatic rehabilitation, beginning from 2 May 2007 until the final payment of the debt, including the procedure expenses in the amount of 1,050.00 €.

16. Against the Judgment of the Municipal Court in Rahovec (C. No. 188/09, dated 27 August 2009), the Insurance Company filed an appeal with the District Court in Prizren.

17. On 5 March 2012, the District Court in Prizren in its Judgment Ac. No. 64/2010 rejected the appeal of the Insurance Company as ungrounded and upheld the Judgment of the Municipal Court in Rahovec (C. No. 188/09, dated 27 August 2009).

18. On 19 April 2012, against the Judgment of the District Court in Prizren (Ac. No. 64/2010, dated 5 March 2012), the Insurance Company filed a revision with the Supreme Court.

19. In its revision submitted to the Supreme Court, the Insurance Company alleged the following:

> *[...]*
> *"The approval of claim for medical rehabilitation is not based on evidence and facts, it is not proven by any evidence that the claimant was in rehabilitation and physiotherapy treatment.*
>
> *[...]*
>
> *Likewise, the court of first instance decides in violation with the legal provisions and with regards to decisions on procedure expenses as well on the interest rate of 20 %, which is not permitted*

and is in contradiction with the case law. This interest rate is inadmissible in case law and the same constitutes the element of an ungrounded benefit, since the adjudicated amount is smaller in comparison with adjudicated interest rate, which is not known whether it is monthly or it is an interest rate, which will be counted only at the moment of compensation".

20. On 18 April 2013, the Supreme Court in its Judgment Rev. No. 176/2012 decided:

I. To reject as ungrounded the revision filed by the Insurance Company for the part referring to non-material damage in the name of bodily disfigurement at the amount of 1,500.00 €, including the specific interest rate, starting from 17 October 2007, the day the judgment of the court of first instance was rendered until the final payment; and

II. To approve as grounded the revision and quash the Judgments of the Municipal Court in Rahovec (C.no.188/09, dated 27 August 2009) and District Court in Prizren (Ac.no.64/2010, dated 5 March 2012) for the part referring to the decision on material damage, namely the rehabilitation, the interest rate for non-material damage, as well as the procedure expenses. For this part, the Supreme Court decided to remand the case to the court of first instance for retrial.

21. Referring to the part of the decision on rejecting the revision related to non-material damage, the Supreme Court found that:

[...]

"The court of second instance, in the appeal procedure approved in entirety the factual conclusion and the legal stance of the court of first instance, finding that the challenged judgment does not constitute substantial violations of contested procedure and with regards to relevant facts it contained sufficient reasoning, and therefore it rejected the appeal of the respondent as ungrounded and upheld the judgment of the court of first instance."

[...]

22. With regards to the part of the decision on approving the revision related to material damage, filed by the Insurance Company, the Supreme Court held that:

[...]

" The court of first instance, in the part of enacting clause related to material damage, namely physiotherapeutic and climatic rehabilitation, has erroneously applied the substantive law, for the reasons that the factual situation was not completely determined, when for the physiotherapeutic rehabilitation it accorded the amount of 1.120 €, therefore this Court for the time being cannot approve such conclusion of the lower instance courts.

According to the conclusion of the medical expert [...], the claimant needed physiotherapeutic – climatic treatment, but the court of first instance has not determined the fact if the claimant was in physiotherapeutic – climatic treatment to confirm that claimant suffered material damages in relation to rehabilitation.

Therefore, in order to determine these facts, the court of first instance during the retrial is obliged to eliminate the abovementioned flaws so that in relation to climatic treatment it should order the claimant to bring to the court the evidence with regards to physiotherapy from the respective institution, in order to be able to determine the amount paid for this period, in case the claimant was in a rehabilitation institution, she should prove that there were material damages in relation to rehabilitation and after determination of these circumstances as well as other eventual evidence, to be able to render fair and lawful decision.

Likewise, in the case of determination of the interest rate amount in the name of non-material damage for bodily disfigurement and physiotherapeutic and climatic rehabilitation, the court of first instance set the interest rate of 20 % counting it from the day the claim was filed without providing clear and complete reasoning in relation to determination of the interest rate amount and the date of counting the interest rate for non-material damage.

Taking into account that the judgment of the first instance court was quashed in the part referring to material damage, the decision in relation to costs of proceedings had also to be quashed."

Applicant's allegations

23. The Applicant alleges violation of Article 24.2 [Equality before the Law], Article 31 [The Right to Fair and Impartial Trial] and Article 102.3

[General Principles of the Judicial System] of the Constitution and the provisions of the Law on Contested Procedure.

24. The Applicant argues that by the Judgment of the Supreme Court, namely in the part whereby it decided to approve the revision filed by the Insurance Company and remand the case for retrial to the first instance court: [...] *"her rights to fair and impartial trial were violated, since the parties in proceeding are not treated equally, and that the above mentioned court has not reviewed the evidence and facts that the claimant provided, namely in its response to revision, since that according to the applicable law [...]"*

25. The Applicant further claims that *[...]" firstly the revision was supposed to be rejected as inadmissible pursuant to Article 211.1 of LCP [Law on Contested Procedure], for the reason that the revision is filed against the judgment of the court of first instance and not against the judgment of second instance as it is provided by law, and secondly the revision is filed based on object of contest that does not exceed 3,000.00 €, which is in contradiction with Article 211.2 of LCP. And according to this second criterion, the revision had to be rejected as inadmissible. "*

26. The Applicant *concludes, requesting the Court*:

> *"To conclude that by final Judgment of the Supreme Court of Kosovo Rev.no.176/2012 of 18.04.2013 item II of enacting clause of judgment, there are violations of the Constitution and applicable law, right to fair and impartial trial, in compliance with Constitution and Law.*
>
> *The Judgment of Supreme Court of Kosovo, Rev.no.176/2012 of 18.04.2013, paragraph II of enacting clause to be annulled and revision of the respondent to be rejected as inadmissible by law."*

27. With regards to the Applicant's claims and request addressed to the Court, the Applicant's allegations are to be divided as following:

A. Allegation regarding the decision of the Supreme Court to remand the case for retrial to the first instance court; and

B. Allegation regarding the admissibility of the revision.

Assessment of admissibility of the Referral

28. First of all, in order to be able to adjudicate the Applicant's Referral, the Court has to examine whether the Applicant has met all the requirements of admissibility, which are foreseen by the Constitution and further specified by the Law and Rules of Procedure.

As to the Applicant's first allegation related to the decision of the Supreme Court to remand the case for retrial to the first instance court

29. In this respect, the Court refers to Article 113, paragraph 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."*

30. Article 47 (2) of the Law on Constitutional Court also provides:

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

31. In the concrete case, the Supreme Court in its Judgment Rev. No. 176/2012 approved the revision of the Insurance Comapany for the part related to material damage, whereby it decided to quash the Judgments of the Municipal Court in Rahovec (C.no.188/09, dated 27 August 2009) and the District Court in Prizren (Ac.no.64/2010, dated 5 March 2012) and remand the case to the court of first instance for retrial.

32. Thus, the Referral is premature because the Applicant's case referring to the rehabilitation costs, interest rate and procedure expenses related to material damage is still ongoing in a regular judicial procedure.

33. In this respect, the Court reiterates that the regular courts are independent in exercising their legal powers and it is their constitutional obligation and prerogative to interpret issues of fact and law which are relevant for the cases raised before them.

34. 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 case KI 41/09, Applicant AABRIINVEST University L.L.C, Resolution on Inadmissibility of 21 January 2010, and see *mutatis mutandis,* Selmouni vs. France, no. 25803/94, ECtHR, Decision of 28 July 1999*)*.

35. The principle of subsidiarity requires that the Applicant has exhausted all procedural means in a regular proceeding, administrative or judicial, so that constitutional violations are prevented, or in case they happen, to rectify such violation of basic rights. (See, case KI 07/09, Applicants Demë Kurbogaj and Besnik Kurbogaj, Resolution on Inadmissibility of 19 May 2010).

36. Consequently, the Court cannot assess any alleged constitutional violations, without the regular courts having the possibility to complete the pending procedure and correct the alleged violations.

As to the Applicant's allegation on the inadmissibility of the Revision of the Supreme Court

37. The Applicant alleges that the Supreme Court should have rejected the revision filed by the Insurance Company as inadmissible.In this respect, she argues that*: […]" firstly the revision was supposed to be rejected as inadmissible pursuant to Article 211.1 of LCP [Law on Contested Procedure], for the reason that the revision is filed against the judgment of the court of first instance and not against the judgment of second instance as it is provided by law, and secondly the revision is filed based on object of contest that does not exceed 3,000.00 €, which is in contradiction with Article 211.2 of LCP. And according to this second criterion, the revision had to be rejected as inadmissible.*

38. In this regard, the Court also takes into account Rule 36 of the Rules of Procedure, which provides:

> *"(1) The Court may review referrals only if: (c) The referral is not manifestly ill- founded."*

39. 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 it may have infringed rights and freedoms protected by the Constitution (constitutionality).

40. In this connection, the Constitutional Court reiterates that it is not its task under the Constitution to act as a court of fourth instance, in

respect of the decisions taken by the regular courts. It is the role of the latter to interpret and apply the pertinent rules of both procedural and substantive law (See, *mutatis mutandis*, García Ruiz v. Spain, No. 30544/96, ECtHR, Judgment of 21 January 1999, para. 28; see also case No. KI70/11, Applicants Faik Hima, Magbule Hima and Bestar Hima, Resolution on Inadmissibility of 16 December 2011).

41. Moreover, the Supreme Court in its Judgment for the part referring to non-material damage rejected the revision filed by the Insurance Company and upheld the Judgment of the lower instance Court. For this part, the Supreme Court obliged the Insurance Company to pay to the Applicant the amount of 1,500.00 € plus the specified interest, this being a decision in favor of the Applicant. Whereas, for the part referring to material damage, namely the rehabilitation costs plus specific interest rate, the Supreme Court decided to remand the case for retrial in the first instance Court.

42. Consequently, the Court considers that the Applicant cannot claim to be a victim of violation of constitutional rights while the proceedings related to material damage are still pending before the Court and furthermore the decision of the Supreme Court to uphold the Judgments of the lower instance courts related to non-material is a decision in her favor.

43. In general, the Court concludes that the Applicant's Referral is inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 49, paragraph 2, of the Law and Rules 36. (1) a) and 36. (2) c)of the Rules of Procedure, on 23 December 2013, unanimously:

DECIDES

I. TO REJECT the Referral as Inadmissible;

II. TO NOTIFY this Decision to the Parties;

III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20 (4) of the Law;

IV. TO DECLARE this Decision effective immediately

Judge Rapporteur
Snezhana Botusharova

President of the Constitutional Court
Prof. Dr. Enver Hasani

KI 79/13, Sokol Haziraj date 27 December 2013 – Constitutional review of the Judgment of the Supreme Court of the Republic of Kosovo, Rev. Mlc. no. 217/2010 of 15 April 2013, and the Judgment of the District Court Ac.No. 240/2010 of 14 May 2010

Case KI79/13, Resolution on Inadmissibility, 18 October 2013

Keywords: Individual Referral, manifestly ill-founded, building a case, right to fair and impartial trial, right to legal remedies

The Applicant, Mr. Sokol Haziraj, filed the Referral based on Article 113.7 of the Constitution of Kosovo, challenging the Judgment of the Supreme Court of Kosovo, Rev. Mlc. no. 217/2010, of 15 April 2013, and the Judgment of the District Court Ac. No. 240/2010 of 14 May 2010, which allegedly violate his rights guaranteed by the Constitution, and that Article 31 [Right to Fair and Impartial Trial]; and Article 32 [Right to Legal Remedies]. The Applicant alleges that his appeal was not reviewed at all before the District Court, whereas the Supreme Court rejected his revision as inadmissible with the reasoning that no appeal was filed before in the lower instance court.

The Court concluded that the Referral does not meet the admissibility criteria because the Applicant has neither succeeded in building a case on violation of the rights that he invoked nor has he provided any *prima facie* evidence that shows alleged violations of the constitutional rights. In sum, the Court decided that the Referral is manifestly ill-founded pursuant to Rule 36 (2) b) and d) of the Rules of Procedure.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI79/13
Applicant
Sokol Haziraj
Constitutional review of the Judgment of the Supreme Court of the Republic of Kosovo, Rev. Mlc. no. 217/2010 of 15 April 2013, and the Judgment of the District Court Ac.No. 240/2010 of 14 May 2010

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

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

Applicant

1. The Referral has been filed by Mr. Sokol Haziraj (the Applicant), residing in Prishtina, represented by Mr. Naser Peci, a practicing lawyer.

Challenged decision

2. The Applicant challenges the Judgment of the Supreme Court of Kosovo, Rev. Mlc. no. 217/2010, of 16 April 2013,and the Judgment of the District Court Ac.No. 240/2010 of 14 May 2010.

3. The Applicant was served with the Judgment of the Supreme Court of the Republic of Kosovo (Rev. Mlc. No. 217/2010) on 13 May 2013.

Subject matter

4. The subject matter of this Referral is constitutional review of the challenged Judgments, regarding the Applicant's allegation for violations of his rights guaranteed by Article 31 [Right to Fair and Impartial Trial], and Article 32 [Right to Legal Remedies] of the Constitution of the Republic of Kosovo

Legal basis

5. Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), Article 22 and 47 of the Law No. 03/1L-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).

Proceedings before the Constitutional Court

6. On 5 June 2013, the Applicant filed the Referral with the Court.

7. On 20 June 2013, the President appointed Judge Altay Suroy as Judge Rapporteur and the Review Panel composed of Judges: Robert Carolan (Presiding), Ivan Čukalović and Enver Hasani.

8. On 9 July 2013, the Secretariat informed the Applicant of the registration of the Referral and at the same time requested from him a proof that the party has authorized the lawyer to represent him before the Court.

9. On 19 July 2013, the Applicant submitted the proof on the authorization of the lawyer to represent the party before the Court.

10. On 22 July 2013, the Secretariat notified the Supreme Court of Kosovo of the registration of the Referral.

11. On 4 September 2013, the Court requested from the Applicant to submit the original document of his appeal to the District Court in Prishtina.

12. On the same date, the Secretariat requested from the Basic Court in Prishtina to verify whether the Applicant had filed an appeal to the District Court in Prishtina in connection with case C. no. 397/06.

13. On 6 September 2013, the Basic Court in Prishtina submitted the reply to the Court.

14. On 10 September 2013, the Applicant submitted his reply to the Court.

15. On 18 October 2013, the Review Panel considered the report of the Judge Rapporteur and recommended to the full Court the inadmissibility of the Referral.

Summary of the facts

16. On 25 April 2008, the Applicant in the capacity of the intervenor, through his representative, filed a submission with the Municipal Court in Prishtina, proposing that it approve, in its entirety, the claim of the plaintiff J. G. against the respondents N. V. and N. G., by which it was requested the verification of contract on sale-purchase of the immovable property, cadastral plots no. 653/1 and no. 653/2 at the place called "Novo Lojze", with total area of 0.27,02 ha, arable land of IV class, Cadastral Zone Çagllavicë, Municipality of Prishtina, registered in the possession list nr. 413, Cadastral Zone Çagllavicë, Municipality of Prishtina, concluded in Prishtina on 10 October 1996 between J. G. and N. V., both from Prishtina, and certified at the Municipal Court in Prishtina, and that the said contract be declared null and void.

17. The Applicant endorsed entirely the allegations of the plaintiff J. G. in this case, according to which, the contract concluded between his authorized representative N. G. as the seller and N. V. as the purchaser, was made after the revocation of the authorization which was certified at the Municipal Court VR.no.4896/96, of 14 August 1996, and that the authorized representative was informed thereof.

18. The Applicant claimed that he had purchased a part of this property with surface area of 0.05,00 ha in 1991, by contract, from J. G., for which he had paid the contract price and entered into possession of that part which he used without any obstruction until 2006. According to him, this renders the contract between N. G. and N. V. fictitious in relation to him, according to Article 66 of the Law of Contract and Torts.

19. On 22 December 2009, the Municipal Court in Prishtina, by Judgment C.no.397/2006, after having established the factual situation in the main hearing, rejected as unfounded the claim of the plaintiff and at the same time rejected as unfounded *"the proposal of the intervenor Sokol Haziraj from Prishtina that the claim of the plaintiff be approved in its entirety as well-founded"* since it *"could not confirm the fact that the intervenor Sokol Haziraj from Prishtina, has entered in possession of a part of the disputed immovable property according to the Sale-*

purchase contract drafted in Prishtina on 10 September 1991, between him and the plaintiff J. G."

20. On 3 February 2010, the Applicant filed an appeal to the District Court in Prishtina against the Judgment of the Municipal Court (C.nr.397/2009) due to essential violation of the procedural provisions and erroneous application of the substantive law, specifically violation of Article 66 and 88 of LCT.

21. Against the same Judgment, plaintiff J. G. filed also an appeal.

22. On 15 May 2010, the District Court in Prishtina by Judgment AC. nr. 240/2010 rejected the appeal of the plaintiff J. G. as unfounded because *"the factual situation before the Municipal Court has been established in a correct and complete manner, as there were no essential violations which this court examines ex officio and that the substantive law has been correctly applied, the plaintiff's appeal is rejected and the challenged Judgment is upheld in accordance with Article 195 paragraph 1 item d) of LCP".*

23. On 21 July 2010, the Applicant filed a revision with Supreme Court of Kosovo due to essential violations of the contested procedure and erroneous application of the substantive law. According to him, the District Court has not decided at all on the appeal of the intervenor and that "i*n accordance with Article 190 of LCP, the second instance court was obliged to decide on the appeal in the session of the trial panel or on the basis of reviewing the matter in a court hearing. On the appeal of the intervenor the second instance court has not decided in either way, and it therefore committed violation under Article 182 para. 1 of LCP, which is a cause for a revision as provided under Article 214 paragraph 214.1 item (a) of LCP."*

24. Against the same Judgment, the plaintiff J. G. filed a revision.

25. On 16 April 2013, the Supreme Court of Kosovo by Judgment Rev. Mlc. nr. 217/2010 rejected as inadmissible the intervenor's revision, because *"the said revision has been filed against the Judgment of the first instance court in the part related to the intervenor to proceedings, a Judgment against which within the meaning of Article 211.1 of LCP revision is not allowed. There is no evidence in the case file that the intervenor to proceedings has filed an appeal against the Judgment of*

the first instance and neither has he presented such evidence in the revision."

Applicant's allegations

26. The Applicant alleges violation of Article 31 and 32 of the Constitution, as his "*appeal was not reviewed at all*" before the District Court. Whereas the Supreme Court rejected his revision as inadmissible "*with the reasoning that no appeal was filed before*"

27. The Applicant requests from the Court to "approve the Referral as being admissible and annul Judgment Rev. MIc. No. 217/2010, of 14.04.2013."

Assessment of the admissibility of the Referral

28. In order to be able to review the Applicant's Referral, the Court first needs to examine whether the Applicant has met the admissibility requirements, laid down in the Constitution and further specified in the Law and the Rules of Procedure.

29. Article 113 (7) of the Constitution establishes that:

> *7. "Individuals are authorized to refer violations by public authorities of their individual rights and freedoms guaranteed by the Constitution, but only after exhaustion of all legal remedies provided by law."*

30. In addition, the Court refers to Article 49 of the Law prescribes that:

> *"The Referral should be submitted within a period of four (4) months"*

31. In the concrete case, the Court notes that the Applicant requested protection of his rights before the Municipal and District Court and finally before the Supreme Court of Kosovo. The Court also notes that the Applicant has received the Judgment of the Supreme Court on 13 May 2013, while has submitted the Referral with the Court on 5 June 2013, which means that the Referral is submitted in compliance with the abovementioned provision.

32. Furthermore, Rule 36 (1) of the Rules of Procedure provides that:

> *(1) "The Court may only deal with Referrals if:*

(c) the Referral is not manifestly ill-founded"

33. Further, pursuant to Rule 36 (2), the Court shall reject a Referral as 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 right;*
> ...
> *d) when the Applicant does not sufficiently substantiate his claim"*

34. The Court also refers to Article 48 of the Law which provides that: "*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."*

35. Regarding the exhaustion of the effective legal remedies, the Court requested clarification from the Basic Court with regard to the submission of this appeal, which in its replay clarified that "*we have sent the civil case C. no. 397/2006, upon appeal, to the Court of Appeals on 1 July 2013*" which corresponds to 25 days after the Applicant submitted his Referral with the Court.

36. From the reply of the Basic Court it is evident that the case is still pending before the regular courts.

37. The Court wishes to emphasize that the rationale for the legal remedies exhaustion rule, as interpreted by the European Court of Human Rights (see Article 53 of the Constitution), is to afford the authorities concerned, including the Court, 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 legal remedy for the violation of the constitutional rights (see, Case KI41/09, Applicant AAB/RIINVEST University LLC, Prishtina, Resolution of 27 January 2010; also, *mutatis mutandis*, ECtHR, Selmouni v. France, no. 25803/94. Decision of 28 July 1999).

38. In the present case, the Applicant alleges that the regular courts have not reviewed at all his appeal and thus violated Articles 31 and 32 of the Constitution and requests that the Court *"annul Judgment Rev. Mlc. 217/10."*

39. The Court notes that the Supreme Court rejected the Applicant's revision against the Judgment of the District Court in Prishtina as being inadmissible, because the Applicant had not provided evidence that he had submitted an appeal to the District Court against the Judgment of the Municipal Court in Prishtina in connection with case C. no. 397/2006.

40. As to the allegations with regard to the Judgment of the Supreme Court (Rev. Mlc. no. 217/2010) which rejected Applicant's revision as inadmissible, the Court draws attention that it cannot deal with errors of facts and law (legality), allegedly committed by the lower instance courts and the Supreme Court, unless and insofar as they may have violated the rights and freedoms protected by the Constitution (constitutionality). Thus, the Constitutional Court does not act as a fourth instance court with respect to decisions taken by the regular courts. The role of the regular 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 of Human Rights [ECtHR] 1999-1;).

41. Therefore, the Court can only consider whether the proceedings, viewed in their entirety, have been conducted in such a way that the Applicant had a fair trial (see, *mutatis mutandis* Report of the European Commission on Human Rights on Case Edwards v. United Kingdom, Application No 13071/87, 10 July 1991).

42. The Court notes the conclusion of the Supreme Court in its Judgment (Rev.Mlc.217/2010) that *"There is no evidence that the intervenor to proceedings has filed an appeal against the Judgment of the first instance and neither has he presented such evidence in the revision"*, while on the other hand, the Applicant has also failed to submit to the Court the original document of the appeal which he claims to have made. In his reply to the Court's request to submit original copy of the appeal as a proof, the Applicant states that *"the only original copy of the appeal which I had in the capacity of authorized representative of the intervenor was requested from me by the Basic Court in Prishtina and I have submitted to them. Now I possess only the copy."*

43. Consequently, the Applicant has neither succeeded in building a case on violation of the rights that he invoked nor has he provided any *prima facie* evidence that shows alleged violations of the constitutional rights (see, Vanek vs. Slovak Republic, Decision of ECtHR on admissibility of the Referral no. 53363/99, of 31 May 2005).

44. In all, the Court notes that the Applicant's Referral does not meet the admissibility criteria on either the admissibility or in the merits of the Referral,because the Applicant failed to prove that the challenged decisions have violated his rights guaranteed by the Constitution.

45. In sum, the Court concludes that the Referral is inadmissible as manifestly ill-founded.

FOR THESE REASONS

The Constitutional Court of Kosovo, pursuant to Article 113.7 of the Constitution, and Rule 36 (2) b) and d) and the Rule 56.2 of the Rules of Procedure, on 18 October 2013,

DECIDES

I. TO REJECT the Referral as Inadmissible;

II. This Decision shall be notified to the Parties and it 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
Altay Suroy

President of the Constitutional Court
Prof. Dr. Enver Hasani

KI 100/13, Selim Hajra, date 27 December 2013 - Constitutional Review of the Judgment of the Supreme Court of the Republic of Kosovo, Rev. I. no. 29/2009, of l5 January 2012

Case KI100/13, Resolution on Inadmissibility, 18 October 2013

Keywords: Individual Referral, manifestly ill-founded, building a case, *prima facie* evidence, fundamental rights and freedoms during a state of emergency, right to work and exercise profession, protection of property, right to fair and impartial trial.

The Applicant, Mr. Selim Hajra, filed the Referral based on Article 113.7 of the Constitution of Kosovo, challenging the Judgment of the Supreme Court of Kosovo, Rev. I. no. 29/2009, of 25 January 2009, by which he alleges that his rights guaranteed by Constitution, Article 56 [Fundamental Rights and Freedoms During a State of Emergency]; Article 49 [Right to Work and Exercise Profession]; Article 46 [Protection of Property]; Article 31 [Right to Fair and Impartial Trial] as well as Article 1 Protocol I of the European Convention on Human Rights (hereinafter: ECHR) have been violated.

The Court concluded that the Referral does not meet the admissibility criteria because the Applicant has neither succeeded in building a case on violation of the rights alleged by him nor has he provided any *prima facie* evidence on such a violation. This way, the Court decided that the Referral is manifestly ill-founded pursuant to Rule 36 (2) a) and b) of the Rules of Procedure.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI100/13
Applicant
Selim Hajra
Constitutional Review of the Judgment of the Supreme Court of the Republic of Kosovo Rev. I. no. 29/2009, of 15 January 2012

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

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

Applicant

1. The Referral is submitted by Selim Hajra (hereinafter: the Applicant) from village Krasaliq, Municipality of Skënderaj.

Challenged decision

2. The Applicant challenges the Judgment of the Supreme Court of Kosovo Rev. I. no. 29/2009, of 25 January 2012, which was served on him on 13 June 2013.

Subject matter

3. The subject matter of this Referral is the constitutional review of the challenged decision. The Applicant alleges that by that decision, his rights guaranteed by the Constitution, Article 56 [Fundamental Rights and Freedoms During a State of Emergency]; Article 49 [Right to Work and Exercise Profession]; Article 46 [Protection of Property]; Article 31 [Right to Fair and Impartial Trial] as well as Article 1 Protocol I of the European Convention on Human Rights (hereinafter: ECHR) have been violated.

Legal basis

4. The Referral is based on Article 113.7 of Constitution of the Republic of Kosovo (hereinafter: the Constitution), Articles 22 and 47 of the 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 11 July 2013, the Applicant submitted the Referral to the Court.

6. On 5 August 2013, the President appointed Judge Altay Suroy as Judge Rapporteur and the Review Panel composed of judges: Robert Carolan (Presiding), Ivan Čukalović and Enver Hasani.

7. On 4 September 2013, the Secretariat notified the Applicant of the registration of Referral.

8. On the same day, the Secretariat notified the Supreme Court of Kosovo of registration of the Referral.

9. On 18 October 2013, 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 28 March 2003, the Applicant filed a claim with the Municipal Court in Prishtina against the Ministry of Labor and Social Welfare (MLSW), requesting *"reinstatement to his working place and compensation of personal income."*

11. According to him, the Applicant was in permanent employment relationship with MLSW from 11 June 1970 until 1 October 2001, while he received personal income until 1 October 1999. He did not receive personal income for the remaining period.On 25 September 2000, the MLSW announced a competition for hiring new employees, in which case, the majority of previous employees have not succeeded in being hired in violation of "*the law in force on the employment relationships, by violating legal status of claimant, who until that moment was in employment relationship with the respondent... and at the same time*

the respondent does not render any decision on termination of employment relationship."

12. On 23 September 2004, the Municipal Court by Judgment Cl. no. 105/2003, rejected the Applicant's the statement of claim as ungrounded, since there was no *"evidence that the claimant has ever been in a possible obligation relationship with the respondent"*. According to the Municipal Court, the Applicant was in employment relationship with the Republican Fund of Serbia for Pension and Disability Insurance of Employees in Prishtina until NATO strikes, during which period he received his personal income.

13. Further on, the Municipal Court concludes that, "*neither theprevious departments nor the Ministry of Labor and Social Welfare are in continuity of and they are not the successors of any institution of Kosovo from the pre-war period, which means that, they are not the successors of the then Republican (of Serbia) Pension and Disability Insurance Fund of Employees in Kosovo-whose employee was the claimant himself."* The Municipal Court reached the conclusion that *"the claimant's statement of claim was addressed against an entity, which does not have any obligation towards the claimant, since they were never in any material-legal relation, from which mutual rights and obligations would derive"*.

14. The Applicant filed an appeal against the Judgment of the Municipal Court (Cl.no.105/2003), with the District Court in Prishtina due to violation of the procedural provisions; the erroneous determination of factual situation and erroneous application of the provisions of the substantive law requesting the annulment of that Judgment and adjudication of the case on merits or the return of the case to the first instance for reconsideration and retrial.

15. On 5 June 2008, the District Court in Prishtina, by Judgment Ac.no.874/06, rejected as ungrounded the appeal of the representative of claimant Selim Hajra from Prishtina and upheld the Judgment of the Municipal Court (Cl. no. 105/2003). According to this court, *"the first instance court determined the factual situation in a correct and complete manner by concluding that the respondent has passive legitimacy in this legal matter ... therefore the first instance court has correctly adjudicated when it rejected the claimant's statement of claim as ungrounded."* The District Court further held that "*the recruitment of new employees was done in accordance with legal and*

applicable rules on civil service in Kosovo, which provided that the department takes care that the entire employment is based on professional background, on the skills and merits and in harmony with the requirements of the competition dated 25 September 2000."

16. On 21 November 2008, the Applicant filed a revision with the Supreme Court of Kosovo against the Judgment of the District Court (Ac.no.874/2006) due to "*erroneous application of the substantive law"*.

17. On 25 January 2012, the Supreme Court of Kosovo, by Judgment Rev. I. no. 29/2009, rejected as ungrounded the claimant's revision filed against the Judgment of the District Court in Prishtina (Ac.no.874/2006), considering *"as fair and lawful the legal stance and the reasoning of the lower instance court, according to which the claimant's statement of claim was rejected"*.

Applicant's allegations

18. The Applicant alleges that during the proceedings before the regular courts his rights guaranteed by the Constitution, Article 56 [Fundamental Rights and Freedoms During a State of Emergency]; Article 49 [Right to Work and Exercise Profession]; Article 46 [Protection of Property]; Article 31 [Right to Fair and Impartial Trial] as well as Article 1 Protocol I of ECHR have been violated.

19. The Applicant requests from the Court that the *"respondent returns me to my previous working place and work duties"* and that *"the respondent pays to me personal income starting from 1 October 1999 until the day of my retirement –with legal interest and court expenses"*.

Assessment of the admissibility of the Referral

20. In order to be able to adjudicate the Applicant's Referral, the Court should examine beforehand 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. The Court must first determine whether the Applicant is an authorized party to file a Referral with the Court in accordance with the requirements of Article 113.7 of the Constitution. The Applicant is a natural person and he has proved that he is an authorized party in accordance with the abovementioned provision.

22. The Court also determines whether the Applicant has proved that he has fulfilled the requirements of Article 47.2 of the Law and Rule 36 (1) a) of the Rules of Procedure, regarding the exhaustion of effective legal remedies. The Applicant has submitted sufficient evidence that he has fulfilled the criterion set forth in the abovementioned provisions.

23. In addition, the Applicant must prove that he has fulfilled the requirements of Article 49 of the Law and Rule 36 (1) b) of the Rules of Procedure, with regard to the submission of the Referral within the legal time limit. From the case file it can be clearly noted that the last decision in the Applicant's case is the Decision of the Supreme Court Rev. no. 29/2009 of 25 January 2012, which the Applicant received on 13 June 2013, whereas the Applicant submitted his Referral to the Court on 11 July 2013, which means that the Referral has been submitted within the four month time limit prescribed by the abovementioned provisions

24. Further, the Court refers to Article 48 of the Law, which provides:

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

25. For the purposes of the admissibility, the Court should also take into consideration whether the Applicant's Referral meets the admissibility criteria set forth in Rule 36 (1) c) and 36 (2) a) and b) which read as follows:

> *(1) The Court may only deal with Referrals if:*
>
> *(c) the Referral is not manifestly ill-founded.*
>
> *(2) "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,*

26. According to the Constitution, it is not the task of the Constitutional Court to deal with errors of fact or law (legality) allegedly committed by

the regular court and the Supreme Court, unless and in so far as they may have infringed rights and freedoms protected by the Constitution (constitutionality). Thus, the Constitutional Court is not to act as a court of fourth instance, when considering the decisions taken by the 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).

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

28. In the present case, the Applicant alleges that the regular courts have committed violation of Article 56 of the Constitution [Fundamental Rights and Freedoms During a State of Emergency], this being an Article that is activated only in cases of official declaration of the state of emergency, pursuant to which:

> *"1. Derogation of the fundamental rights and freedoms protected by this Constitution may only occur following the declaration of a State of Emergency as provided by this Constitution and only to the extent necessary under the relevant circumstances.*
>
> *2. Derogation of the fundamental rights and freedoms guaranteed by Articles 23, 24, 25, 27, 28, 29, 31, 33, 34, 37 and 38 of this Constitution shall not be permitted under any circumstances*."

29. The Applicant has not provided any evidence on the declaration of the state of emergency during the period, in which he alleges that a violation of human rights was committed and the Court does not have any other document or information to confirm this.

30. Furthermore, the Court cannot conclude that the Applicant's constitutional rights were allegedly violated, while the mere fact that the Applicant is unsatisfied with the outcome of the case cannot serve as the right to file an arguable claim on violation of alleged articles of the Constitution (see Memetoviq vs. Supreme Court of Kosovo KI 50/10, 21 March 2011; see *mutatis mutandis* the Constitution or Article 6 of ECHR (see *mutatis mutandis*Judgment ECHR Appl. No. 5503/02, Mezotur-Tisazugi Tarsulat v. Hungary, Judgment of 26 July 2005).

31. After having reviewed the proceedings before the Supreme Court, which rejected the Applicant's revision against the Judgment of the District Court as ungrounded, due to the reasons, mainly mentioned in the Judgment of the Municipal Court, 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 the Application No. 17064/06 of 31 May 2009).

32. In conclusion, the Applicant has neither built a case on violation of rights, alleged by him, nor has submitted any *prima facie* evidence on such a violation (see Vanek v. Slovak Republic, ECHR Decision as to the Admissibility of Application no. 53363/99 of 31 May 2005 and Case KI 70/11, Faik Hima, Magbule Hima and Bestar Hima, Constitutional review of the Judgment of the Supreme Court, No 983/08, dated 7 February 2011, Resolution on Inadmissibility no 70/11).

33. Therefore, it results that the Referral is manifestly ill-founded, and consequently inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Rule 36 (2) a) and b) and Rule 56 (2) of the Rules of Procedure, on 18 October 2013,

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; and

III. This Decision is effective immediately.

Judge Rapporteur
Altay Suroy

President of the Constitutional Court
Prof. Dr. Enver Hasani

KI 159/13, Ferat Neziri, date 30 December 2013- Constitutional review of the decision of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo related matters

Case KI 159/13, Resolution on Inadmissibility of 05 December 2013.

Keywords: individual Referral, constitutional review of the decision of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo related matters .

The Referral is based on Article 113.7 of the Constitution, Article 47 of the Law on the Constitutional Court of the Republic of Kosovo no. 03/L-121 of 15 January 2009 (hereinafter, the Law), and Rule 56, of the Rules of Procedure of the Constitutional Court (hereinafter, the Rules of Procedure).

On 14 October 2013 the Applicant submitted a Referral to the Constitutional Court of Kosovo seeking the constitutional review of the decision of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo related matters.

The Applicant does not clarify the constitutional rights violated by the challenged judgment, and only claims that he is victim of discrimination.

The President by Decision no.GJR.KI 159/13 of 14 October 2013, appointed Judge Ivana Čukalovića as Judge Rapporteur. On the same day, the President with Decision no.KSH 159/13 appointed the Review Panel composed of Judges: Altay Suroy (Presiding), Snezhana Botusharova and Arta Rama Hajrizi

Upon reviewing the documents the Court noticed that the Applicant missed the time limit envisaged pursuant to the law and Rules of Procedure.

In this sense the Court concludes that the Applicant's Referral is out of time.

For all the aforementioned reasons, the Constitutional Court of Kosovo rendered the Referral inadmissible.

RESOLUTION ON INADMISSIBILITY
in
Case no. KI159/13
Applicant
Ferat Neziri
Constitutional Review of the Judgment ASC-11-0069 of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo, of 22 April 2013 god.

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

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

Applicant

1. The Applicant is Mr. Ferat Neziri from Prishtina (hereinafter: Applicant).

Challenged decision

2. The Applicant challenges the Judgment ASC-11-0069 of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters (hereinafter: Appellate Panel of Special Chamber), of 22 April 2013.

Subject matter

3. The subject matter is constitutional review of the Judgment, which allegedly deprives the Applicant from the entitlement to a share of 20% of proceeds of the privatization of the Socially owned Enterprise "Ramiz Sadiku" (hereinafter: SOE "Ramiz Sadiku"), in Prishtina.

Legal basis

4. The Referral is based on Article 113.7 of 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: 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

5. On 14 October 2013, the Applicant filed the Referral with the Constitutional Court of the Republic of Kosovo (hereinafter: Court).

6. On 28 October 2013, the President appointed Judge Ivan Čukalović as Judge Rapporteur, and the Review Panel composed of Judges: Altay Suroy (Presiding), Snezhana Botusharova and Arta Rama-Hajrizi.

7. On 8 November 2013, the Court notified the Applicant of the registration of Referral, requesting to submit evidence on date of service of the Judgment on the Applicant.

8. On 11 November 2013, the Special Chamber of the Supreme Court was notified of the Referral.

9. The Applicant did not answer to the Court's request of 8 November 2013.

10. On 5 December 2013, after having considered the Report of the Judge Rapporteur, the Review Panel made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

11. The Applicant had employment relationship with the SOE "Ramiz Sadiku" from 8 September 1977, until 5 March 1990.

12. On 27 June 2006, SOE "Ramiz Sadiku" concluded the privatization process.

13. On 13 March 2009, the Applicant filed a complaint with the Special Chamber of the Supreme Court, against the final list of employees compiled by the Privatization Agency of Kosovo (hereinafter: Agency), since he was not found in the list as a former employee.

14. In the complaint to the Special Chamber of the Supreme Court, the Applicant stated that he worked in SOE "Ramiz Sadiku" for more than 12 (twelve) years, and filed his employment booklet as evidence to such claim.

15. By a letter to the Special Chamber, the Agency replied to the complaint of the Applicant, stating that the Applicant does not fulfill the requirements to be included in the list of eligible employees to a share of 20 % of proceeds of the privatization, since the evidence of Agency contains a copy of the decision upon which it is ascertained that the Applicant earned the right to disability pension on 5 May 1994. Furthermore, the Agency reviewed the documentation, and found that the Applicant was born on 1 May 1938 therefore, at the moment of privatization he had reached the age of 65 years.

16. On 15 March 2010, during the hearing before the Trial Panel of the Special Chamber, the Applicant confirmed the statements of the Agency, and repeated that on the basis of decision of 1994, he was retired on disability pension of the first (I) grade.

17. Also, the Trial Panel, on the basis of the available documentation and the review of the personal identification document of the Applicant, confirmed that he was born on 1 May 1938, namely he had been older than 65 years, namely acquiring entitlement to age pension.

18. On 10 June 2011, the Trial Panel of the Special Chamber rendered the decision SCEL-09-0001, thereby rejecting the complaint of Applicant as inadmissible.

19. In its reasoning, the Trial Panel of the Special Chamber found that: "*during the hearing procedure and evidentiary hearing, it was confirmed that the Applicant, at the moment of privatization of SOE 'Ramiz Sadiku' (concluded on 27 June 2006) was older than 65 years. Therefore, the Trial Panel of the Special Chamber is of the view that the complaint of the applicant does not meet conditions as provided by Article 10.4 of UNMIK Regulation 2003/13.*"

20. On 22 March 2012, the Applicant filed a complaint to the Appellate Panel of the Special Chamber against the decision of the Trial Panel of the Special Chamber SCEL-09-0001.

21. On 22 April 2013, the Appellate Panel of the Special Chamber rendered the Judgment ASC-11-0069, thereby rejecting the complaint of the Applicant as ungrounded.

Relevant law

22. UNMIK Regulation No. 2003/13, of 9 May 2003, ON THE TRANSFORMATION OF THE RIGHT OF USE TO SOCIALLY-OWNED IMMOVABLE PROPERTY

Article 10.4 (Entitlement of employees)

"For the purpose of this section an employee shall be considered as eligible, if such employee is registered as an employee with the Socially-owned Enterprise at the time of privatization and is established to have been on the payroll of the enterprise for not less than three years. This requirement shall not preclude employees, who claim that they would have been so registered and employed, had they not been subjected to discrimination, from submitting a complaint to the Special Chamber pursuant to subsection 10.6."

Applicant's allegations

23. The Applicant does not clarify the constitutional rights violated by the challenged judgment, but only claims that he is victim of discrimination.

24. The Applicant addresses the court with the following proposal:

„That the Special Chamber of the Supreme Court renders a judgment thereby recognizing my entitlement to 20% of the privatization of SOE Ramiz Sadiku."

Preliminary assessment of admissibility of the Referral

25. In order to be able to review the Referral of the Applicant, the Court first examines whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution and as further specified in the Law and Rules of Procedure.

26. In this respect, the Court refers to Article 113.7 of the Constitution, which provides that:

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.

27. The Court notes that the Applicant has filed a complaint with the PAK, and later before the Trial Panel, and the Appellate Panel of the Special Chamber. The Applicant has exhausted all legal remedies as provided by Article 113 (7).

28. The Court also refers to Article 49 of the Law, which 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. (...)".

29. The Court also refers to Rule 36 (1) b) of the Rules of Procedure, which provides that:

"(1)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 ...".

30. On the basis of documents filed, the Court finds that the Applicant filed his Referral on 14 October 2013, but since the Applicant has not responded to the Court's request and failed to provide any evidence on the date of service of the Judgment to him, the Court considers as the date of service of the Judgment the date when the Appellate Panel of the Special Chamber rendered the Judgment ASC-11-0069, which in this case is 22 April 2013, and therefore, the Applicant filed the Referral to the Court 1 month and 22 days after the legal deadline as provided by Article 49 of the Law, and Rule 36 (1) b) of the Rules of Procedure.

31. It follows that the Referral is out of time.

32. Therefore, the Referral must be rejected as inadmissible, pursuant to Article 49 of the Law and Rule 36 (1) b) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 20 of the Law and Rule 36 (1) b) of the Rules of Procedure, on 5 December 2013, unanimously

DECIDES

I. TO REJECT the Referral as Inadmissible;

II. TO NOTIFY the Parties of this Decision;

III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20 (4) of the Law;

IV. TO DECLARE this Decision immediatelyeffective.

Judge Rapporteur
Ivan Čukalović

President of the Constitutional Court
Prof. Dr. Enver Hasani

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