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BULLETIN OF CASE LAW 2014

OF THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

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Case KI05/13, Decision of 26 May 2014.

Key words: Individual Referral, enforcement of judgments, administrative conflict, inadmissible, non-exhaustion of legal remedies

The Applicant challenges the non-enforcement of the Judgment of the Supreme Court of Kosovo dated 14 March 2007, whereby the Supreme Court in the administrative procedure, rejected the appeal filed by the Municipality of Klina and obliged the Municipality of Klina to render a new Decision in relation to the Applicant.

The administrative proceedings concerned the Decision of the municipal authorities of Klina on demolition of a construction used by the Applicant for business purposes.

In addition, the Applicant requested the Constitutional Court to oblige the Municipality of Klina to implement the Judgment of the Supreme Court.

Following the Judgment of the Supreme Court, the Municipality of Klina failed to render a new decision in relation to the Applicant. According to the provisions of the Law on Administrative Conflict, the Municipality of Klina was obliged to render this decision within thirty (30) days. In this regard, the Constitutional Court, referring to the provisions of the Law on Administrative Conflict held that the Applicant, upon expiry of the deadline of thirty (30) days should have further proceeded with the administrative conflict and thus exhaust the legal remedies provided by law.

The Constitutional Court considered that the Applicant actually failing to proceed further with the administrative conflict, by filing an appeal with the second instance body within the foreseen deadline is liable to have his case declared inadmissible, as it shall be understood as a waiver of the right to further proceedings on objecting the violation of constitutional rights.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI05/13
Applicant
Florim Gashi
Constitutional Review of the Judgment, A. no. 811/2006 of the Supreme Court of Kosovo dated 14 March 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

The Applicant

1. The Applicant is Mr. Florim Gashi (hereinafter: the Applicant), residing in Klina, who is represented by Mr. Skënder Gashi.

Challenged decisions

2. The Applicant challenges the non-enforcement of the Judgment, A. no. 811/2006 of the Supreme Court of Kosovo dated 14 March 2007 by the Municipality of Klina, which was served on the Applicant on an unspecified date.

Subject matter

3. The subject matter of the Referral is the constitutional review of the Judgment, A. no. 811/2006 of the Supreme Court of Kosovo dated 14 March 2007, whereby the Supreme Court in the administrative procedure, rejected the appeal of the Municipality of Klina. The administrative procedure concerns the Decision of the municipal authorities of Klina on demolition of a construction used by the Applicant for business purposes.

4. In his Referral, the Applicant requests the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) [...]*"to oblige the Municipality of Klina to implement the Judgment of the Supreme."*

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 the Constitutional Court (hereinafter: the Law), and Rule 56 of the Rules of Procedure (hereinafter: the Rules).

Proceedings before the Court

6. On 16 January 2013 the Applicant filed the Referral with the Court.

7. On 30 January 2013, by Decision GJR. KI05/13, the President appointed Judge Ivan Čukalović as Judge Rapporteur. On the same date, by Decision KSH. KI05/13, the President appointed the Review Panel composed of Judges Altay Suroy (presiding), Snezhana Botusharova (member) and Arta Rama-Hajrizi (member).

8. On 28 February 2013 the Court informed the Applicant of the registration of the Referral and sent a copy of the Referral to the Supreme Court.

9. On 7 May 2014 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

10. On 14 March 2005, on the basis of a revised urban plan, the Board of Directors of the Municipality of Klina issued a Decision (1/3 NR. 353-247/2005) revoking all existing permits for the construction of temporary premises in the Municipality. 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.

11. This Decision of the Board of Directors of 14 March 2005 affected also the Applicant, who was using the construction for his business activities.

12. Consequently, on 17 August 2005, the Directorate for Urbanism and Public Services of the Municipality of Klina issued an Order No. 07. No. 354-122/2005 (hereinafter: the Order of the Directorate), obliging the Applicant to demolish the construction.

13. The Applicant was given 15 days to demolish the construction, or the Directorate would proceed to forced execution of its order.

14. Following the above, on 2 September 2005, against the order of the Municipality of Klina, the Applicant submitted a complaint to the Chief Executive Officer of the Municipality of Klina.

15. On 15 September 2005, the Chief Executive Officer of Klina, by Decision 07 No. 354-122/2005 (hereinafter: the Decision of the Chief Executive Officer) rejected as unfounded the complaint of the Applicant and upheld the Order of the Directorate.

16. In the Applicant's case, on 14 October 2005, the Directorate proceeded with the demolition of the construction.

17. On 31 October 2005, against the Decision of the Chief Executive Officer, the Applicant filed an appeal with the Ministry of Environment and Spatial Planning (hereinafter: MESP).

18. On 20 March 2006, the MESP, by its Decision A-106/05 approved the appeal filed by the Applicant, whereby it annulled the Decision of the Chief Executive Officer and remanded the case for review.

19. MESP reasoned that the Chief Executive Officer in Klina in its Decision, had failed to determine the factual situation in a complete and correct manner, and had failed to pay due attention to the relevant legal provisions on administrative procedure, which had rendered the decisions unfair. Consequently, the MESP decided:

"*Pursuant to article 242, paragraph 2 of the Law on General Administrative Procedures, the Ministry of Environment and Spatial Planning [...] to remand the case for review. The first instance authority is obliged to act in conformity with decisions of the msecond instance within not later than 30 days from the day this Decision is rendered, and to issue a new Decision by administering the above mentioned evidence.*"

20. Consequently, the Municipality of Klina submitted an appeal against the decision of the MESP to the Supreme Court. The Municipality of Klina claimed in its appeal that the MESP decision was not in compliance with the law, and that the law had been applied to the detriment of the Municipality of Klina.

21. On 14 March 2007, the Supreme Court rejected the appeal of the Municipality of Klina.

22. In its Judgment, the Supreme Court held that:

> *"The contested decision approved the request of Florim Gashi from Klina and annulled the Decision of the Chief Executive Officers of the Municipality of Klina 07.nr.354-122/2005 of date 15.09.2005 and the case was remanded for review.*
>
> *[…]*
>
> *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."*

23. Following the Judgment of the Supreme Court, the Municipality of Klina did not take any action in relation to the Applicant.

24. Based on the submissions, the Applicant addressed the MESP (letter of 17 April 2008) and the Municipal Assembly of Klina (letter of 21 April 2009) regarding the enforcement of the Judgment of the Supreme Court.

25. On 23 January 2013, the Municipality of Klina had filed a Referral with the Constitutional Court, requesting the constitutional review and annulment of the abovementioned Judgment, A. no. 811/2006 of the Supreme Court and 15 other Judgments of the Supreme Court. The Municipality of Klina further requested the annulment of the Decision of the MESP in all 16 cases. The Municipality of Klina filed its Referral based on Article 113, paragraph 4 of the Constitution (See Case KO08/13, Constitutional Court, Resolution on Inadmissibility of 29 November 2013)

26. On 7 May 2014, the Court, upon deliberation, unanimously decided to declare the Referral inadmissible, because the Municipality of Klina was not an authorized party.

Applicant's Allegation

27. The Applicant argues that [...]*"with these arbitrary decisions, Municipality of Klina made grave violations of constitutional provisions, without enabling him [the Applicant] the most basic means for his existence and his 6 family members. Klina municipality by acting in this way violated the constitutional provisions on human rights and freedom pursuant to Article 113.7 of Constitution, Article 47 of Law on Constitutional Court. "*

28. The Applicant further alleges that he addressed the Municipality of Klina orally and in written on the enforcement of the Judgment.

29. In his Referral, the Applicant addresses the Court as following:

> "*It is relevant to mention that all legal regular procedures have been precisely followed by the* [the Applicant] *up to the Supreme Court of Kosovo, and after all legal remedies are exhausted, we are obliged to address to Constitutional Court of the Republic of Kosovo for legal and constitutional review of the judgment of Supreme Court of Kosovo A. no. 811/2006 dated 14.03.2007."*

30. The Applicant concludes, requesting the Court:

"Through our request, we request from Constitutional Court to force Klina municipality on implementation of Judgment of Supreme Court of Kosovo based on Article 116.1 according to which it is said, that decisions of Constitutional Court are obligatory for all persons and institutions of the Republic of Kosovo, and Article 124.6 to oblige the Municipality to implement the judgment of the [Supreme Court] of Republic of Kosovo A. no. 811/2006, as well as the Decision of the Ministry of Environment and Spatial Planning in Prishtina No. A-106/2005 dated 20.03./2006, which became final based on Judgment of Supreme Court of Kosovo."

Admissibility of the Referral

31. 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.

32. 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."

33. The Court also refers to 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".

34. As said above, the Applicant in his Referral challenges thenon-enforcement of the Judgment of the Supreme Court of Kosovo (A. no. 811/2006 dated 14 March 2007) by the Municipality of Klina and requests the Court [...] *"to oblige the Municipality of Klina to implement the Judgment of the Supreme."*

35. The Court notes that the Supreme Court in the administrative procedure rejected the appeal of the Municipality of Klina filed against the Decision of the MESP as ungrounded. According to the Decision of the MESP, the MESP decided to remand the case for review, and further obliged the first instance body, namely the

Municipality of Klina, within 30 days upon receipt of the Decision to render a new Decision based on the recommendation of the MESP. Hence, following the Judgment of the Supreme Court, the Municipality of Klina was obliged to render a new Decision in relation to the Applicant. To this date, the Municipality of Klina has not rendered such a decision.

36. Given that the procedure followed has been the administrative procedure, the Court deems it relevant and necessary to refer to the provisions of the Law on Administrative Conflict.

37. Article 29 of the Law on Administrative Conflicts No. 03/L-202 establishes:

> *1. If the court of appeals has not issued the decision within thirty (30) days or a shorter time-line determined with special provisions concerning the appeal of the party against the decision of the first instance court, whereas if it does not issue the decision further within seven (7) days with a repetitious request, the party may start the administrative conflict as if the complain has been refused.*
>
> *2. As it is foreseen under paragraph 1 of this Article, the party may act also when according to his/her request, the decision by the court of first instance has not been issued, against which act the appeal cannot be made.*
>
> *3. If the court of first instance, against which act the appeal can be made, has not issued any decision based on the request within sixty (60) days or a shorter foreseen time-line with special provisions, the party has the right to address by the request to the court of appeals. Against the decision of court of appeals, the party may start an administrative conflict, but also may, under the conditions in paragraph 1 of this Article, start it even if this body has not issued a decision.*

38. In this regard, the Court notes that the Applicant addressed the MESP (letter of 17 April 2008) and the Municipal Assembly of Klina (letter of 21 April 2009), only requesting the enforcement of the Judgment of the Supreme Court.

39. Based on the foregoing, the Court holds that the Applicant, upon expiry of the deadline as provided by the aforementioned provision of the Law on Administrative Conflicts should have further

proceeded with the administrative conflict and thus exhaust the legal remedies provided by law.

40. In this relation, the Court recalls that in accordance with the principle of subsidiarity, the Applicant is under the obligation to exhaust all legal remedies provided by law, as stipulated by Article 113, paragraph 7 and the other legal provisions, as mentioned above. Therefore, the Applicant should have filed an appeal with the second instance body since the first instance body, the Municipality of Klina, had failed to render a Decision within the foreseen deadline.

41. 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 legal order of Kosovo will provide an effective remedy for the violation of the constitutional rights (See case *Selmouni v. France*, No. 25803/94, ECHR, Decision of 28 July 1999*;* and case KI06/10, Applicant *Valon Bislimi*, Constitutional Court, Judgment of 30 October 2010).

42. Thus, the Applicant actually failing to proceed further with the administrative conflict, by filing an appeal with the second instance body within the foreseen deadline is liable to have his case declared inadmissible, as it shall be understood as a waiver of the right to further proceedings on objecting the violation of constitutional rights (See case KI16/12, Applicant *Gazmend Tahiraj*, Constitutional Court, Resolution on Inadmissibility of 22 May 2012).

43. In sum, the Applicant has not exhausted all the legal remedies available to him under applicable law.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 47, paragraph 2 of the Law and Rule 36 (1) a) of the Rules of Procedure, on 7 May 2014, unanimously:

DECIDES

I. TO DECLARE 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

KI121/13, Lumturije Morina, Resolution of 25 March 2014- Constitutional Review of the Decision AC. no. 1791/13, of the Court of Appeal of Kosovo, of 12 July 2013

Case KI121/13, Decision of 25 March 2014.

Key words; individual referral, execution procedure, Administrative Direction, manifestly ill-founded

The Applicant submitted the Referral pursuant to Article 113. 7 of the Constitution, challenging the Decision AC. no. 1791/13, of the Court of Appeal of Kosovo, of 12 July 2013, which according to the Applicant's allegation was served on her on 1 August 2013. and Administrative Direction of the Judicial Council of Kosovo no. 2008/02 on unification of the court fees.

The subject matter is the request for constitutional review of the Decision AC. no. 1791/13, of the Court of Appeal, of 12 July 2013, which in the execution procedure against the Applicant, in the capacity of a debtor, rejected her appeal as ungrounded and upheld the Decision E. No. 934/12, of the Basic Court in Gjakova, of 8 March 2013. The Applicant also requests the constitutional review of the Administrative Direction no. 2008/02 on unification of the court fees of the Kosovo Judicial Council.

The Applicant considers that her constitutional rights under Articles 22 [Direct Applicability of International Agreements and Instruments], Article 31 [Right to Fair and Impartial Trial], Article 54 [Judicial Protection of Rights] of the Constitution of the Republic of Kosovo, were violated and concretely human rights and freedoms, guaranteed by the European Convention for Protection of Human Rights and Fundamental Freedoms and its protocols, in particular Protocol 1, Article 1.

With respect to the Applicant's allegations from the Referral for annulment of the Administrative Direction no. 2008/02 on unification of the court fees of Kosovo Judicial Council, the Court reiterates that only authorized parties under Article 113.2 of the Constitution are entitled to refer questions of compatibility of laws with the Constitution. Therefore, the Applicant is not authorized party pursuant to Article 113.2 of the Constitution (see case KI34/11, Applicant *Sami Bunjaku*, Resolution on inadmissibility of the Constitutional Court, of 8 December 2011)

Considering the Applicant's allegations regarding the constitutional review of the Decision AC. no. 1791/13, of the Appeal Court of Kosovo, of 12 July 2013, the Constitutional Court considers that the facts presented

by the Applicant did not in any way justify the allegation of a violation of the constitutional rights and that the Applicant has not sufficiently substantiated her allegations. Therefore, the Court concluded that the facts presented by the Applicant do not in any way justify the allegation of a violation of her constitutional rights, therefore her referral is manifestly ill-founded.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI121/13
Applicant
Lumturije Morina
Constitutional review of the Decision of the Court of Appeal of Kosovo, AC. No. 1791/13, of 12 July 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. Lumturije Morina (hereinafter: the Applicant), who is represented by Mr. Teki Bokshi, lawyer from the Municipality of Gjakova (hereinafter: the Applicant's representative).

Challenged decision

2. The Applicant challenges the Decision of the Court of Appeal of Kosovo, AC. No. 1791/13, of 12 July 2013, which according to the Applicant, was served on her on 1 August 2013 and Administrative Direction no. 2008/02 on unification of the court fees of the Kosovo Judicial Council.

Subject matter

3. The subject matter is the request for the constitutional review of the Decision of the Court of Appeal, AC. no. 1791/13, of 12 July 2013, which in the execution procedure against the Applicant, in the capacity of a debtor, rejected her appeal as ungrounded and upheld the Decision of the Basic Court in Gjakova, E. No. 934/12, of 8 March 2013. The Applicant also requests the constitutional

review of the Administrative Direction no. 2008/02 on unification of the court fees of the Kosovo Judicial Council.

Legal basis

4. 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 (hereinafter: the Law) and Rule 56. 2 of the Rules of Procedure of the Constitutional Court (hereinafter: the Rules of Procedure).

Proceedings before the Court

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

6. On 30 August 2013, the President by Decision GJR. No. KI121/13, appointed Judge Altay Suroy as Judge Rapporteur.On the same day, the President by Decision No. KSH. KI121/13, appointed the Review Panel composed of Judges: Robert Carolan (Presiding), Ivan Čukalović and Enver Hasani.

7. On 18 September 2013, the Court notified the Applicant's representative of the registration on the Referral and requested from him to sign the official Referral form, since the form submitted on 7 August 2013 was not signed by him.

8. The Applicant's representative has not responded to the request of the Court.

9. On 21 February 2014, the Court requested from the Applicant's representative to submit to the Court all decisions, related to the Applicant's Referral.

10. On 4 March 2014, the Applicant's representative submitted to the Court the Referral form signed by him.

11. On 13 March 2014, after having reviewed the preliminary report of Judge Rapporteur, the Review Panel made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

12. According to the incomplete documentation, which was submitted to the Court by the Applicant, and which is related only to the execution procedure, the Court came up with these facts.

13. The Applicant filed an appeal to the Basic Court in Gjakova against the Decision on allowing the execution, E.No.934/12, of 1 March 2013, where the Applicant appears in the capacity of the debtor.

14. On 8 May 2013, the Basic Court in Gjakova, deciding upon the Applicant's appeal against the Ruling on allowing the execution, E. no. 934/12, of 1 March 2013, rejected the appeal as ungrounded and considered that the Applicant withdrew the appeal filed against the Decision E no. 934/12, of 1 March 2013, in entirety. The Court further stated:

> *"The debtor did not attach to the appeal the evidence on payment of fees. ...since the debtor did not pay the court fee within the time limit set forth by the conclusion of 22.03.2013, in compliance with Article 19 of LCP, as well as Article 102 of the LCP, in conjunction with Article 22 of LCP, it was decided as per enacting clause of this Ruling*."

15. On 12 July 2013, the Court of Appeal of Kosovo, deciding upon the Applicant's appeal rendered Decision AC. no. 1791/13, thereby rejecting as ungrounded the appeal. The Court further in its Judgment added:

> *"[...] this Court considers that the appealed allegations of the debtor do not stand, because based on provision of Article 2.2 of Administrative Direction no. 2008/02 on Unification of Court Fees of Kosovo Judicial Council...while in provision of Article 6.5 of the abovementioned Direction it is provided that in case these fees are not paid until the final deadline, the court will dismiss the application for which the respective fee was not paid and in the present case it is the court fee for the appeal under Article 10.11 of this Direction.*
>
> *[...]*
>
> *The first instance court has not committed any essential violation of the contested procedure provisions, which this Court reviews ex-officio."*

Applicant's allegations

16. The Applicant alleges that by Decision of the Court of Appeal, AC. No. 1791/13, of 12 July 2013, were violated her rights protected by the Constitution, as follows:

    Article 22 [Direct Applicability of International Agreements and Instruments], Article 31 [Right to Fair and Impartial Trial], Article 54 [Judicial Protection of Rights] of the Constitution of the Republic of Kosovo and concretely human rights and freedoms, guaranteed by the European Convention for Protection of Human Rights and Fundamental Freedoms and its protocols, in particular Protocol 1, Article 1.

17. The Applicant further states:

    > *"The court fees and fiscal liabilities can be determined exclusively by Law promulgated by ..... and not in any way by Administrative Direction no. 2008/02 on Unification of Court Fees of Kosovo Judicial Council".*

18. The Applicant concludes by requesting from the Constitutional Court that:

    - *"Annul the Ruling of the Basic Court in Gjakova, E. no. 934/12 of 08.05.2013*
    - *Annul the Ruling of the Court of Appeal, Ac.no.1791/13 of 12.07.2013, and*
    - *Annul the Administrative Direction no.2008/02 on Unification of Court Fees of Kosovo Judicial Council."*

Admissibility of Referral

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

    Allegation regarding the request for annulment of the Administrative Direction no. 2008/02 on unification of the court fees of the Kosovo Judicial Council

20. With respect to the Applicant's Referral for annulment of the Administrative Direction no. 2008/02 on unification of the court fees of Kosovo Judicial Council, the Court refers to Article 113, paragraphs 1, 2 and 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,*
>
> *2. The Assembly of Kosovo, the President of the Republic of Kosovo, the Government, and the Ombudsperson are authorized to refer the following matters to the Constitutional Court:*
>
> *(1) the question of the compatibility with the Constitution of laws, of decrees of the President or Prime Minister, and of regulations of the Government;*
>
> *(2) the compatibility with the Constitution of municipal statutes.*
>
> [...]
>
> *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."*

21. Regarding the Applicant's Referral to annul the Administrative Direction no. 2008/2 on unification of court fees of Kosovo Judicial Council, the Court reiterates that only the authorized parties under Article 113. 2 of the Constitution are entitled to submit the question of the compatibility of laws with the Constitution. Therefore, the Applicant is not authorized party under Article 113. 2 of the Constitution (See Case KI34/11, Applicant Sami Burnjaku Constitutional Court Resolution on Inadmissibility, of 8 December 2011).

Allegation regarding decisions of the Basic Court in Gjakova and the Court of Appeal of Kosovo

22. With respect to Applicant's allegations that the Basic Court in Gjakova and the Court of Appeal of Kosovo through their decisions have violated her rights, guaranteed by the Constitution, the Applicant must show that she has fulfilled the requirements of Article 113.7 of Constitution, as well as Article 47.2 and 49 of the

Law. From the case file, it can be seen that the Applicant has presented facts that she has used all available legal remedies under the applicable laws and that the Referral was submitted within the time limit of (4) months, as provided by the Law and the Rules of Procedure.

23. 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".*

24. The Applicant has not provided any *prima facie* evidence which would point to a violation of her constitutional rights (see *mutatis mutandis* Vanek vs. Slovak Republic, no. 53363/99, Application of 31 May 2005). The Applicant does not state in which way Article 22, 31 and 54 of the Constitution and Protocol 1, Article 1 were violated.

25. The Applicant has failed to prove in what manner the non-payment of court fees led to violation of her constitutional rights.

26. In this regard, the Constitutional Court reiterates that under the Constitution, it is not its duty to act as a court of fourth instance, when reviewing 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, *mutatis mutandis*, Garcia Ruiz v. Spain, no. 30544/96, ECtHR Judgment of 21 January 1999; see also case KI70/11, Applicants Faik Hima, Magbule Hima and Bestar Hima, Resolution on Inadmissibility of 7 February 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 had a fair trial
(See *inter alia*, European Commission on Human Rights, Edwards v. United Kingdom, App. No 13071/87, of 10 July 1991).

28. For all the reasons mentioned above, 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 her allegations.

29. The Court finds that the Referral does not meet the admissibility requirements, as required by Article 113.1 of the Constitution and Rule 36 (2) b) and d) and 36 (3) c) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to the Article 113.1 of the Constitution, Article 20 of the Law and Rule 36 (2), b) and d) and Rule 36 (3) c) of the Rules of Procedure, on 25 March 2014, unanimously:

DECIDES

I. TO DECLARE 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	**President of the Constitutional Court**
Altay Suroy	Prof. Dr. Enver Hasani

KI219/13, Avdi Abdullahu, Resolution of 25 March 2014 - Constitutional Review of the Decision SCEL-09-0001, of the Trial Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters, of 24 February 2011

Case KI219/13, Decision of 25 March 2014.

Key words: individual referral, constitutional review of decision of the Trial Panel of the Special Chamber of the Supreme Court

The Applicant submitted 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 Rule 56 of the Rules of Procedure of the Constitutional Court of Kosovo (hereinafter: the Rules of Procedure).

On 03 December 2013, the Applicant filed the Referral with the Constitutional Court of the Republic of Kosovo and requested from the Court the constitutional review of the Decision of the Trial Panel of the Special Chamber of the Supreme Court.

The Applicant alleges that the Supreme Court of Kosovo committed procedural violations of legal provisions and erroneously determined factual situation, and also the Constitution of the Republic of Kosovo, namely Articles 46, 47, 48, 49 and 50 of the Law on Constitutional Court were violated.

On 8 January 2014, the President by Decision GJR. No. KI219/13 appointed Judge Altay Suroy as Judge Rapporteur. On the same day, the President by Decision No. KSH.KI219/13, appointed the Review Panel composed of Judges: Robert Carolan (Presiding), Ivan Čukalovićand Arta Rama-Hajrizi.

Based on information from the case file, the Court finds that the Applicant filed his Referral on 3 December 2013. Based on available documents, the Court determined that the final Decision SCEL-09-0001 of the Trial Panel of the Special Chamber was served on the Applicant on 19 March 2011, therefore, the Applicant filed his Referrals to the Court after the expiration of the period prescribed by Article 49 of the Law and Rule 36 (1) b) of the Rules of Procedure.

Taking into account all the circumstances of the submitted Referral, the Constitutional Court of Kosovo in its session held on 25 March 2014, decided to declare the Referral inadmissible, as out of time.

RESOLUTION ON INADMISSIBILITY
in
Case no. KI219/13
Applicant
Avdi Abdullahu
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
Arta Rama-Hajrizi, Judge

Applicant

1. The Applicant is Mr. Avdi Abdullahu from village Gllamnik, Municipality of Podujeva, (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges the Decision SCEL-09-0001, 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 Special Chamber), of 24February 2011, which was served on the Applicant on 19 March 2011.

Subject matter

3. The subject matter is the constitutional review of the decision, which allegedly prevents the Applicant to exercise his right to 20% share from privatization of the enterprise Ramiz Sadiku (hereinafter: SOE "Ramiz Sadiku"), in Prishtina. The Applicant

does not specify the Articles of the Constitution that have been violated.

Legal basis

4. The Referral is based on Article 113. 7 of the Constitution of the Republic of Kosovo, Article 47 of the Law on the Constitutional Court of the Republic of Kosovo, No. 03/L-121 (hereinafter: the Law) and Rule 56 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Court

5. On 3 December 2013, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 8 January 2014, the President by Decision GJR. No. KI219/13 appointed Judge Altay Suroy as Judge Rapporteur.On the same day, the President by Decision No. KSH.KI219/13, appointed the Review Panel composed of Judges: Robert Carolan (Presiding), Ivan Čukalović and Arta Rama-Hajrizi.

7. On 27 January 2014, the Court notified the Applicant and the Special Chamber of the Supreme Court of registration of the Referral.

8. On 25 March 2014, after having reviewed 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. The Applicant claims that he was an employee of the SOE “Ramiz Sadiku“ for 8 (eight) years.

10. On 27 June 2006, the SOE „Ramiz Sadiku“ has concluded the privatization process.

11. On 05 March 2010, the Applicant unsatisfied with the Decision of the Privatization Agency (hereinafter: the Agency), which has not included him on the list of employees who are entitled to a share of 20% from privatization, filed an appeal with the Special Chamber of the Supreme Court.

12. In the appeal to the Special Chamber of the Supreme Court, the Applicant stated that he was an employee of the SOE "Ramiz Sadiku", and that he worked until 1992, whereby he was coercively removed from his job. The Applicant attached to the appeal to the Special Chamber a copy of the certificate as a proof of his employment status in the SOE "Ramiz Sadiku", as well as a copy of the labor booklet.

13. The Agency, through a letter to the Special Chamber responded to the Applicant's appeal, alleging that the Applicant does not meet the requirements, since he did not file appeal within legal time limit (which has expired on 27 March 2009) against the final list of employees, compiled by the Agency.

14. On 24 February 2011, the Trial Panel of the Special Chamber rendered the Decision SCEL-09-0001, by which rejected the Applicant's appeal as inadmissible.In the reasoning of its decision, the Trial Panel stated: „*Considering that the appeal was submitted 3 months after the expiration of the time limit to submit the appeal (the time limit to submit the appeal expired on 27 March 2009), based on this, it is not possible to approve the return to the previous situation and consider the appeal as in time; therefore the appeal is rejected as inadmissible".*

15. In the conclusion of the Ruling SCEL-09-0001, the Trial Panel of the Special Chamber states*: „Pursuant to Article 9.5 of UNMIK Regulation 2008/4, the appeal against this Ruling is submitted in writing to the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency Related Matters within 30 days from the day this Ruling is served".*

Applicant's allegations

16. The Applicant alleges that the Supreme Court of Kosovo committed procedural violations of legal provisions, and erroneously determined factual situation, and also the Constitution of the Republic of Kosovo, namely Articles 46, 47, 48, 49 and 50 of the Law on Constitutional Court were violated.

17. The Applicant addresses the Court with the request:

„I want to be entitled to 20% share, since this compensation is guaranteed to me, and which was received by a part of employees of „Ramiz Sadiku“”.

Admissibility of the Referral

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

19. In relation to 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. The Court also refers to Article 49 of the Law, which stipulates:

"The referral should be submitted within a period of four (4) months. The deadline shall be counted from the day upon which the claimant has been served with a court decision (...)".

21. The Court also takes into account Rule 36 (1) b) of the Rules of Procedure, which stipulates:

"(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...".

22. Based on information from the case file, the Court finds that the Applicant filed his Referral on 3 December 2013. Based on available documents, the Court determined that the final Ruling SCEL-09-0001 of the Trial Panel of the Special Chamber was served on the Applicant on 19 March 2011,therefore, the Applicant filed his Referrals to the Court after the expiration of the period prescribed by Article 49 of the Law and Rule 36 (1) b) of the Rules of Procedure.

23. The Court also recalls that the purpose of the four-month legal time limit under Article 49 of the Law and Rule 36 (1) b) is to promote

legal certainty, to ensure that cases raising constitutional issues are dealt with within a reasonable time and that previously rendered decisions are not endlessly open to challenging (see case of O' LOUGHLIN and Others v. the United Kingdom no. 23274/04, ECtHR decision of 25 August 2005.

24. From this results that the Referral is out of time.

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,

DECIDES

I. TO DECLARE the Referral as Inadmissible;

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

III. This Decision is effective immediately.

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

KI02/14, Hamdi Ademi, Resolution of 2 April 2014 - Constitutional Review of the Judgment ASC-11-0069, of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo, of 22 April 2013

Case KI02/14, Decision of 2 April 2014.

Key words; individual referral, constitutional review of decision of Appellate Panel of the Special Chamber of the Supreme Court

The Applicant submitted Referral based on Article 113.7 of the Constitution of the Republic of Kosovo, Article 47 of the Law on the Constitutional Court of the Republic of Kosovo No. 03/L-121 and Rule 56 of the Rules of Procedure of Kosovo (hereinafter: the Rules of Procedure).

On 09 January 2014, the Applicant filed his referral with the Constitutional Court of the Republic of Kosovo and requested from the Court the constitutional review of the Judgment of the Appellate Panel of the Special Chamber of the Supreme Court.

In his Referral, the Applicant claims to have lost his right to 20% of the proceeds of privatization due to an error of the responsible person in the SOE "Ramiz Sadiku".

On 30 January 2014, the President of the Court, by Decision no. GJR. K102/14, appointed Judge Altay Suroy as Judge Rapporteur. On the same date, by Decision no. KSH. K102/ 14, the President appointed the Review Panel, composed of judges: Robert Carolan (Presiding), Ivan Čukalović and Enver Hasani.

Based on the case file, the Court concludes that it has already dealt with the abovementioned case no. KI73/13, Resolution on Inadmissibility, in which on 18 November 2013, it rendered its resolution on inadmissibility of the referral. In its Resolution, the Court noted that the Applicant had not substantiated his allegations related to violation of constitutional provisions, since the presented facts do not in any way indicate that the Trial Panel and the Appellate Panel of the Special Chamber of the Supreme Court violated his constitutionally guaranteed rights. The Court found that it has already rendered a decision on the subject matter while the Referral does not contain sufficient grounds for rendering a new decision. Therefore, the Court declares this referral inadmissible, in compliance with Rule 36 (3) e) of the Rules of Procedure.

Taking into account all the circumstances of the submitted referral, the Constitutional Court of Kosovo in its session held on 2 April 2014, decided to declare the referral inadmissible because the Referral does not contain sufficient grounds for rendering a new decision.

RESOLUTION ON INADMISSIBILITY
in
Case no. KI02/14
Applicant
Hamdi Ademi
Constitutional Review of the Judgment of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo, ASC-11-0069, 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. Hamdi Ademi, from the village of Gllamnik, Municipality of Podujeva (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges the Judgment ASC-11-0069of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo (hereinafter: the Appellate Panel)of22 April 2013, served on the Applicant on 03 May 2013. The abovementioned decision was reviewed in the Constitutional Court in case KI73/13, Inadmissibility Resolution, which the Court reviewed on 18 November 2013.

Subject matter

3. The subject matter is the constitutional review of the judgment which is alleged to have deprived the Applicant the enjoyment of the rights to a share from 20% of the proceeds from the privatization of the Socially-Owned Enterprise “Ramiz Sadiku” (hereinafter: SOE “Ramiz Sadiku“), in Prishtina.

4. The Applicant does not refer specifically to the articles of the Constitution which are violated.

Legal basis

5. The legal basis for filing the referral is: Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), Article 47 of the Law on the Constitutional Court of the Republic of Kosovo No. 03/L-121 (hereinafter: the Law) and Rule 56 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Court

6. On 09 January 2014, the Applicant filed his referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

7. On 30 January 2014, the President of the Court, by Decision no. GJR. KI02/14, appointed Judge Altay Suroy as Judge Rapporteur. On the same date, by Decision no. KSH. KI02/14, the President appointed the Review Panel, composed of judges: Robert Carolan (Presiding), Ivan Čukalovićand Enver Hasani.

8. On 24 February 2014, the Court notified the Applicant and the Special Chamber of the Supreme Court (hereinafter: SCSC), of the registration of the referral.

9. On 02 April 2014, after having reviewed the report of the Judge Rapporteur, the Review Panel made a recommendation to the full Court on inadmissibility of the Referral.

Summary of facts

10. On 16 May 2013, the Applicant filed his referral with the Court, which was registered under the number KI73/13, thereby challenging the Decision ASC-11-0069 of the SCSC Appellate Panel, of 22 April 2013.

11. In referral KI73/13, the Applicant claims that the challenged judgment violates his rights guaranteed by the Constitution, such as the right to life, the right to work, and that he is a victim of discrimination.

12. In referral KI73/13, the Applicant requested from the Court to: *„To benefit 20% for his work at the enterprise 'Ramiz Sadiku' and to be paid for sick leave from the day he suffered the car accident, until he turned 65".*

13. On 18 November 2013, the Court declared the Applicant's referral inadmissible (Case no. KI73/13, Resolution on Inadmissibility).

14. On 9 January 2013, the Applicant filed a new Referral with the Court (by challenging the same decision, as in the Case no. KI73/13), registered under the number KI02/14.

15. In Referral no. KI02/14, the Applicant has not submitted any new facts or evidence related to the nature of his case, but explicitly demands to: *„That the Court makes possible to face the Secretary of former SOE 'Ramiz Sadiku' whom he considers to be the only responsible person for losing his right to the 20%".*

Applicant's allegations

16. In his Referral, the Applicant claims to have lost his right to 20% of the proceeds of privatization due to an error of the responsible person in the SOE "Ramiz Sadiku".

17. The Applicant addresses the Court with the following request:

> *„I want to face the Secretary of former 'Ramiz Sadiku' who has lost all my personal documents proving my history of work in the enterprise SOE 'Ramiz Sadiku'".*

Admissibility of the Referral

18. The Court first examines whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution and further specified in the Law and the Rules of Procedure.

19. In this regard, the Court refers to Article 116.1 of the Constitution [Legal Effect of Decisions], which provides that:

> *„1. Decisions of the Constitutional Court are binding on the judiciary and all persons and institutions of the Republic of Kosovo."*

20. Apart from the above, the Court also takes note of the Rule 63 (1) of the Rules of Procedure, which provides that:

> *„(1) The decisions of the Court are binding on the judiciary and all persons and institutions of the Republic of Kosovo."*

21. Furthermore, the Rule 36 (3) e) of the Rules of Procedure provides that:

> *„(3) Referral may also be deemed inadmissible in any of the following cases:*
> *(...)*
> *e) the Court has already issued a Decision on the matter concerned and the Referral does not provide sufficient grounds for a new Decision".*

22. The Court considers that the facts and allegations raised by the Applicant in his new Referral do not provide any sufficient or relevant grounds or reasons for a new decision.

23. In fact, the Court wishes to remind that it has already dealt with the above-mentioned case no. KI73/13, Inadmissibility Resolution, in which on 18 November 2013, it rendered its resolution on inadmissibility of referral. In its Resolution, the Court noted that the Applicant had not substantiated his allegations related to violation of constitutional provisions, since the presented facts do not in any way indicate that the Trial Panel and the Appellate Panel of the Special Chamber of the Supreme Court violated his constitutionally guaranteed rights.

24. The Court finds that it has already rendered a decision on the subject matter while the Referral does not contain sufficient grounds for rendering a new decision.

25. Therefore, the Court declares this referral inadmissible, in compliance with Rule 36 (3) e) of the Rules of Procedure.

FOR THESE REASONS

Pursuant to Article 116.1 of the Constitution, Article 47 of the Law and Rule 36 (3) e) of the Rules of Procedure, the Constitutional Court, in its session held on 2 April 2014, unanimously

DECIDES

I. TO DECLARE the Referral inadmissible;

II. TO NOTIFY this decision to the parties and to PUBLISH it in the Official Gazette, in accordance with Article 20.4 of the Law;

III. This Decision is effective immediately.

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

KI228/13, KI04/14, KI11/14, KI13/14- Lulzim Ramaj and Shahe Ramaj, Resolution of 24 March 2014 - Constitutional Review of the Notification of the State Prosecutor, KMLP.I.no.11/13 dated 5 August 2013, Constitutional review of the Decision of the Disciplinary Office of the Prosecutor, ZPD/U/0133 dated 8 February 2011. Constitutional Review of Decision P.no.470/13, of the Basic Court in Peja of 27 June 2013

Joined cases nos. KI228/13, KI04/14, KI11/14, KI13/14, Decision of 24 March 2014.

Key words: Individual referral, abuse of the right to petition

The Applicants have alleged a violation of a catalogue of rights protected by the Constitution and the Convention to their detriment by the State Prosecutor, Disciplinary Office of the Prosecutor, the Basic Court in Peja and the Constitutional Court of Kosovo.

The Constitutional Court rejected the Referrals cumulatively as an abuse of the right to petition because they were unsubstantiated and because of the way the referrals were presented before the Court.

RESOLUTION ON INADMISSIBILITY
in
Joined Cases Nos.
KI228/13
KI04/14
KI11/14
KI13/14
Applicants
Lulzim Ramaj and Shahe Ramaj jointly in case no. KI228/13, and Lulzim Ramaj separately in cases nos. KI04/14, KI11/14, KI13/14
Case No. KI228/13,
Constitutional review of the Noification of the State Prosecutor, KMLP.I.no.11/13, dated 5 August 2013, in connection withResolution on Inadmissibility case no. KI126/10 of the Constitutional Court dated 19 January 2012; Resolution on Inadmissibility case no. KI32/11 of the Constitutional Court dated 20 April 2012; and Resolution on Inadmissibility case no. KI102/11 of the Constitutional Court dated 12 December 2011
Cases nos. KI04/14, KI13/14
Constitutional review of the Decision of the Disciplinary Office of the Prosecutor, ZPD/11/0133, dated 8 February 2011, in connection with Constitutional review of Resolution on Inadmissibility case no. KI32/11 of the Constitutional Court dated 20 April 2012
Case no. KI11/14
Constitutional review of DecisionP.no.470/13, of the Basic Court in Peja, dated 27 June 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

Applicants

1. The Referral KI228/13 was submitted by Mr. Lulzim Ramaj and Mrs. Shahe Ramaj (hereinafter, the Applicants) residing in Peja, while Referrals KI04/14, KI11/14 and KI13/14 were filed by the Applicant Lulzim Ramaj.

Challenged decision

A. As to Referral KI228/13

2. The Applicants challenge the notification KMLP. I. no. 11/13 of the State Prosecutor, dated 5 August 2013, and served to the Applicants on 7 August 2013,

3. Moreover, in referral KI228/13, the Applicants complain against the Resolution on Inadmissibility case no. KI126/10 of the Constitutional Court dated 19 January 2012; Resolution on Inadmissibility case no. KI32/11 of the Constitutional Court dated 20 April 2012; and Resolution on Inadmissibility case no. KI102/11 of the Constitutional Court dated 12 December 2011.

B. As to Referral KI11/14

4. The Applicant Lulzim Ramaj challenges Decision P. no. 470/13 of the Basic Court in Peja, dated 27 June 2013, served to him on 15 July 2013.

C. As to Referrals KI04/14 & KI13/14

5. The Applicant Lulzim Ramaj challenges Decision of the Disciplinary Office of the Prosecutor, ZPD/11/0133, dated 8 February 2011, served to him on 9 February 2011.

6. Furthermore, the Applicant Lulzim Ramaj in referrals KI04/14 & KI11/14 complains that the Resolution on Inadmissibility case no. KI32/11 of the Court dated 20 April 2012, is "*illegal, lacks reasoning and should have not been published*".

Subject matter

7. The subject matter of Referral KI 228/13 is the constitutional review of the Notification KMLP. I. no. 11/13 of the State Prosecutor of 5 August 2013 because *"[…] the decision of the State*

Prosecutor contradicts Article 392 of the CCK [Criminal Code of Kosovo], due to rendering unlawful decisions, since the file contains all case files, and the Prosecutor has not provided any legal clarification on the reasons for such a decision", in connection with the Resolution on Inadmissibility case no. KI126/10 of the Constitutional Court dated 19 January 2012; Resolution on Inadmissibility case no. KI32/11 of the Constitutional Court dated 20 April 2012; and Resolution on Inadmissibility case no. KI102/11 of the Constitutional Court dated 12 December 2011. They are not satisfied with the Resolutions of the Court because they consider that *"[...] the Constitutional Courtdid not explain to me why I did not exhaust all legal remedies when I made a request to the Ministry of Local Government to reconstruct my house...the Constitutional Court has published its resolutions in violation of Article 17.2.3 of the Law on the Constitutional Court even after my request not to publish its resolutions...by publishing its illegal resolutions the Constitutional Court has violated article 346 of the Criminal Code of Kosovo"*.

8. The subject matter of Referral KI 11/14 is the constitutional review of the Decision P. no. 470/13 of the Basic Court in Peja, of 27 June 2013, because *"No state aid came to us for legal help to construct a house although they came to verify the case and promised to bring us all building material is contrary to Article 3 (Equality before law), Article 16 (Supremacy of the Constitution), Article 17 (International agreements), Article 18 (Ratification of international treaties), Article 19 (Enforcement of international law), Article 21, paragraph 1 (General Principles), Article 22 (Implementation of International agreements and Instruments) Article 24, paragraph 1, (Equality before law), Article 31 (Right to a fair and impartial), Article 53 (Interpretation of Provisions for Human rights) and Article 54 (Judicial Protection of rights) of the Constitution of Kosovo, Article 1, Article 2, paragraph 1, Article 7, Article 8 and Article 29, paragraph 2 of the Universal Declaration of Human Rights, Article 2, paragraph 1 (a) and (b), Article 5, paragraph 11 and 2, Article 8, paragraph 2, Article 14, paragraph 1, Article 25, paragraph 1 and Article 26 of the International Covenant on Civil and Political Rights and Article 1 (Right to respect human rights), Article 6 (Right to a fair trial), Article 13 (Right to an effective remedy) and Article 14 (Prohibition of discrimination) of the European Convention on Human Rights and its Protocols thereof"*,

9. The subject matter of Referral KI04/14 and KI13/14 is the constitutional review of the Decision of the Disciplinary Office of the Prosecutor, ZPD/11/0133, of 8 February 2011 because *"The denial of the confirmation of being a member of the KLA and the denial of recognition of status as KLA member, the publication of the case in media and the defamation by OVL KLA is contrary to Article 21, paragraph 1, Article 24, paragraph 1, Article 36, paragraph 1 and Article 41, paragraph 1 of the Constitution of the Republic of Kosovo, Article 1, Article 2, paragraph 1, Article 7, Article 8 and Article 29, paragraph 2 of the Universal Declaration of Human Rights, Article 2, paragraph 1 (a) and (b), Article 5, paragraph 11 and 2, Article 8, paragraph 2, Article 14, paragraph 1, Article 25, paragraph 1 and Article 26 of the International Covenant on Civil and Political Rights and Article 1 (right to respect human rights), Article 6 (right to a fair trial), Article 13 (right to an effective remedy) and Article 14 (prohibition of discrimination) of the European Convention on Human Rights and Protocols thereof",* in connection with the Resolution on Inadmissibility case no. KI32/11 of the Constitutional Court dated 20 April 2012. He is not satisfied with the Resolution of the Court, because he consider that it *"is illegal, lack reasoning should have not been published".*

10. Furthermore, in all of the Referrals the Applicants request not to disclose their identity based on *"Article 17.2.3 of the Law no. 03/L-121 on the Constitutional Court of Kosovo, and Article 36, paragraph 1 of the Constitution of Kosovo, and Articles 1 and 14 of the European Convention on Human Rights and its Protocols."*

Legal basis

11. 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 (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

12. On 7 December 2013, the Applicants Lulzim Ramaj and Shahe Ramaj by post office submitted a Referral to the Constitutional Court of the Republic of Kosovo (hereinafter, the Court), which arrived on 10 December 2013 at the Court and was registered under number KI228/13.

13. On 15 January 2014 the President of the Constitutional Court by Decision No. GJR. KI228/13, appointed Judge Snezhana Botusharova as Judge Rapporteur. On the same date the President of the Constitutional Court by Decision No. KSH. KI228/13, appointed the Review Panel composed of Judges Robert Carolan (presiding), Almiro Rodrigues and Ivan Čukalović.

14. On 16 January 2014 the Applicant Lulzim Ramaj filed a referral with the Court, which was registered under no. KI04/14.

15. On 23 January 2014 the Applicant Lulzim Ramaj filed another referral with the Court, registered under no. KI11/14.

16. On 24 January 2014 the Applicant Lulzim Ramaj filed one more referral with the Court, which was registered under no. KI13/14.

17. On 3 February 2014, the President of Constitutional Court, in accordance with Rule 37.1 of the Rules of Procedure, by Decision Urdh. KI228/13, KI04/14, KI11/14, KI13/14, ordered the Joinder of the Referrals KI04/14, KI11/14 and KI13/14 to the Referral KI228/13.

18. On 7 February 2014, in accordance with Rule 37 of the Rules of Procedure, the Court notified the Applicants about the registration and joinder of the Referrals.

19. On 24 March 2014, 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

A. Referral KI228/13

20. On 5 March 2012, the Applicant Lulzim Ramaj filed a private lawsuit with the Basic Court in Prishtina against the Court for rendering Resolutions KI 102/11, KI 32/11 and KI 126/10 unlawfully as per Article 346 of the Criminal Code of Kosovo because the Constitutional Court "*...did not explain to me why I did not exhaust all legal remedies when I made a request to the Ministry of Local Government to reconstruct my house...the Constitutional Court has published its resolutions in violation of Article 17.2.3 of the Law on the Constitutional Court even after my request not to publish its resolutions...by publishing its illegal*

resolutions the Constitutional Court has violated article 346 of the Criminal Code of Kosovo".

21. On 27 March 2013, the Basic Court in Prishtina – General Department, by Decision P. no. 803/11, rejected Lulzim Ramaj's private lawsuit as ungrounded.

22. The subsequent appeal by the Applicant Lulzim Ramaj was rejected as ungrounded by the Appellate Court of Kosovo (Decision PA1. No. 407/2013, dated 17 May 2013).

23. On 5 August 2013, the State Prosecutor (Notification KMLP. I. no. 11/13), notified the Applicant that the State Prosecutor could not find a legal basis to proceed with a request for protection of legality against the decision of the Basic Court and the Appellate Court.

B. Referral KI11/14

24. On 5 June 2013, the Applicant Lulzim Ramaj had asked the Directorate for Reconstruction in the Municipality of Peja to provide him with the necessary material for the reconstruction of his house.

25. According to the Applicant the Directorate for Reconstruction did not provide him with the requested construction material. He decided to file private lawsuits with the regular court of Kosovo against the Director of the Directorate for Reconstruction in the Municipality of Peja.

26. On 27 June 2013, the Basic Court in Peja-General Department, by Decision P. no. 470/13, rejected Lulzim Ramaj's private lawsuit as ungrounded.

C. Referral KI04/14 and KI13/14

27. The Applicant Lulzim Ramaj complains that the Governmental Commission for Recognition and Verification of the KLA Veterans did not confer to him the status of the KLA veteran.

28. The Applicant considers that the Resolution on Inadmissibility KI32/11 of the Court with applicant Lulzim Ramaj, concerning the request for recognition of KLA veteran status,dated 20 April 2012, is illegal, lacks reasoning and should have not been published.

29. Furthermore, the Applicant addresses the Court with the following remarks *"this time around when you render a decision, whether you approve or reject the referral, provide me with a legal reasoning and do not do as you have done until now, to render decisions without legal reasoning"*.

Admissibility of the Referral KI228/14

30. The Court observes that, in order to be able to adjudicate the Applicants' complaints, it is necessary first to examine whether they have fulfilled the admissibility requirements laid down in the Constitution as further specified in the Law and the Rules of Procedure.

31. In relation to the Referral KI228/13, 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"*.

32. The abovementioned constitutional provision requires from the Applicants to file their referrals with the Court, in a legal manner after having exhausted all legal remedies.

33. 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 form the day the law entered into force"*.

34. The Court also refers Rule 36 (1) (b) 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..."*

35. In this respect, the Court notes that decision KMLP. I. no. 11/13, of the State Prosecutor, dated 5 August 2013, was served to the Applicants on 7 August 2013.

36. Furthermore, the Court notes that even though referral KI228/13 was registered on 10 December 2013, the Court will consider the date of the postmark recording as the date when referral KI228/13 was introduced to the Court, which is 7 December 2013 (See case Kiprici v. Turkey, No.14294/04, ECtHR, Decision 3 September 2008).

37. It follows that referral KI228/13 is filed within the four (4) month legal deadline set forth by Article 49 of the Law and Rule 36 (1) (b) of the Rules of Procedure.

38. However, the Court notes that Applicant Shahe Ramaj was not involved, at any stage or capacity, in the proceedings before the regular courts. The Court notes that she filed referral KI228/13 together with the other Applicant and that Applicant Shahe Ramaj only complains that resolutions of the Court are *"illegal and lack reasoning"*

39. The Court reiterates Article 113.7 of the Constitution, which states that *"Individuals are authorized to refer violations by public authorities of their individual rights and freedoms guaranteed by the Constitution"*.

40. In the present Referral, Applicant Shahe Ramaj was neither a party to the proceedings, nor in the previous referrals to the Court KI102/11, KI32/11 and KI126/10, nor in the subsequent proceedings before the regular courts. It follows that Applicant Shahe Ramaj cannot be considered an authorized party to submit this Referral within the meaning of Article 113.7 of the Constitution.

41. In consequence, the Court must reject the Referral as inadmissible in so far as it has been submitted by Shahe Ramaj.

42. Regarding the other complaints submitted by Applicant Lulzim Ramaj in this Referral, the Court notes that this Applicant's fundamental complaint is with the constitutionality of the Court's Resolutions on Inadmissiblity in Referrals 102/11, 32/11 and 126/10.

43. The Court refers to Article 116.1 of the Constitution, which provides:

> *"Decisions of the Constitutional Court are binding on the judiciary and all persons and institutions of the Republic of Kosovo".*

44. The Court also refers to Rule 36 (3) (f) of the Rules of Procedure, which provides:

> *"(3) A Referral may also be deemed inadmissible in any of the following cases:*
> *...*
> *(f) the Referral is incompatible ratione materiae with the Constitution."*

45. The Court notes that its decisions are final and binding and as such cannot be challenged by the Court itself or by any other public authority.

46. It follows that these complaints submitted by Applicant Lulzim Ramaj in Referral KI228/13 must be rejected by the Court as incompatible *ratione materiae* with the Constitution, as provided for in the Rule 36 (3) (f) of the Rules of Procedure.

Admissibility of the Referral KI11/14

47. In relation to referral KI11/14, 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".*

48. The Court refers to Article 47 of the Law, which provides:

> *"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.*

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

49. The Court also takes into account Rule 36 (1) a) of the Rules of procedure, which provide:

(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."

50. The Court notes from the submitted documents, that the Applicant Lulzim Ramaj did not challenge Decision P.no.470/13 of the Basic Court in Peja, before the higher instances of the regular judiciary.

51. It follows that referral KI11/14 must be rejected as inadmissible because the Applicant Lulzim Ramaj did not exhaust all legal remedies as required by Article 113.7 of the Constitution, Article 47 of the Law and Rule 36 (1) a) of the Rules of Procedure.

KI04/14 and KI13/14

52. In respect to referrals KI04/14 and KI13/14 filed by Applicant Lulzim Ramaj, the Court refers to Article 116.1 of the Constitution, which provides:

"Decisions of the Constitutional Court are binding on the judiciary and all persons and institutions of the Republic of Kosovo".

53. The Court also refers to Rule 36 (3) (f) of the Rules of Procedure, which provides:

"(3) A Referral may also be deemed inadmissible in any of the following cases:
...
(f) the Referral is incompatible ratione materiae with the Constitution."

54. The Court notes that in referrals KI04/14 and KI13/14, the Applicant Lulzim Ramaj complains against the Resolution on Inadmissibility no. KI32/11, Applicant Lulzim Ramaj,dated 20

April 2012, pertinent to his status as KLA veteran, thereby claiming, *inter alia,* that it is an illegal resolution.

55. The Court notes that its decisions are final and binding and as such cannot be challenged by the Court itself or by any other public authority.

56. It follows that the referrals KI04/13 and KI13/14 pertinent to Applicant Lulzim Ramaj are rejected by the Court as incompatible *ratione materiae* with the Constitution, as provided for in the Rule 36 (3) (f) of the Rules of Procedure.

Admissibility concerning all referrals KI228/13, KI04/14, KI11/14, KI13/14

57. The Court considers that despite the separate admissibility criteria applied to each of the referrals and the conclusions based on that, the referrals have to meet mostly the requirements set in Rule 36 (3) d) of the Rules of Procedure, which provide:

> *"(3) A Referral may also be deemed inadmissible in any of the following cases:*
>
> *(...)*
>
> *(d) the Court considers that the Referral is an abuse of the right of petition;*

58. As to the abuse of the right to petition, the Court emphasizes that the case-law of the European Court of Human Rights elaborates when there is abuse of the right to petition. This is the case, *inter alia*, when an applicant repeatedly lodges vexatious and manifestly ill-founded applications with the ECtHR that are similar to an application that he or she has lodged in the past that has already been declared inadmissible (see M. v. the United Kingdom (dec.), and Philis v. Greece (dec.)).

59. The Court notes that in the cases at issue, the Applicants have filed unsubstantiated and repetitive referrals. They have thus so far, altogether filed eight referrals with the Court including the current ones.

a. KI126/10, Applicant, Lulzim Ramaj, Constitutional review of the Decision of the Ministry of Transport and

Telecommunications, declared inadmissible by the Court on 19 January 2012;

b. KI32/11 Applicant, Lulzim Ramaj, Request for recognition of KLA veteran status, declared inadmissible by the Court on 20 April 2012:

c. KI102/11, Applicant, Shahe Ramaj vs. Government of the Republic of Kosovo, Ministry of Health, declared inadmissible by the Court on 12 December 2011.

d. KI106/12, Applicant, Lulzim Ramaj, Request for recognition of KLA member status, declared inadmissible by the Court on 29 January 2013;

e. KI116/12, Applicant, Lulzim Ramaj, Constitutional review of the Telecommunications Regulatory Authority Decision, declared inadmissible by the Court on 25 January 2013;

f. KI228/13, Applicants, Lulzim Ramaj & Shahe Ramaj, Constitutional review of the Notification of the State Prosecutor, KMLP.I.no.11/13, dated 5 August 2013, in connection with Resolution on Inadmissibility case no. KI126/10 of the Constitutional Court dated 19 January 2012; Resolution on Inadmissibility case no. KI32/11 of the Constitutional Court dated 20 April 2012; and Resolution on Inadmissibility case no. KI102/11 of the Constitutional Court dated 12 December 2011, declared inadmissible by the Court on 24 March 2014;

g. KI04/14 & KI13/14, Applicant, Lulzim Ramaj, Constitutional review of the Decision of the Disciplinary Office of the Prosecutor, ZPD/11/0133, dated 8 February 2011, in connection with Constitutional review of Resolution on Inadmissibility case no. KI32/11 of the Constitutional Court dated 20 April 2012, declared inadmissible by the Court on 24 March 2014;

h. KI11/14, Applicant, Lulzim Ramaj, Constitutional review of Decision P.no.470/13, of the Basic Court in Peja, declared inadmissible by the Court on 24 March 2014.

60. The Court considers that in the current cases, the Applicants have lodged unsubstantiated, repetitive, vexatious and abusive referrals, thereby hampering the work of the Court by taking away its time and resources.

61. Taking into account all the foregoing, the Court considers that the Applicants are taking advantage of the right to petition in order to attack, denigrate and besmear the reputation of the Judges as professionals and individuals, and of the Court as an institution of justice.

62. Moreover, the Court rejects the Applicants request not to disclose their identity as unsubstantiated.

63. Therefore, the Court considers that the Referrals KI228/13, KI04/14, KI11/14 and KI13/14 constitute an abuse of the right of petition in accordance with the Rule 36 (3) d) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 47 of the Law, Rule 36 (3) d) and Rule 56 (2) of the Rules of Procedure, on 24 March 2014, unanimously

DECIDES

I. TO REJECT the Referrals as inadmissible;

II. TO HOLD that the present Referrals constitute an abuse of the right to petition as per wording of the Rule 36 (3) d) of the Rules of Procedure;

III. TO REJECT the Applicants request not to disclose their identity;

IV. TO NOTIFY this Decision to the Parties;

V. TO PUBLISH this Decision in the Official Gazette in accordance with Article 20.4 of the Law;

VI. This Decision is effective immediately.

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

KI104/13 , Adem Maloku, Resoluation of 2 April 2014 - Constitutional Review of Decision ASC-ll-0069, of the Appellate Panel of the Special Chamber of the Supreme Court, of 22 April 2013

Case KI104/13 decision of 2 April 2014

Key words; Individual Referral, property right, out of time

The Applicant filed Referral based on Article 113.7 of the Constitution of Kosovo, requesting the constitutional review of Decision ASC-ll-0069, of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo, of 22 April 2013.

The Applicant requests to be included on the list of employees, entitled to the legitimate rights to proceeds accumulated from the privatization of SOE "Ramiz Sadiku".

Considering the Applicant's allegations regarding the constitutional review of the Decision ASC-II-0069, of the Appellate Panel of the Special Chamber of the Supreme Court, of 22 April 2013, the Constitutional Court found that the facts presented by the Applicant do not in any way justify the allegation of a violation of constitutional rights and the Applicant has not sufficiently substantiated his claims. Therefore, the Court concluded that the facts presented by the Applicant do not in any way justify the allegation of violation of his constitutional rights, thus his Referral is manifestly ill-founded.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI104/13
Applicant
Adem Maloku
Constitutional review of the Decision ASC-11-0069, of the Appellate Panel of the Special Chamber of the Supreme Court, 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. Adem Maloku, represented by Mr. Ali Latifi, lawyer from Prishtina.

Challenged decision

2. The Decision ASC-11-0069 of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo, of 22 April 2013.

Legal basis

3. Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), Article 47 of the Law on the Constitutional Court of the Republic of Kosovo No. 03/L-121 (hereinafter: the Law), and Rules 56 (1) and 74 (1) 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 constitutional review of the Ruling ASC-11-0069 of the Appellate Panel of the Special Chamber of the Supreme Court, of 22 April 2013, regarding the alleged right of the Applicant to be included on the list of employees, to enjoy the right to a share of proceeds from the privatization of SOE KNI "Ramiz Sadiku" in Prishtina.

Proceedings before the Constitutional Court

5. On 16 July 2013, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 5 August 2013, the President, by Decision No. GJR. KI104/13, appointed Judge Kadri Kryeziu as Judge Rapporteur. On the same date, the President, by Decision No. KSH. KI104/13, appointed the Review Panel, composed of Judges: Robert Carolan (Presiding), Almiro Rodrigues and Ivan Čukalović (members).

7. On 29 August 2013, the Applicant was notified of the registration of Referral. On the same day, the Referral was communicated to the Special Chamber of the Supreme Court of Kosovo (hereinafter: the Special Chamber).

8. On 26 September 2013, the Court requested from the Applicant to clarify some aspects of his Referral.

9. On 13 September and 3 October 2013, the Court requested clarification from the Special Chamber of the decisions of the Trial Panel and the Appellate Panel of the Special Chamber regarding the Referral and the Applicant's allegations.

10. On 13 March 2014, the Review Panel after deliberating on the preliminary report appraised that the report needed further supplementation and decided to postpone its deliberation to another date.

11. On 18 March 2014, the Court asked the Applicant to comment on the clarifications of the Special Chamber dated 3 September respectively 3 October 2013.

12. On 1 and 2 April 2014, after having considered the report of the Judge Rapporteur, the Review Panel recommended to the Court the inadmissibility of the Referral.

Summary of facts

13. On an unspecified date, the Applicant was employed as an employee of the SOE "Ramiz Sadiku".

14. On 27 June 2006, the SOE "Ramiz Sadiku" was privatized.

15. On 23 March 2009, the Applicant filed an appeal with the Special Chamber against the Privatization Agency of Kosovo (hereinafter: the PAK), whereby requesting to be included on the list of eligible employees to a share of proceeds from the privatization of the SOE KNI "Ramiz Sadiku" in Prishtina.

16. On 10 June 2011, the Trial Panel of the Special Chamber, by Judgment SCEL-09-0001, rejected the Applicant's appeal as inadmissible.

17. By the above-mentioned Judgment, SCEL-09-0001, of 10 June 2011, the Trial Panel of the Special Chamber, reasoned among the other:

> *"... The Trial Panel notes that at the time of privatization, the appellant was older than 65, according to the documents in the case file (born on 1 October 1939)..."*
>
> *"The Trial Panel considers that the appellant does not fulfill requirements of Article 10.4 of UNMIK Regulation 2003/13 as amended, since he reached the retirement age prior to the privatization of the SOE, 27 June 2006".*

18. On 24 October 2011, the Applicant filed an appeal with the Appellate Panel of the Special Chamber, against the Judgment of the Trial Panel.

19. On 22 April 2013, the Appellate Panel of the Special Chamber, by Ruling ASC-11-0069, rejected as ungrounded the Applicant's appeal, reasoning among the other:

> *"The Trial Panel found that the Appellant has met the requirements to be included on the list of employees, who are*

eligible to 20% share of proceeds from privatization of the SOE, therefore the appeal is inadmissible".

20. On 13 September 2013, the Court requested from the Special Chamber to clarify the abovementioned uncertainties between the Judgment SCEL-09-0001 and the Ruling ASC-11-0069, rendered by the Trial Panel, respectively the Appellate Panel of the Special Chamber.

21. On 20 September 2013, regarding the Applicant's referral, the Court received clarification from the Appellate Panel of the Special Chamber, where it was stated among the other:

"The Appellate Panel, following the review of the appeal, noted that Mr. Maloku (the Applicant) filed appeal erroneously, since he was included on the list. The Appellate Panel should have provided a solution to this appeal, therefore, such appeals are inadmissible by the Appellate Panel, because the latter is included on the list to benefit the right to 20 percent from the proceeds from the sale-privatization of the enterprise and should not have filed the appeal."

22. On 3 October 2013, the Court requested from the Special Chamber to submit relevant documents, which would finally clarify whether the Applicant was included on the list of employees entitled to the right to a share of proceeds from the privatization of the SOE "Ramiz Sadiku", or not.

23. On 17 October 2013, the Court received another clarification, from the Appellate Panel of the Special Chamber, where is stated among the other:

"The Appellate Panel by Ruling ASC-11-0069 of 18 April 2013, rejected the appeal of the appellant (ASC-11-0069-A0091), as inadmissible, meaning for Mr. Adem Maloku from the village Bradash... Here was created a confusion due to the same names and surnames, therefore there was made an error in the procedure. It is clear that the appeal of Mr. Adem Maloku (the Applicant) from the village Bellopojë of Podujeva with number 619, was rejected in the first instance as ungrounded, and that the Appellate Panel, had to included the appeal of the appellant in the Judgment ASC-11-0069 of 22 April 2013 and to decide on merits, by rejecting his appeal as ungrounded.

Therefore, I inform you that even the appeal of the appellant Adem Maloku from Bellopoja was reviewed, it would have been rejected as ungrounded, because he has not fulfilled the requirements, provided by Article 10.4 of UNMIK Regulation 2003/13, because he reached the retirement age prior to the date of privatization of the SOE".

24. On 20 March 2014, pertinent to the aforementioned clarifications by the Special Chamber, the Applicant, *inter alia*, remarked: "*…the comments of this special court, […] are contradictory to each other, I am not saying this but they are proving it themselves".*

Applicant's allegations

25. The Applicant alleges: "*… the Decision ASC-11-0069, of 18.04.2013, page no. 4, the reasoning for Adem Maloku that he is entitled, but excluded direct hearing that is a serious violation of the procedure".*

26. The Applicant also alleges: "*…the Court itself (Special Chamber) has concluded that he was unjustly removed from the list of 20%".*

27. The Applicant requests to be included on the list of employees, entitled to the legitimate rights to proceeds accumulated from the privatization of SOE "Ramiz Sadiku" and also alleges "*…I have been removed from the list by irresponsible people. This is certified also by the Supreme Court which did not instruct me what to do, did not give me legal advice for what I am entitled to."*

Relevant provisions

Law No. 04/L-033 on Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters

Article 14
Repeal of Prior Legislation; Conflicts; Interpretation

4. *In interpreting and applying this law, where necessary to resolve a procedural issue not sufficiently addressed in this law, the Special Chamber shall apply, mutatis mutandis, the relevant provision(s) of the Law on Contested Procedures.*

LAW NO. 03/L-006

ON CONTESTED PROCEDURE

Article 165

Correction of the decision

165.1 Mistakes on the names and numbers as well as other written and calculating mistakes, absence in a aspect of ways of decision and discrepancies of copies with the original are corrected by the court in every time.

Assessment of admissibility

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

29. 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".*

30. The Court also refers to 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. With regards to the Applicant's allegations to enjoy the right to 20% of proceeds from the privatization of the SOE 'Ramiz Sadiku', the Court notes that the Trial Panel rejected the Applicant's appeal as inadmissible, because he had reached the retirement age before the privatization of the SOE "Ramiz Sadiku", on 27 June 2006.

32. The Court also notes that the Appellate Panel of the Special Chamber responded that the Applicant does not enjoy the right to 20% share of the proceeds from the privatization of the SOE

"Ramiz Sadiku", because he had reached the retirement age before the date of privatization of the enterprise above.

33. As to the clerical errors or confusion of identities, the Court considers that they are the matter of legality and that it is not its task to correct the errors of such nature of the regular courts.

34. Furthermore, the Court notes that the Applicant's Referral does not have merits in substance, because the Trial Panel, namely the Appellate Panel of the Special Chamber has concluded that the Applicant does not enjoy the right to 20% share of proceeds from the privatization of the SOE "Ramiz Sadiku", because he has reached the retirement age before the date of privatization of the enterprise above.

35. The Constitutional Court recalls that it is not a fact-finding Court and correct and complete determination of the factual situation is within the 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. Therefore, the Constitutional Court cannot act as a "fourth instance court" (See case, *Akdivar v. Turkey*, No. 21893/93, ECHR, Judgment of 16 September 1996, para. 65, also *mutatis mutandis* see case KI86/11, Applicant Milaim Berisha, Resolution on Inadmissibility of 5 April 2012).

36. 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 case *Edwards v. United Kingdom*, No. 13071/87, Report of the European Commission of Human Rights of 10 July 1991).

37. The fact that the Applicant disagrees with the outcome of the case cannot of itself raise an arguable claim of a breach of Article 31 [Right to Fair and Impartial Trial] of the Constitution (See case *Mezotur- Tiszazugi Tarsulat vs. Hungary*, No. 5503/02, ECHR, Judgment of 26 July 2005)·

38. In these circumstances, the Applicant has not substantiated his allegation of a violation of Article 31 [Right to Fair and Impartial

Trial], of the Constitution because the facts presented by him do not show in any way that the regular courts had denied him the rights guaranteed by the Constitution.

39. Consequently, the Referral is manifestly ill-founded and must be declared 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 47 of the Law and Rule 36 (1) c)of the Rules of Procedure, on 1 and 2 April 2014, unanimously:

DECIDES

I. TO DECLARE the Referral 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	**President of the Constitutional Court**
Dr. sc. Kadri Kryeziu	Prof. Dr. Enver Hasani

KI211/13, Demush Krasniqi, Resolution of date 28 March 2014 - Constitutional Review of the Act of the Kosovo Judicial Council, Notification no. 01/118-682, of 27 October 2010

Case KI211/13, Decision of 28 March 2014.

Key words; individual referral, exhaustion of all remedies, Kosovo Judicial Council, Administrative Direction.

The Applicant submitted the Referral pursuant to Article 113.7 of the Constitution of Kosovo, challenging the Notification no. 01/118-682 of the Kosovo Judicial Council (hereinafter: KJC), of 27 October 2010., due to his dismissal from the post of the Judge in the Municipal Court in Malisheva.

The Applicant is the former Judge of the Municipal Court in Malisheva, who on 27 October 2010 received the KJC Notification, No. 01/118-682, whereby he was notified that his mandate as a Judge in the Municipal Court in Malisheva ended on 27 October 2010. The KJC Notification came as a result of the reappointment process of judges and prosecutors during the third phase, pursuant to Article 2.11, Article 2.16 and Article 14.2 of the Administrative Direction No. 2008/02 on Implementing UNMIK Regulation No. 2006/25 on Regulatory Framework for the Justice System in Kosovo and Article 150 of the Constitution.

Deciding on the Referral of the Applicant Demush Krasniqi, the Court considers that the Applicant has not provided any evidence that he has challenged the decision of the KJC in any of the regular courts of Kosovo or that he has exhausted all legal remedies, before addressing the Constitutional Court with this Referral. The Court wants to reiterate 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 legal order of Kosovo provides an effective remedy against the violation of constitutional rights.

Therefore, the Court concludes that the Applicant has not exhausted all legal remedies provided by law and rejected the referral as inadmissible pursuant to Article 47.2 of the Law and Rule 36 (1) a) of the Rules of Procedure.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI211/13
Applicant
Demush Krasniqi
Constitutional review of the Act of the Kosovo Judicial Council,
Notification no. 01/118-682, of 27 October 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 and
Arta Rama-Hajrizi, Judge

Applicant

1. The Applicant is Mr. Demush Krasniqi, residing in the village Drenoc, Municipality of Malisheva, who with power of attorney is represented by Mr. Daut Krasniqi, lawyer from Municipality of Malisheva.

Challenged decision

2. The Applicant challenges the Notification of the Kosovo Judicial Council (hereinafter: KJC), No. 01/118-682, of 27 October 2010, on his dismissal from the post of the Judge in the Municipal Court in Malisheva.

Subject matter

3. The Applicant requests the assessment of the constitutionality and legality of the KJC Notification No. 01/118-682, of 27 October 2010, when as a result of the reappointment of Judges, the KJC, on 27 December 2010, notified the Applicant that his mandate as a judge had ended.

Legal basis

4. 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 (hereinafter: the Law) and on Rule 56 (2) of the Rules of Procedure (hereinafter: the Rules of Procedure).

Proceedings before the Court

5. On 19 November 2013, the Applicant submitted the Referral to the Constitutional Court.

6. On 3 December 2013, the President of the Court appointed Judge Robert Carolan as Judge Rapporteur. On the same date, the President appointed the Review Panel composed of Judges: Snezhana Botusharova (Presiding), Kadri Kryeziu and Arta Rama-Hajrizi.

7. On 19 December 2013, the Court notified the Applicant on the registration of Referral and requested from him to submit to the Court the official form of the Referral.

8. On 30 December 2013, the Applicant submitted to the Court the Referral form.

9. On 17 January 2014, the Court notified the KJC on registration of the Referral.

10. On 28 March 2014, the Review Panel considered the preliminary report and made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

11. The Applicant is the former Judge of the Municipal Court in Malisheva, who on 27 October 2010 received the KJC Notification, No. 01/118-682, whereby he was notified that his mandate as a Judge in the Municipal Court in Malisheva ended on 27 October 2010.

12. The KJC Notification came as a result of the reappointment process of judges and prosecutors during the third phase, pursuant to Article 2.11, Article 2.16 and Article 14.2 of the Administrative Direction No. 2008/02 on Implementing UNMIK Regulation No.

2006/25 on a Regulatory Framework for the Justice System in Kosovo and Article 150 of the Constitution.

Applicant's allegations

13. The Applicant alleges that the KJC Notification, *"... violated UNMIK Regulation No. 2006/25 on a Regulatory Framework for the Justice System in Kosovo of (SRSG) as well as Article 104 of the Constitution of the Republic of Kosovo, the European Charter on the Statute for Judges, Article 6 item 1.2.3 and 4 Remuneration and Social Welfare of Professional Judges".*

14. The Applicant requests from the Court "*to declare the KJC Notification as unconstitutional and unlawful and to recognize all my rights and obligations from employment relationship, from the day of my dismissal until rendering the decision on merits*".

Preliminary assessment of admissibility of Referral

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

16. 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".*

17. As well as 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".*

18. Furthermore, the Court refers to Rule 36 (1) a) of the Rules, which provides:

> *"(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…".

19. With respect to this Referral, the Constitutional Court notes that on 27 October 2010, the KJC notified the Applicant, by Notification No. 01/118-682, that his mandate as a Judge in the Municipal Court for Minor Offences in Malisheva ended on 27 October 2010.

20. The KJC based the issuance of this Notification on Article 150 of the Constitution and on Articles 2.11, 2.16 and 14.2 of the Administrative Direction No. 2008/02 on Implementing UNMIK Regulation No. 2006/25 on a Regulatory Framework for the Justice System in Kosovo.

21. In this respect, the Court concludes that the Applicant has not provided any evidence that he has challenged the decision of the KJC in any of the regular courts of Kosovo or that he has exhausted all legal remedies, before addressing the Constitutional Court with this Referral

22. The Court wants to reiterate 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 legal order of Kosovo provides an effective remedy against the violation of constitutional rights (see case *Selmouni vs. France, no. 25803/94*, ECtHR Decision of 28 July 1999).

23. The Court applied this same reasoning when it issued the Resolution on Inadmissibility, on the grounds of non exhaustion of all legal remedies (See case KI104/10, *Vahide Badivuku vs. Kosovo Judicial Council*, Resolution on Inadmissibility of 14 June 2011 Case).

24. Therefore, the Court concludes that the Applicant has not exhausted all legal remedies provided by law, in order to submit the Referral with the Constitutional Court and the Referral should be rejected as inadmissible, pursuant to Article 47.2 of the Law and Rule 36 (1) a) of the Rules of Procedure.

25. The Court also notes that if the Applicant had exhausted all of his legal remedies before filing this referral with the Court on 19 November 2013, his referral would be inadmissible because it had not been filed within the four month time limit prescribed by law.

See Article 49 of the Law On the Constitutional Court of the Republic of Kosovo.

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 28 March 2014, unanimously

DECIDES

I. TO DECLARE 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	**President of the Constitutional Court**
Robert Carolan	Prof. Dr. Enver Hasani

KI114/13, Emsale Zoni, Resolution of 11 February 2014 - Constitutional Review of the Decision of the District Court in Mitrovica, Ac. no. 170/2012, of 24 September 2012

Case KI 114/13, Resolution of 11 February 2014.

Key words: individual referral, violation of rights provided by Article 53 (Interpretation of Human Rights Provisions) and Article 54 (Judicial Protection of Rights) of the Constitution of Kosovo, inadmissible referral

Challenged decision- The Applicant in the referral specifically challenges the Judgment of the Municipal Court in Vushtrri of the Republic of Kosovo C. nr. 215/06 of 3 July 2006. However, the final decision in this case is the decision of the District Court in Mitrovica Ac. no. 170/2012 dated 24 September 2012.

The Applicant submitted her referral based on Article 113.7 of the Constitution of Kosovo, in which she alleges that her rights guaranteed by the Constitution were violated. More specifically, she emphasizes that the right provided by Article 53 (Interpretation of Human Rights Provisions) and Article 54 (Judicial Protection of Rights) of the Constitution of Kosovo have been violated.

The Applicant states that she had worked in the SOE "Qyqavica" until 1992, when the Serbian forces removed her from work. She further states that the SOE "Qyqavica" in Vushtrri was obliged to compensate her salary from 1992 until 1999, but the SOE did not do such thing.
As regards this case, the Constitutional Court decided to reject the Referral of the Applicant as inadmissible.

The Court reasons its decision pursuant to Article 49 of the Law on Constitutional Court and Rule 36, item 1 (b) of the Rules of Procedure of this Court. Based on this, the Court emphasizes that the Applicant did not respect the time limit of 4 (four) months, counting from the day upon which the Applicant has been served with the decision of the last effective legal remedy.

Based on the abovementioned reasons, the Court decided to reject the Referral of the Applicant as inadmissible.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI114/13
Applicant
Emsale Zoni
Constitutional Review of the Decision of the District Court in Mitrovica Ac. no. 170/2012 dated 24 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 Referral was submitted by Mrs. Emsale Zoni, residing in Vushtrri.

Challenged decision

2. The Applicant in the referral specifically challenges the Judgment of the Municipal Court in Vushtrri of the Republic of Kosovo C. nr. 215/06 (hereinafter: the Municipal Court in Vushtrri) of 3 July 2006, which was received by the Applicants on an unspecified date.

3. However, the final decision in this case is the decision of the District Court in Mitrovica Ac. no. 170/2012 dated 24 September 2012 received by the Applicant on an unspecified date.

Subject matter

4. The subject matter is the constitutional review of the above mentioned Decisions of the District Court in Mitrovica.

5. Notwithstanding this, the Applicants in the referral challenged the collective Judgment of the Municipal Court in Vushtrri C. nr. 215/06 of 3 July 2006 due to the non execution of the decision.

Legal basis

6. The Referrals are based on Article 113.7 of the Constitution, Article 47.2 of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 56 (2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

7. The Applicant submitted the referral 29 July 2013.

8. On 5 October 2013, the President of the Constitutional Court, with Decision No. GJR. KI114/13, appointed Judge Altay Suroy as Judge Rapporteur. On the same date, the President of the Constitutional Court, with Decision No. KSH. KI114/13, appointed the Review Panel composed of Judges Snezhana Botusharova (Presiding), Ivan Čukalović and Arta Rama-Hajrizi.

9. On 12 September 2013, the Referrals were communicated to the Basic Court in Vushtrri (hereinafter: Basic Court).

10. On 26 September 2013, the Basic Court in Vushtrri submitted to the Court the Decision of the Municipal Court in Vushtrri E. no. 273/08 dated 21 February 2008 and District Court in Mitrovica Ac. no. 170/12 dated 24 September 2012 which were not initially submitted by the Applicant.

11. On 21 November 2013, the Court notified the Applicant regarding the submitted documents by the Basic Court in Vushtrri.

12. On 11 February 2014, 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

13. The applicant was employed at the Socially Owned Enterprise “Cyqavica” until the year 1992.

14. According to the documents submitted, based on the collective Judgment of the Municipal Court in Vushtrri C 215/06 dated 3 July 2006, the SOE "Cycavica" in Vushtrri was obliged to fulfill the obligations regarding compensation of salary from year 1992 until year 1999 with an interest of 4.5% per year as of 29 June 2005 until its final payment for all the Applicants.

15. The Applicants filed a request with the Municipal Court in Vushtrri for the Execution of the previous Municipal Court Judgment C. no. 215/05 of 3 July 2006.

16. On 5 October 2006, the Municipal Court in Vushtrri decided on the execution of the Judgment C. no. 215/06 dated 3 July 2006 (Decision E. no. 2846/06 dated 5 October 2006). The account of the SOE "Cycavica" was blocked and the "New Bank in Kosovo" branch in Vushtrri was ordered to pay the Applicants the specified amount plus the specified interest.

17. However, on 21 February 2008, the Municipal Court in Vushtrri rendered a decision to cancel the Execution procedure (Decision E. no. 273/08).

18. In its Decision the Municipal Court in Vushtrri justified its Decision to cancel the execution with reference to the letter of 31 December 2007 of the Kosovo Trust Agency requesting the Municipal Court that "*... regarding all cases related to SOE "Cyqavica, to cancel the execution as the UNMIK Regulation 2005/4 provides that by adoption of special regulations regarding regulation of certain areas is excluded LEP [Law on Execution Procedure] and that the said SOE is not in the liquidation procedure, but the creditor can realize his rights in KTA [Kosovo Trust Agency] and these requests will be considered as executive title and in the executive procedure of the enterprise, the requests will be fulfilled by the Liquidation Committee of the SOE".*

19. Against the decision of the Municipal Court in Vushtrri E. no. 273/08 dated 21 February 2009 the Applicant filed an appeal with the District Court in Mitrovica.

20. On 24 September 2012, the District Court in Mitrovica (Decision Ac. nr. 170/12) rejected the appeal of the Applicant and upheld the decision of the Municipal Court E. no. 273/08 dated 21 February 2009.. The District Court held that *"SOE are an exclusive*

jurisdictional competence of the Special Chamber in accordance with UNMIK regulation 2002/13 on the Establishment of a Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency related matters".

Applicants' allegations

21. The Applicant claim that she has worked in the SOE "Cyqavica" in Vushtrri until year 1991 whereby Serbian forces coercively removed her from work and discriminated her.

22. The Applicant alleges that her rights guaranteed by the Constitution were violated because she is entitled to a share of proceed from the privatization of SOE "Cyqavica" as a form of compensation for her salary for the years 1991 until 1999. The applicant calls upon Article 53 [Interpretation of Human Rights Prvisions] and 54 [Judicial Protection of Rights] of the Constitution.

Assessment of the admissibility

23. 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.

24. In this respect, 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 (...).

25. The Court also takes into consideration Rule 36.1. b), which provides that:

"The Court may only deal with Referrals if: the Referral is filed within four months from the date on which the decision of the last effective remedy was served on the Applicant".

26. The Court notes that the final judgment of the District Court in Mitrovica, Ac. nr. 170/12 is dated 24 September 2012 and was served on the Applicant on an unspecified date, whereas the Applicant filed the Referral with the Court on 29 September 2013. Since the Applicant has failed to submit evidence to this Court

when the she was served with the decision of the District Court this Court considers the date when the decision is publicly announced as the date of service, i.e. 24 September 2012.

27. 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, Decision of 24 August 2004).

28. Furthermore, the Court reiterates that the Applicant is obliged to inform the Court of all circumstances relevant to the referral and not to retain any information known to him. Otherwise retaining or misleading the Court could raise the issue of abuse of the right to petition.

29. The Court notes that in the present case the Applicants' have not informed the Court about the Decision of the Municipal Court in Vushtrri (E. no. 273/08 dated 21 February 2008) to cancel the procedure of its execution and the Decision of the Court of Appeal (Ac. No. 170/2012 dated 24 September 2012) to quash the above mentioned Decision of the Municipal Court in Vushtrri. Such Conduct is not in compliance with the right to individual petition according to the European legal standards. (See *mutatis mutandis,* ECHR decision *Hadrabova and others v Czech Republic*, ECHR Decision on Admissibility of Application No. 42165/02 and 466/03 of 25 September 2007).

30. 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.

31. The Court, therefore, concludes that the Referral must be rejected as inadmissible, pursuant to 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 Rules 36 (1) b) and 56 (2) of the Rules of Procedure, on 11 February 2014, unanimously

DECIDES

I. TO REJECT the Referral as Inadmissible;

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

III. This Decision is effective immediately.

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

KI28/14, Skender Mezini and Ferbend Haxhijaj, Resolution of 13 June 2014 - Constitutional Review of the Judgment Rev. No. 26/2012 of the Supreme Court of Kosovo, of 16 September 2013

CaseKI 28/14, Decision of 13 June 2014.

Key words: Individual Referral, Request for interim measure, right to fair and impartial trial, right to legal remedies, inadmissible, manifestly ill-founded

The subject matter is the constitutional review of the Judgments of the Municipal Court in and of the Supreme Court regarding the Applicants' request for confirmation of the property rights over an immovable property on the basis of the inheritance.

The Applicants also requested the Constitutional Court to temporarily suspend the Judgment of the Municipal Court and to stay any execution and alienation of the immovable property until a decision on this matter is rendered by the Constitutional Court.

The Applicants alleged that the challenged judgments violated their rights, guaranteed by the Constitution, namely Article 31 [Right to Fair and Impartial Trial] and 32 [Right to Legal Remedies] of the Constitution.

The Constitutional Court declared the Referral as inadmissible for being manifestly ill-founded because the presented facts by the Applicants do not in any way justify their allegation of a violation of the constitutional rights and that the Applicants have not sufficiently substantiated how and why the Judgment of the Supreme Court has violated their rights, guaranteed by the Constitution.

In addition, the Constitutional Court rejected the Applicants' request for interim measures because there was no reason there is no *prima facie* case for imposing an interim measure.

RESOLUTION ON INADMISSIBILITY
in
Case no. KI28/14
Applicant
Skender Mezini and Ferbend Haxhijaj
Constitutional review
of the Judgment Rev. No. 26/2012 of the Supreme Court of Kosovo
of 16 September 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 Applicants are Mr. Skender Mezini and Mr. Ferbend Haxhijaj (hereinafter: the Applicants), citizens of the Republic of Albania with residence in Durrës, Republic of Albania.

Challenged decision

2. The challenged decision is the Judgment Rev. no. 26/2012 of the Supreme Court of Kosovo, of 16 September 2013, which was served on the Applicants on 11 November 2013.

Subject matter

3. The subject matter is the constitutional review of the Judgments of the Municipal Court in Deçan, (C. No. 54/2010, of 5 February 2010), and of the Supreme Court (Rev. no. 26/2012, of 16 September 2013) regarding the Applicants' request for confirmation of the property rights over an immovable property on the basis of the inheritance.

4. The Applicants also request from the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) "*TO TEMPORARILY SUSPEND the Judgment of the Municipal Court in Decan C. nr. 54/2009 dated 05.02.2010 and to stay any execution and alienation whatsoever of the real estate until the conclusion of this civil matter.*"

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 47 of the Law on the Constitutional Court of the Republic of Kosovo, No. 03/L-121 (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 Court

6. On 10 February 2014, the Applicants submitted their Referral to the Court.

7. On 6 March 2014, the President of the Court, by Decision GJR. KI28/14, appointed Judge Arta Rama-Hajrizi as Judge Rapporteur. On the same date, the President of the Court, by Decision KSH. KI28/14, appointed the Review Panel, composed of Judges: Altay Suroy (Presiding), Snezhana Botusharova and Kadri Kryeziu.

8. On 25 March 2014, the Court notified the Applicants of the registration of Referral and requested from them to complete their referral.

9. On 10 April 2014, the Applicants submitted to the Court only the copies of the challenged Judgments.

10. On 10 April 2014, the Court notified the Supreme Court of the Referral. On the same date, the Court requested from the Basic Court in Peja, Branch in Deçan, to provide a copy of the return paper, which shows when the Judgment of the Supreme Court Rev. no. 26/2012, of 16 September 2013 was served on the Applicants.

11. On 16 April 2014, the Basic Court in Peja, Branch in Deçan, submitted to the Court the return paper, which shows that the

Judgment Rev. no. 26/2012, of 16 September 2013, was served on the Applicants on 11 November 2013.

12. On 19 May 2014 the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the full Court to declare the Referral inadmissible and to reject the request for interim measure.

Summary of the facts

13. In 2002, the Applicants and other family members filed a claim with the Municipal Court in Deçan against the possessors of an immovable property in Junik, on the basis of the inheritance, requesting the confirmation of the ownership over this immovable property.

14. The Applicants alleged that the immovable property concerned was the property of their predecessor, from Junik.

15. On 8 December 2006, the Municipal Court, by Judgment C. no. 208/2002, determined that the Applicants and other claimants, were the owners of the immovable property on the basis of inheritance and obliged the possessors to hand over the immovable property, registered as cadastral plots, under respective numbers based on the possession list, to the Applicants and other claimants, within the time limit of fifteen (15) days, after the Judgment became final.

16. Based on the chronology of the procedure, which was conducted after the abovementioned Judgment of the Municipal Court, C. nr. 208/2002, it appears that the case was remanded to the Municipal Court for reconsideration.

17. On 5 February 2010, the Municipal Court in Deçan, by Judgment C. no. 54/09, rejected the claim of the Applicants and of other claimants for confirmation of the ownership over the immovable property on the basis of inheritance.

18. The Municipal Court, based on the records of the Directorate for Cadastre, Geodesy and Property of Deçan, and the assessment of the experts, determined that the respondents' predecessors acquired the property right based on the valid legal affair for acquisition of the property right.

19. The Applicants and other claimants filed an appeal with the District Court in Peja against the Judgment of the Municipal Court in Deçan, C. no. 54/09, of 5 February 2010.

20. On 10 October 2011, the District Court in Peja, by Judgment Ac. no. 145/10, rejected as ungrounded the appeal of the Applicants and of other claimants and upheld the Judgment of the Municipal Court in Deçan, C. no. 54/09, of 5 February 2010.

21. The District Court also determined that the respondents' predecessors acquired the property right based on the sale-purchase contracts, concluded in writing and certified with the court and as a result of the possession of this immovable property for over 20 years as legal possessors, the respondents acquired the property right.

22. The Applicants and other claimants filed a revision with the Supreme Court of Kosovo against the Judgment of the District Court in Peja, alleging substantial violation of the contested procedure provisions and erroneous application of the substantive law.

23. On 16 September 2013, the Supreme Court rejected as ungrounded the revision filed by the Applicants and other claimants.

24. The Supreme Court in its judgment held:

[…]

"According to the assessment of the Supreme Court of Kosovo, the second instance court has correctly applied the material law, when it rejected as ungrounded the claimants' appeal and upheld the first instance court judgment, and for this provided sufficient reasons, which are admitted by this court too. The lower instance courts have correctly assessed that the respondents have acquired the property right based on the sale-purchase contracts, concluded in written form, as provided by the Law on the Transfer of Real Property, signed by the contracting parties and certified in the Municipal Court in Peja, which according to the Law on Transfer of Real Property, presents valid legal transaction, for derivative acquisition of the property right, pursuant to Article 20 par. 1 of the Law on Basic Property Relations and pursuant to Article 36 of the Law on Property and other Real Rights in Kosovo.

The respondents were both lawful possessors and in good faith by possessing the immovable property for more than 20 years, which is also the ground for acquisition of the property right.

[...]

The second instance court in its judgment gave reasons for all appealed allegations, including also the statements of witnesses, therefore the Supreme Court of Kosovo assesses as ungrounded the allegation, repeated in the revision that the court has not assessed the fact that the claimants' predecessors left in safe custody the immovable property to the respondents' predecessors, when they left Kosovo."

Applicant's allegations

25. The Applicants allege that the court judgment violated their rights, guaranteed by the Constitution, namely Article 31 [Right to Fair and Impartial Trial] and 32 [Right to Legal Remedies] of the Constitution.

26. In this respect, the Applicants allege as follows:

"The applicants consider among the other that they were not enabled as heirs of the first rank of inheritance to enjoy the property right over the immovable property of their predecessors.
Furthermore, when the circumstances and the possibilities of that time are known, when there was not even a theoretical possibility to ask for the implementation of their right to inheritance, taking into account the political situation at that time in Albania and in former Yugoslavia.
It was stated among the other, that the latter as citizens, legally ignorant and without influence on the regular courts, were manipulated and deceived."

27. The Applicants request the following:

"[...] the annulment of final Judgment of the Municipal Court in Deçan C. no. 54/2010 and of the Judgment of the Supreme Court Rev. No. 26/2012".

"TO TEMPORARILY SUSPEND the Judgment of the Municipal Court in Deçan C. nr. 54/2009 dated 05.02.2010 and to stay

any execution and alienation whatsoever of the real estate until the conclusion of this civil matter".

Admissibility of the Referral

28. In order to be able to adjudicate the Applicants' referral, the Court needs to examine beforehand whether the Applicants have fulfilled the admissibility requirements laid down in the Constitution and further specified in the Law and the Rules of Procedure.

29. 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".*

30. The Court also takes into account Rule 36 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:*
> *[...], or*
> *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."*

31. As stated above, the Applicants allege that the Judgment of the Supreme Court, Rev. no. 26/2012, of 16 September 2013, has violated their rights guaranteed by Article 31 [Right to Fair and Impartial Trial] and Article 32 [Right to Legal Remedies] of the Constitution.

32. In this regard, the Applicants have not explained at all how and why the Judgment of the Supreme Court violated their rights guaranteed by the Constitution.

33. The Applicants only state that *"[...] that they were not enabled as heirs of the first rank of inheritance to enjoy the right to the property of their predecessors [...] that the latter as citizens, legally ignorant and without influence on the regular courts, were manipulated and deceived."*

34. In this respect, the Constitutional Court reiterates that under the Constitution, it 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*, no. 30544/96, ECHR, Judgment of 21 January 1999, see also case 70/11, Applicants *Faik Hima, Magbule Hima and Bestar Hima*, Resolution on Inadmissibility of 16 December 2011).

35. 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 Applicants had a fair trial (see among others authorities, case *Edwards v. United Kingdom*, no. 13071/87 Report of the European Commission on Human Rights, adopted on 10 July 1991).

36. Based on the case file, the Court notes that the reasoning provided in the Judgment of the Supreme Court is clear and, after reviewing the entire procedures, the Court found that the proceedings before the regular courts have not been unfair or arbitrary (See, *mutatis mutandis, Shub v. Lithuania*, No. 17064/06, ECHR Decision of 30 June 2009).

37. Furthermore, the Supreme Court, in its Judgment, found that [...] "*According to the assessment of the Supreme Court of Kosovo, the second instance court has correctly applied the material law, when it rejected as ungrounded the claimants' appeal and upheld the first instance court judgment, and for this provided sufficient reasons, which are admitted by this court too. The lower instance courts have correctly assessed that the respondents have acquired the property right based on the sale-purchase contracts, concluded in written form, as provided by the Law on the Transfer of Real Property...[...]*".

38. For the foregoing reasons , the Court considers that the presented facts by the Applicants do not in any way justify their allegation of a violation of the constitutional rights and that the Applicants have not sufficiently substantiated how and why the Judgment of the Supreme Court has violated their rights, guaranteed by the Constitution.

Request for interim measure

39. As mentioned above, the Applicants also request from the Court "*TO TEMPORARILY SUSPEND the Judgment of the Municipal Court in Deçan C.nr.54/2009 dated 05.02.2010 and to stay any execution and alienation whatsoever of the real estate until the conclusion of this civil matter.*"

40. The Applicants have not presented any argument nor have they shown any evidence as to how and why the interim measure is necessary.

41. In order for the Court to grant an 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*
>
> *(...)*
>
> *If the party requesting interim measures has not made this necessary showing, the Review Panel shall recommend denying the application.*"

42. As it is concluded above, the Referral is inadmissible and for this reason there is no *prima facie* case for imposing an interim measure. For these reasons, the request for interim measure must be rejected.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 27 of the Law, and Rules 36 (2) b) and d), 55 (4) and 56 (2) of the Rules of Procedure, on 13 June 2014, unanimously:

DECIDES

I. TO DECLARE the Referral 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;

V. This Decision is effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Arta Rama-Hajrizi	Prof. Dr. Enver Hasani

KI01/14, Qazim Dragusha, Resolution of 2 April 2014 - Constitutional Review of Decision ASC-11-0035 of the Special Chamber of the Supreme Court of Kosovo, of 23 November 2012

CaseKI 01/14, Decision of 2 April 2014.

Key words: Individual Referral, out of time

The Special Chamber of the Supreme Court of Kosovo by Decision ASC-11-0035 of 23 November 2012 found that the application of the complainant is time-barred thereby rendering the application as inadmissible on procedural grounds.

The Applicant alleged that due to sickness he could not file a timely application before the Special Chamber of the Supreme Court of Kosovo thereby claiming violation of Articles 24 [Equality before the Law] and 31 [Right to Fair and Impartial Trial] of the Constitution.

The Constitutional Court declared the Referral inadmissible for being out of time because the Applicant did not submit his referral within the legal deadlines prescribed by the Law and further specified in the Rules of Procedure.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI01/14
Applicant
Qazim Dragusha
Constitutional Review of Decision ASC-11-0035 of the Special Chamber of the Supreme Court of Kosovo, dated 23 November 2012

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 filed by Mr. Qazim Dragusha represented by Mr. Bejtush Isufi, lawyer from Prishtina.

Challenged decision

2. The Applicant challenges Decision ASC-11-0035 of the Special Chamber of the Supreme Court of Kosovo, dated 23 November 2012 served upon him on 12 January 2013.

Subject matter

3. The subject matter is the constitutional review of the challenged Decision, which allegedly *"is discriminatory to the detriment of the Applicant because it did not take into account all the evidence adduced by him and thereby denying him the entitlement to a share of proceeds acquired from the privatization of the Socially Owned Enterprise 'Ramiz Sadiku' in Prishtina"*.

4. In this respect, the Applicant claims violation of Articles 24 [Equality before the Law] and 31 [Right to Fair and Impartial

Trial], of the Constitution of the Republic of Kosovo (hereinafter, the Constitution).

Legal Basis

5. 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 (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

6. On 3 January 2014, the Applicant submitted the Referral with the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).

7. On 30 January 2014, the President of the Constitutional Court, by Decision No. GJR. KI01/14 appointed Judge Robert Carolan as Judge Rapporteur. On the same date, the President of the Constitutional Court, by Decision No. KSH. KI01/14, appointed a Review Panel composed of Judges Snezhana Botusharova (presiding), Kadri Kryeziu and Arta Rama-Hajrizi.

8. On 26 February 2014, the Court notified the Applicant and the Special Chamber of the Supreme Court of Kosovo (hereinafter, the Special Chamber) about the registration of the referral.

9. On 11 March 2014, the Court asked additional information from the Applicant and the Special Chamber.

10. On 13 March 2014, the Special Chamber submitted the required information by the Court.

11. On 2 April 2014, 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

12. At some point in time, the Applicant was employed as a worker of the SOE “Ramiz Sadiku”.

13. On 27 June 2006, the SOE “Ramiz Sadiku” was privatized.

14. On 4, 5, and 7 March 2009, the Privatization Agency of Kosovo (hereinafter, the PAK) published a final list of eligible employees entitled to a share in the benefit from the fund of 20% of proceeds of the privatization. The final deadline for filing a complaint against the said list was 27 March 2009.

15. The Applicant complained against the final list of employees on 30 March 2009.

16. On 24 February 2011, the Trial Panel of the Special Chamber by Decision SCEL-09-0001 dismissed the Applicant's complaint as inadmissible on the grounds of being untimely.

17. The Applicant filed an appeal with the Appellate Panel of the Special Chamber thereby alleging that he only filed his complaint with the Trial Panel only three to four days after the deadline, and that the Trial Panel should have taken into account the fact that there were objective difficulties for the Applicant to file a timely complaint.

18. On 23 November 2012, the Appellate Panel of the Special Chamber by Decision ASC-11-0035 upheld the Trial Panel's decision and rejected the Applicant's complaint as ungrounded.

19. In the abovementioned decision, the Appellate Panel of the Special Chamber, *inter alia*, reasoned: *"The Trial Panel correctly assessed that the complaints against the final list, which they filed after 27 March 2009, were untimely. As the Appellants did not submit a motion for restitution to the Trial Panel it is of no relevance whether they missed the deadline by their fault or not"*.

Applicant's allegations

20. The Applicant claims that *"... for reasons of health I have missed the deadline, because during the deadline foreseen to file complaints I was suffering from a heart condition which can be verified by the medical reports,which I will attach later on since I don't have the documentation with me because I have submitted it with the Special Chamber"*.

21. The Applicant claims that *"... because of illness I was languishing in my house; I could not get up from the bed and get informed by others about the deadlines"*.

22. The Applicant claims that *"... even though he has met all of the requirements he was not included in the final list of employees with the right to the 20%"*.

23. Finally, the Applicant claims violation of Articles 24 [Equality before the Law] and 31 [Right to Fair and Impartial Trial] of the Constitution.

Assessment of admissibility

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

25. 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 rights and freedoms guaranteed by the Constitution, but only after exhaustion of all legal remedies."*

26. 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".*

27. The Court also takes into account Rule 36 (1) b), 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."*

28. In this regard, the Court notes that the last decision complained of by the Applicant was served upon him on 12 January 2013,

whereas the referral was submitted with the Court on 3 January 2014.

29. The Court notes that the Applicant did not submit his referral within the four months legal deadline as provided for in Article 49 of the Law and Rule 36 (1) b) of the Rules of Procedure, as it was submitted with the Court almost one year after the date the challenged decision was served upon the Applicant.

30. The Court recalls that the object of the four month legal deadline under Article 49 of the Law and Rule 36 (1) b) of the Rules of Procedures is to promote legal certainty, by ensuring that cases raising issues under the Constitution are dealt within a reasonable time and that past decisions are not continually open to challenge (See case *O'LOUGHLIN and Others v. United Kingdom*, No. 23274/04, ECtHR, Decision of 25 August 2005).

31. It follows, that the referral is out of time.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 47 of the Law and Rule and 56 (2) of the Rules of Procedure, on 2 April 2014, unanimously

DECIDES

I. TO DECLARE the Referral 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	**President of the Constitutional Court**
Robert Carolan	Prof. Dr. Enver Hasani

KI10/14, Joint Stock Company Raiffeisen Bank Kosovo J.S.C, Constitutional Review of Judgment -Constitutional Review of Judgment CN. no. 7/2013 of the Supreme Court of Kosovo, of 19 October 2013

Case KI10/14, Decision of 20 May 2014.

Key words:Individual Referral, Right to Fair and Impartial Trial

The Applicant claims that the challenged Judgment constitutes a violation of Article 3.2 [Equality before the Law], Article 24.1 [Equality before the Law], Article 31 [The Right to Fair and Impartial Trial] of the Constitution and Article 6 of Convention for the Protection of Human Rights and Fundamental Freedoms.

The Applicant alleges that the Supreme Court has seriously violated the contradictory principle, because it declared as admissible the E. N. request for return to the previous situation, without informing and summoning the Applicant to take part in the procedure.

The Court considers that the Applicant did not have any opportunity to present his case, including the evidence, as the case was already finished, and, as a party interested in theproceedings, he was placed at a substantial disadvantage vis-a-vis his opponent E. N.

Therefore, the Court concludes that there was a violation of the Applicant's right to a fair and impartial trial as guaranteed by Article 31 of the Constitution and Article 6 of the ECHR.

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 20 of the

Law, and Rules 56 (1) and 74 (1) of the Rules of Procedure, at its session held on 20 May 2014, unanimously declares the Referral admissible and holds that there has been a violation of Article 31 [Right to Fair and Impartial Trial] of the Constitution, in conjunction with Article 6.1 [Right to Fair Trial] of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

JUDGMENT
in
Case no. KI10/14
Applicant
Joint Stock Company Raiffeisen Bank Kosovo J.S.C.
Request for constitutional review of
Judgment CN. No. 7/2013 of Supreme Court of Kosovo,
dated 19 October 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 Referral was filed by the Joint Stock Company Raiffeisen Bank Kosovo J.S.C., based in Prishtina (hereinafter, the Applicant), represented by Mr. Dastid Pallaska, a practicing lawyer from Prishtina.

Challenged decision

2. The challenged decision isJudgment CN. No. 7/2013 of Supreme Court of Kosovo, of 19 October 2013, which allegedly was taken without informing and summoning the Applicant to take part in the proceedings on a request for return to previous situation.

3. The Judgment was served on the Applicant on 5 December 2013

Subject matter

4. The subject matter is the constitutional review of the challenged Judgment, which allegedly *"violated constitutional rights of Applicant guaranteed by Article 3.2 [Equality before the Law], Article 24.1 [Equality before the Law], Article 31 [The right to fair*

*and impartial trial] of the Constitution of the Republic of Kosovo and Article 6 of European Convention for Protection of Human Rights and Fundamental Freedoms" [*hereinafter, the ECHR*].*

Legal basis

5. The Referral is based on Articles 21 (4) and 113 (7) of the Constitution of Republic of Kosovo (hereinafter, the Constitution) and Article 47 of the Law No. 03/L-121 on Constitutional Court (hereinafter, the Law).

Proceedings before the Constitutional Court

6. On 28 January 2014, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).

7. On 7 February 2014, the President of the Court appointed the Judge Almiro Rodrigues as Judge Rapporteur and the Review Panel composed of Judges Altay Suroy, Kadri Kryeziu and Arta Rama-Hajrizi

8. On 10 February 2014, the Court notified the Applicant of the registration of the Referral and sent a copy of the Referral to the Supreme Court.

9. On 20 May 2014 the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the Court on the admissibility of the Referral.

Summary of facts

10. On 18 June 2002, the American Bank of Kosovo, as legal predecessor of the Applicant (hereinafter, the predecessor of the Applicant), signed an employment contract with E. N. citizen of Kosovo. Article 1 of this contract provided a duration of 3 months as probation work. During that period, both parties had the right to terminate the contract with 24 hours notice, without any reimbursement or compensation.

11. On 13 September 2002, the predecessor of Applicant sent to E. N a notice in relation to termination of contract, recognizing to him the right of payment until the end of September and a bonus salary for October 2002.

12. On 30 October 2002, E. N. submitted to the Applicant a request for review of the decision for non-extension of contract in order to engage him in a Branch of the Applicant, in one of the Kosovo cities.

13. On 10 November 2002, the Applicant confirmed that the decision for non-extension of employment contract was final.

14. On 21 November 2002, E. N. requested the Municipal Court in Prishtina to quash the Decision on termination of employment contract.

15. On 14 October 2009, the Municipal Court (Judgment No. C1. 32/2006) approved as grounded the claim of E. N. and annulled the Decision of the Applicant of 10 November 2002.

16. On 8 December 2009, the Applicant appealed the Judgment of the Municipal Court, due to erroneous and incomplete determination of factual situation and erroneous application of substantive law.

17. On 16 September 2011, the District Court in Prishtina (Judgment Ac. No. 118/2010) approved as grounded the appeal of Applicant and modified the Judgment of Municipal Court. The District Court reasoned that "*the first instance court based on reviewed evidence determined correctly the factual situation and in the reasoning of the appealed judgment presented complete and understandable reasons in relation to crucial facts, however has erroneously applied the substantive law whereby assessed that the statement of claim of claimant is grounded*".

18. On 12 October 2011, E. N. filed a revision with the Supreme Court, due to erroneous application of substantive law.

19. On 03 November 2013, the Applicant submitted a written response on the Revision, stating that E. N. was fully aware of the conditions of the labor contract and indicating that in similar circumstances in the case Rev 49/2005, the Supreme Court decided to refuse the revision and that this decision should be considered in reviewing the E. N. case.

20. On 21 January 2013, the Supreme Court (Rev. No. 333/2011) rejected the revision as out of time. The Supreme Court concluded that Judgment of District Court was received by the representative of E. N. on 3 September 2011, whereas the request for Revision was

submitted on 12 October 2011, meaning 9 days after the established deadline of 30 days.

21. E. N. filed with the Supreme Court a request to return to the previous situation.

22. On 19 October 2013, the Supreme Court rendered the challenged Judgment C. no. 7/2013, approving the request of E. N. for returning to the previous situation. The judgment notes that the representative of E. N received the Judgment of District Court on 1 October 2011, whereas the date 3 September 2013 was written in the returning receipt. The Revision was submitted on 12 October 2011. Thus the Supreme Court concluded that Revision was submitted within 30 days, as it is required pursuant to Article 211 of Law No.03/L-006 on Contested Procedure.

23. The operative part of the challenged judgment reads as follows:

"I. The request of claimant for returning to previous state IS ADMISSIBLE, whereas the ruling of Supreme Court of Kosovo Rev. no. 333/2011 of 21.01.2013 is quashed.

II. The revision of claimant filed against judgment of District Court in Prishtina, Ac. no. 118/2010 of 16.09.2011 is approved as grounded, so that the Judgment of District Court in Prishtina Ac. no. 118/2010 of 16.09.2011 IS MODIFIED, whereas judgment of Municipal Court in Prishtina Ci. no. 32/2006 of 14.10.2009 remains applicable in part I of enacting clause, which refers to annulment of decision of the respondent of 10.11.2002, based on which in the review procedure according to the request of claimant is approved the first instance decision of 13.09.2002, based on which to the claimant was terminated the employment relationship and the part II of enacting clause, which refers to obligation of the respondent to return the claimant to the previous workplace, which corresponds to his professional background.

Part II of enacting clause, of judgment of Municipal Court in Prishtina, CI. no. 32/2006 of 14.10.2009, in the part, which refers to return of claimant to work with all rights stemming from employment relationship from 01.10.2002, within 7 days, from the day of rendering this judgment, IS QUASHED, and the case is remanded to first instance court for retrial.

Part III of enacting clause of judgment of Municipal Court Prishtina, CI. no. 32/2006 of 14.10.2009, which refers to the expenses remains un reviewed".

Applicant's allegations

24. The Applicantclaims that the challenged Judgment constitutes a violation of Article 3.2 [Equality before the Law], Article 24.1 [Equality before the Law], Article 31 [The right to fair and impartial trial] of the Constitution and Article 6 of Convention for the Protection of Human Rights and Fundamental Freedoms

25. The Applicant alleges that the Supreme Court has seriously violated the contradictory principle, because it declared as admissible the E. N. request for return to the previous situation, withoutinforming and summoning the Applicant to take part in the procedure.

26. The Applicant further founds its reasoning on the basis of the Court case law, namely on cases KI103/10 and KI108/10.

27. In the end, the Applicant requests the Court to *"Declare invalid the Judgment of Supreme Court of Kosovo CN. No. 7/2013 of 19 October 2013, and remand the case for review in compliance with Judgment of Constitutional Court".*

Admissibilityof the Referral

28. First of all, the Court examines whether the Applicant has fulfilled the Referral admissibility requirements.

29. 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.

30. In addition, the Court also refers to Articles 48 and 49 of the Law, which provide what follows.

Article 48

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.

Article 49

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 this regard, the Court notes that the Applicant is an authorized party, filed the Referral within the timeline of 4 months as provided by law, has exhausted all legal remedies provided by law, and has accurately clarified what rights and freedoms have been violated as well he has indicated the challenged act of public authority.

32. Therefore, the Referral meets the requirements of admissibility.

Relevant legal provisions on the request to Return to the Previous Situation

33. The request to Return to previous situation is regulated by the Law No. 03/L-006on Contested Procedure, of 20 September 2008, namely in the Articles that follow.

Article 129

1. When the party does not take part in the proceeding or misses the due date for Completion of any procedural action and due to this it loses the right to complete the procedural action bound to the prescribed period of time, the court may permit this party to complete this action with delay if there are reasonable circumstances which cannot be determined or avoided.
2. If the return to previous situation is permitted, the contentious procedure returns to the situation in which was before failure to act and all the decisions rendered to the court due to failure to act are cancelled.

Article 131

The return to previous situation shall not be permitted if the period for submission of proposals for return to previous situation is not met or the party did not show himself at the proceeding for review of the proposal for return to previous situation.

Article 132

1. Proposal for return to previous situation, in general, shall not influence the proceeding but the court may order to halt the proceeding until the decision on proposal is rendered.
2. If the proposal for return to previous situation is presented during the proceeding of the second instance, the court of first instance shall inform the court of second instance on the proposal.

Article 133

1. The court rejects by rendering a decision the proposal that is submitted after the prescribed period of time or the non-permitted proposal for return to previous situation.
2. The court initiates the proceeding only when the party expressively proposes return to previous situation. The court shall not initiate a proceeding if the facts of the proposal are widely known. The court acts in the same way also when the proposal is based on clearly unfounded facts or when the court has sufficient evidence in the file of the subject to render the decision for return to previous situation.
3. The appeal against the decision which allows return to previous situation shall not be permitted.
4. The appeal against the decision for rejection of proposal for return to previous situation shall not be permitted unless the decision is rendered due to absence of the defendant in the proceeding.

Substantive legal aspects of the Referral

34. As stated earlier, the Applicant claims that the Judgment of the Supreme Court violated his right to fair trial as guaranteed by Article 31 of the Constitution and Article 6 of the ECHR and also Articles 3.2 and 24.1 (Equality before Law) of the Constitution.

35. In this regard, the Court refers to Article 31 (1 and 2) of the Constitution, which establishes:

> *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.*

36. On the other hand, Article 53 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".*

37. Furthermore, Article 6 (1) of the ECHR:

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

38. In fact, the Applicant has the right to obtain a court ruling in conformity with the law.In addition, the right to a fair hearing, as embodied in Article 31 of the Constitution and Article 6 of the ECHR, is of fundamental nature to safeguard fundamental rights.

39. The Court emphasizes that the fundamental right to a fair trial is derived from the fundamental right to judicial protection, guaranteed by Article 54 of the Constitution. More than other fundamental rights, the right to a fair trial demands that judges be careful, as they are always in danger of violating it. In fact, the right to a fair trial is a general reference to a complex of other rights: namely, the right to access to the courts, to present arguments and evidence, the adversarial and equality of arms principles.

40. The Court also recalls that the effect of Article 6 (1) is, *inter alia*, to place a "tribunal" under a duty to conduct a proper examination of the submissions, arguments and evidence adduced by the parties, without prejudice to its assessment of whether they are relevant to its decision. (See the ECtHR *Kraska v. Switzerland* judgment of 19 April 1993, Series A no. 254-B, p. 49, § 30).

41. The principle of "equality of arms" between the parties in a case is an essential criterion of a fair hearing. Equality of arms, which must be observed throughout the trial process, means that both parties are treated in a manner ensuring that they have a procedurally equal position during the course of the trial, and are in an equal position to make their case. (See ECtHR judgments in the cases of *Ofrer* and *Hopfinger*, Nos. 524/59 and 617/59, 19.12.60, Yearbook 6, p. 680 and 696). It means that each party must be afforded a reasonable opportunity to present its case, under conditions that do not place it at a substantial disadvantage *vis à vis* the opposing party.

42. The Court further recalls that the ECtHR case law established that*"the requirement of "equality of arms", in the sense of a "fair balance" between the parties, applies in principle to such cases [civil cases concerning civil rights and obligations] as well as to criminal cases" and "litigation involving opposing private interests, "equality of arms" implies that each party must be afforded a reasonable opportunity to present his case - including his evidence - under conditions that do not place him at a substantial disadvantage vis-à-vis his opponent"*. (See *Dombo Beheer B.V. v. the Netherlands*, judgment of 27 October 1993, Series A, No. 274).

43. The lack of summons for a case or notification of the decision taken in the case, which impacts on or interferes with the exercise of one person's (civil) rights, is *a fortiori* a substantial disadvantage *vis à vis* the opposing party. Moreover, where there are two (or even three) levels of jurisdiction, the appeals procedure must always be accompanied by the safeguards set out in Article 6. (See *Ekbatani v. Sweden* Judgement, 26.5. 1988, no. 10563/83 §26ss).

44. The Court considers that the reviewed case law reasonably allows to conclude that the equality of arms *"is not applicable solely to proceedings which are already in progress"*, but also when one party *"has not had the possibility of submitting"* its view to the tribunal in whatever stage of the proceedings.

45. The facts of the case show that the Supreme Court has not notified the Applicant of the existence of the proceedings regarding the request to return to the previous situation filed by E. N. In fact, the Applicant has been aware of the proceedings on the request to return to the previous situation only when the challenged judgment was received.

46. Thus, the Applicant did not have any opportunity to present his case, including the evidence, as the case was already finished, and, as a party interested in the proceedings, he was placed at a substantial disadvantage *vis-à-vis* his opponent E. N.

47. Moreover, the Court takes into accountthat the Applicant was aware of that *"The Supreme Court of Kosovo is the highest judicial authority"* (Article 103 of the Constitution). Thus, the Applicant could have been reasonably convinced that already got a final and binding decision by which the labour dispute was definitively closed.

48. The Court considers that the Supreme Court committed a violation of Articles 31 of the Constitution and 6 of the ECHRwhile reopening the case without notifying the Applicant, without providing the opportunity to present arguments, without hearing the other party.

49. In this regard, the Court refers to the Grozdanoski case (see *Grozdanoski v. The Former Yugoslav Republic of Macedonia*, no. 21510/03, of 31 May 2007). In that case, the Public Prosecutor filed a request for the protection of legality with the Supreme Court. The other party has never been notified about that request. The request for the protection of legality led to the Supreme Court's decision which was to the other party's significant disadvantage. The ECtHR considered that the procedural failure to not notify the other party has prevented it from effectively participating in the proceedings before the Supreme Court of Macedonia.

50. Furthermore, the Court refers to its legal practice noting that, in similar circumstances, it declared a referral admissible and found a violation of the Article 31 of Constitution and article 6 of the ECHR (See Constitutional Court case KI103/10, Judgment of 12 April 2012) Similarly, the Court ruled that *"the Applicant should have been summoned to the court proceedings in such a way as not only to have knowledge of its existence, but also to present arguments and evidence during the course of the proceedings"* (See also Constitutional Court Case KI108/10, *Fadil Selmanaj* - Constitutional Review of Judgment of the Supreme Court of Kosovo, A. no. 170/2009 of 25 September 2009).

51. Therefore, the Court concludes that there was a violation of the Applicant's right to a fair and impartial trial as guaranteed by Article 31 of the Constitution and Article 6 of the ECHR.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 20 of the Law, and Rules 56 (1) and 74 (1) of the Rules of Procedure, unanimously, at its session held on 20 May 2014,

DECIDES

I. DECLARE the Referral admissible;

II. HOLD that there has been a violation of Article 31 [Right to Fair and Impartial Trial] of the Constitution, in conjunction with Article 6 (1) [Right to Fair Trial] of the Convention for the Protection of Human Rights and Fundamental Freedoms;

III. DECLARE invalid the Judgment CN. No. 7/2013 of the Supreme Court of 19 October 2013;

IV. REMAND the Judgment CN. No. 7/2013 of 19 October 2013 to the Supreme Court for reconsideration inconformity with this judgment of the Court;

V. TO ORDER the Supreme Court, 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 Court;

VI. REMAIN seized of the matter pending compliance with that Order;

VII. ORDER this Judgment to be notified to the Parties;

VIII. PUBLISH this Judgment in the Official Gazette, in accordance with Article 20 (4) of the Law;

IX. DECLARE this Judgment effective immediately.

Judge Rapporteur Almiro Rodrigues

President of the Constitutional Court Prof. Dr. Enver Hasani

KI93/12, Imer Ibriqaj, Resolution of 11 March 2014 - Constitutional Review of the Decision no. 03V-115 of the Assembly of the Republic of Kosovo, of 4 June 2009

Case KI93/12 Decision of 11 March 2014.

Key words: individual referral, selection procedure of the Ombudsperson, manifestly ill-founded referral.

The Applicant based his Referral on Article 113.7 of the Constitution of Kosovo, specifically challenging Decision no. 03V-115 of the Assembly of Kosovo. However, the final decision in this case is the Decision A. no. 594/09 of the Supreme Court, dated 23 February 201.

The Applicant had submitted his application for the vacancy of "Ombudsperson", however he was not amongst the 23 (twenty three) candidates who were invited for an interview, while after the interview in the Assembly of Kosovo, 3 (three) candidates where proposed, and by Decision no. 03V-115, Mr. Sami Kurteshi was selected as Ombudsperson.

Against this decision, the Applicant made a complaint to the Assembly of Kosovo and to the International Civilian Office, but his complaint was rejected. Therefore, the Applicant alleges that his application was *unlawfully* rejected by the Assembly of Kosovo and the appointment of the Ombudsperson was "done in an unlawful and unfair manner".

The Constitutional Court, in this case, notes that the Referral is manifestly ill-founded and should be rejected as inadmissible pursuant to Rule 36 (1) c) of the Rules of Procedure.

The Court recalls that it 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, referring to a practical case in the European Court on Human Rights (see, *mutatismutandis*, Garcia Ruiz v. Spain [GC], no. 30544/96).

Moreover, in the case at issue, the Court notes that procedural guarantees of the right to a fair trial as prescribed by the Constitution and the Convention were met; there is no trace of arbitrariness on the part of the Supreme Court. The fact that the Applicant disagrees with the outcome of the case cannot of itself raise an arguable claim of a breach of Articles 31 [Right to Fair and Impartial Trial]. Based on the reasons mentioned above, the Court decided to reject the Referral of the Applicant as inadmissible.

RESOLUTION ON INADMISSIBILITY
in
Cases No. KI93/12
Applicant
Imer Ibriqaj
Constitutional Review of the Decision no. 03V-115 of the Assembly of the Republic of Kosovo of 4 June 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

Applicant

1. The Referral was submitted by Imer Ibriqaj (hereinafter, the Applicant), residing in Gllogovc.

Challenged decision

2. The Applicant in the referral specifically challenges Decision no. 03V-115 of the Assembly of the Republic of Kosovo (hereinafter: the Assembly of Kosovo) of 4 June 2009.

3. However, the final decision in this case is the decision A. no. 594/09 of the Supreme Court of the Republic of Kosovo (hereinafter: the Supreme Court) dated 23 February 2011 received by the Applicant on 13 September 2012.

Subject matter

4. The subject matter is the constitutional review of the above mentioned Decision of the Supreme Court of Kosovo.

5. Notwithstanding this, the Applicants in the referral challenges Decision no. 03V-115 of the Assembly of Kosovo of 4 June 2009.

Legal basis

6. 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 (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

7. The Applicant submitted the referral on 20 September 2012.

8. On 31 October 2012, the President of the Constitutional Court, with Decision No. GJR. KI93/12, appointed Judge Kadri Kryeziu as Judge Rapporteur. On the same date, the President of the Constitutional Court, with Decision No. KSH. KI93/12, appointed the Review Panel composed of Judges Robert Carolan (Presiding), Altay Suroy and Enver Hasani.

9. On 26 November 2013, the Supreme Court was notified of the referral.

10. On 11 March 2014, after having considered the report of Judge Rapporteur, the Review Panel made a recommendation to the Court on the inadmissibility of the Referral.

The Applicant's earlier case before the Court

11. On 18 March 2011, the Constitutional Court, in the Applicant's previous Case No. KI34/09, declared his referral for the constitutional review of the Decision of the Assembly of Kosovo, Decision no. 03V-115, dated 4 June 2009, inadmissible.

12. In that case, the Applicant alleged that the appointment of the current Ombudsperson was *"unlawful and unfair"*. In that respect, the Court found that the Applicant has not exhausted all legal remedies available under applicable law, as required by Article 113.7 of the Constitution and Article 47(2) of the Law, because the case was pending before the Supreme Court. The proceedings at issue were finalized by adoption of Decision A.no. 549/09, of the Supreme Court of Kosovo that the Applicant challenges in the present case.

Summary of facts

13. On 13 March 2010, the Applicant had submitted his application to the Assembly of the Republic of Kosovo following its announcement for the vacancy of the Ombudsperson.

14. On 18 May 2010, the Selection Panel presented its report to the Assembly of Kosovo, recommending three (3) potential candidates for the position of the Ombudsperson. In addition to the report the Selection Panel has also enclosed a list containing the points of the twenty three (23) candidates that were interviewed.

15. The Applicant was not amongst the twenty three (23) candidates who were invited for an interview.

16. On 4 June 2010, an Assembly meeting was held for the purpose of the selection of the Ombudsperson. On the same day the President of the Assembly issued Decision no. 03V-115, appointing the Ombudsperson of the Republic of Kosovo.

17. The Applicant, with regards to the selection process, has made a complaint to the Assembly of Kosovo and to the International Civilian Office.

18. On 29 July 2009 the Applicant initiated the administrative proceedings before the Supreme Court.

19. On 23 February 2011, the Supreme Court (Decision A.nr. 594/09) rejected the applicant's law suit stating that the appointment of the Ombudsperson is a competence of the Assembly of the Republic of Kosovo.

20. In the abovementioned decision, the Supreme Court further argued:*"In compliance with provision of article 9 paragraph 3 of the Law on Administrative Disputes (Official Gazette of the SFRJ nr.4/77) the applicable law in compliance with article 145 paragraph 2 of the Constitution of the Republic of Kosovo, on issues on which directly, based on constitutional authorization, are decided by the Assembly of Kosovo, an administrative dispute cannot be processed".*

Applicants' allegations

21. The Applicant alleges that his application was *"unlawfully"* rejected by the Assembly of Kosovo and the appointment of the Ombudsperson was *"done in an unlawful and unfair manner"*.

22. In addition, The Applicant requests from the court to return to previous situation case KI34/09, stating that the Resolution on Inadmissibility in Case KI34/09 *"was served on the applicant on 11 September 2012 and that because of this the Applicant has missed his right to appeal this decision before the Constitutional Court"*.

Assessment of the admissibility

23. The Court observes that, in order to be able to adjudicate the Applicant's complaint, it is necessary to 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 refers to Article 113.7 of the Constitution, which provides:

> *"Individuals are authorized to refer violations by public authorities of their individual rights and freedoms guaranteed by the Constitution, but only after exhaustion of all legal remedies provided by law"*.

25. Furthermore, 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"*.

26. In the concrete case, the Court considers that the Applicant is an authorized person, he has exhausted all legal remedies as prescribed by Article 113.7 of the Constitution, and the referral is

filed within the four months legal deadline in compliance with Article 49 of the Law.

27. 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".*

28. The Court recalls that it 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).

29. Moreover, the Referral does not indicate that the regular court 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 case Edwards v. United Kingdom, No. 13071/87, Report of the European Commission of Human Rights of 10 July 1991).

30. In the case at issue, the Court notes that procedural guarantees of the right to a fair trial as prescribed by the Constitution and the Convention were met; there is no trace of arbitrariness on the part of the Supreme Court. Furthermore, the Court considers that the decision of the Supreme Court is sufficiently reasoned and coherent because it explains to the Applicant the competences of the Assembly regarding the process for the election of the Ombudsperson

31. The fact that the Applicant disagrees with the outcome of the case cannot of itself raise an arguable claim of a breach of Articles 31 [Right to Fair and Impartial Trial], of the Constitution (See case

Mezotur-Tiszazugi Tarsulat us. Hungary, No. 5503/02, ECtHR, Judgment of 26 July 2005).

32. In these circumstances, the Applicant has not substantiated his allegation for violation of Articles 31 [Right to Fair and Impartial Trial], of the Constitution because the facts presented by him do not show in any way that the regular courts had denied him the rights guaranteed by the Constitution.

33. Consequently, the Referral is manifestly ill-founded and should be rejected as inadmissible pursuant to Rule 36 (1) c) of the Rules of Procedure.

34. Moreover, in relation to the Applicant's request to return to previous situation in Case KI34/09 the court takes into account Article 50 of the law which provides: *"If a claimant without his/her fault has not been able to submit the referral within the set deadline, the Constitutional Court, based on such a request, is obliged to return it to previous situation. The claimant should submit the request for returning to previous situation within 15 days from the removal of obstacle and should justify such a request. The return to the previous situation is not permitted if one year or more have passed from the day the deadline set in this Law has expired".*

35. In this relation, the Court notes that "Resolution on Inadmissibility in Case KI34/09" has been rejected as the Applicant's referral was premature and thus could not be considered to have fulfilled the requirements under Article 113.7 of the Constitution and further specified in Article 47.2 of the law; thus Article 50 of the Law cannot be applied in this case. It follows that the Applicant has not provided supporting grounds and evidence substantiating the request to return to previous situation.

36. Furthermore the court wishes to emphasize that the decisions of the Constitutional Court are final and binding and are not subject for review; thus the Court considers that in the case at issue, there was no deadline at stake, as alleged by the applicant.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Rules 36 (2) b) and 56 (2) of the Rules of Procedure, on 11 March 2014, unanimously

DECIDES

I. TO REJECT the Referral as Inadmissible;

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

III. This Decision is effective immediately.

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

KI163/13, Naser Dragusha and 6 other employees of the Kosovo Energy, Corporation, Resolution of 8 May 2014 - Constitutional Review of the Judgment Rev. No. 25/2012, of the Supreme Court of the Republic of Kosovo, of 10 May 2013

Case KI163/13, Decision of 8 May 2014.

Key words: Individual Referral, right to property, manifestly ill-founded

The Applicant filed Referral based on Article 113.7 of the Constitution of the Republic of Kosovo, Article 47 of the Law No. 03/L-121 of the Constitutional Court of the Republic of Kosovo, and Rule 56, paragraph 2 of the Rules of Procedure.

The Applicants allege that the challenged judgment violated Article 31 [Right to Fair and Impartial Trial], Article 49 [Right to Work and Exercise Profession] and Article 54 [Judicial Protection of Rights] of the Constitution of the Republic of Kosovo.

The Applicants also allege that the decisions are *"erroneous and unconstitutional, because the Applicants were unjustly denied the salary compensation."*

Considering the Applicants' allegations regarding the constitutional review of the Judgment Rev. no. 25/2012, of the Supreme Court of the Republic of Kosovo, of 10 May 2013, the Constitutional Court found that the facts presented by the Applicants do not in any way justify the allegation of violation of the constitutional rights and that the Applicants have not sufficiently substantiated their claims. Therefore, the Court decided that the facts presented by the Applicants do not in any way justify the allegation of violation of their constitutional rights, thus the Referral is manifestly ill-founded.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI163/13
Applicant
Naser Dragusha and 6 other employees of the Kosovo Energy Corporation
Constitutional review of the Judgment Rev. No. 25/2012, of the Supreme Court of the Republic of Kosovo, of 10 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 Applicants are: Mr. Naser Dragusha, Mr. Mehmet Shaqiri, Mr. Bajram Ahmeti, Mr. Shasivar Hashani, Mr. Qazim Igrishta, Mr. Fahri Asllani and Ms. Selvete Preniqi, represented by Mr. Ilaz Çerkinaj, lawyer from Prishtina.

Challenged decision

2. The Applicants in their Referral complain against Judgment Rev. No. 25/2012, of the Supreme Court of Kosovo, of 10 May 2013, which was served on them on 10 July 2013, Judgment Ac. no. 270/2009 of the District Court in Prishtina of 28 February 2011 and Decision C. no. 268/07 of the Municipal Court in Prishtina of 2 June 2008.

Subject matter

3. The subject matter is the constitutional review of the decisions, alleged to be *"erroneous and unconstitutional, because the Applicants were unjustly denied the salary compensation."*

4. In this respect, the Applicants allege violation of Article 31 [Right to Fair and Impartial Trial], Article 49 [Right to Work and Exercise Profession] and of Article 54 [Judicial Protection of Rights] of the Constitution of the Republic of Kosovo.

Legal basis

5. The Referral is based on Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), Article 47 of the Law on the Constitutional Court of the Republic of Kosovo, No. 03/L-121 (hereinafter: the Law), and Rule 56 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

6. On 18 October 2013, the Applicants submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

7. On 31 October 2013, the President of the Court by Decision No. GJR. KI163/13, appointed Judge Altay Suroy as Judge Rapporteur. On the same date, the President of the Court, by Decision No. KSH. KI163/13, appointed the Review Panel, composed of Judges: Robert Carolan (Presiding), Ivan Čukalović and Enver Hasani.

8. On 14 November 2013, the Applicants, the Supreme Court and the Kosovo Energy Corporation (hereinafter: KEK) were notified of the registration of Referral.

9. On 18 November 2013, the Court requested from the Applicants to submit additional documents.

10. On 19 and 20 November 2013, the Applicants submitted additional documents to the Court.

11. On 25 November 2013, the KEK Legal Office submitted its comments regarding the Applicants' Referral.

12. On 13 January 2014, the Court requested from the Basic Court in Prishtina to submit additional documents.

13. On 20 January 2014, the Basic Court in Prishtina submitted to the Court the additional documents.

14. On 8 May 2014, the Review Panel considered the report of the Judge Rapporteur and recommended to the Court the inadmissibility of the Referral.

Summary of facts

15. On 1 October 2004, the Applicants established employment relationship with the KEK on indefinite term, with monthly salary in the amount of €296 in the job position of the assistant operator.

16. On 2 July 2007, the Applicants sued the KEK in the Municipal Court in Prishtina, by requesting to change the name of the job position, from the assistant operator to furnace operatorand the payment of the difference of personal income by 41 € per month, for the period from 1 December 2004 to 1 January 2007.

17. On 2 June 2008, the Municipal Court in Prishtina, by Decision C. no. 268/07, decided:

> *"The statement of claim of claimants Bajram Ahmeti from Prishtina, neighborhood "Ulpiana", building 13, no.1, and Mehmet Shaqiri from village Svecel, Podujeva Municipality, by which they requested the change of the name of the work position and the payment of difference of personal income starting from 01.12.2004 until 01.01.2007 is rejectedas out of timeand the statement of claim of claimants Fahri Asllani from village Stanovc i Ulet, Vushtrri Municipality, Qazim Igrishta from village Stanovc i Ulet, Vushtrri Municipality, Shasivar Hashani from Obiliq, Latif Preniqi from Prishtina, neighborhood "Dardania", SU 1/3, III entrance, no.23 and Naser Dragusha from village Prugovc, Prishtina Municipality, by which they requested the change of the name of work position and the payment of the difference of personal income starting from 01.12.2004 until 01.01.2007, is rejected as inadmissible."*

18. On 4 March 2010, the Applicants filed an appeal with the District Court in Prishtina.

19. On 28 February 2011, the District Court in Prishtina, by Judgment Ac. no. 270/2009, decided:

"The appeals of claimants Bajram Ahmeti from Prishtina, Mehmet Shaqiri from village Svecel, Fahri Asllani and Qazim Igrishta from village Stanovc i Ulet, Shasivar Hashani from Obiliq, Latif Preniqi from Prishtina and Naser Dragusha from village Prugovc, are REJECTED as ungrounded and the Ruling of the Municipal Court in Prishtina C1. no. 268/2007 of 02.06.2008 is UPHELD."

20. On 20 May 2011, the Applicants filed a request for revision with the Supreme Court of Kosovo.

21. On 10 May 2013, the Supreme Court of Kosovo, by Judgment Rev. no. 25/2012, stated:

"The claimants' revision submitted against the Judgment of the District Court in Prishtina Ac. no. 270/2009 of 28.02.2011, is rejected as ungrounded in the part related to the change of the name of the work position.

The Judgments of the second and first instance are changed in the part related to the claimants' statement of claim for the payment of difference of monthly salaries for the time period starting from 01.02.2004 until 01.01.2007 so that the claimants' statement of claim in this part is rejected as not grounded."

22. In the abovementioned Judgment, the Supreme Court reasoned:

"... from the case file it is found that the claimants have established with the respondent indefinite period employment relationship starting from 01.10.2004, in the job positions assistant operator, based on employment contracts no.8992/0 dated 01.10.20004 with Naser Dragusha, contract no.1223/0 with Bajram Ahmeti, contract no.3564/0 with Mehmet Shaqiri, contract no.8967/0 with Fahri Asllani, contract no.12310/0 with Qazim Igrishta, contract no.2099/0 with Shasivar Hashani, contract no.2268/0 with Latif Preniqi, and with these contracts they were allocated the monthly salary of 296 € and the latter are signed both by the claimants and the respondent.

The claimants by the claim submitted on 02.07.2007 requested that the respondent is obliged to name to each claimant the job position "furnace operators" as it had previously been and that each of them would be paid the difference of personal income of 41 € for each month starting from 01.12.2004 until

01.01.2007 with legal interest starting from the day of non-payment until the final payment all within the time limit of 8 (eight) days and the costs of the contested procedure.

The first instance court after administering the necessary evidence found that the claimants had established employment relationship with the respondent pursuant to employment contracts dated 01.10.2004 for the job position assistant operator, according to which their salaries were determined to be 296 €, and these contracts were signed both by the claimants and the respondent, and the same were not challenged by the claimants pursuant to the provisions of Article 83 of the Law on Basic Rights from the Employment Relationship, and found that the claimants Mehmet Shaqiri and Bajram Ahmeti, have lost the right to judicial protection, whereas the claimants Fahri Asllani, Qazim Igrishta, Shasivar Hashani, Latif Preniqi and Naser Dragusha, because the same have not exhausted the out of court remedies for exercising their rights, by deciding as in the enacting clause of its Judgment.

Setting from this situation of the matter, the Supreme Court of Kosovo finds that the lower instance courts have correctly applied the material law when they found that the claimants' claim for changing the name of the work position pursuant to the contract is inadmissible and as such was rejected because this matter is not under the subject matter jurisdiction of regular courts.

The Supreme Court of Kosovo finds that the lower instance courts by correctly and completely determining the factual situation, have erroneously applied the material law when they rejected the claimants' claim for compensation of the difference of monthly salaries at the amount of 41 €, for the time period starting from 01.12.2004 until 01.01.2007 pursuant to Article 83, paragraph 1 of the Law on Basic Rights from the Employment Relation because pursuant to the provision of Article 83, paragraph 2 of the Law cited above it is provided that: the protection of rights before the competent court cannot be sought if previously the employee has not sought the protection of rights before the competent authorities of the organization, except the rights from the monetary demand, because pursuant to this provision, Article 83 paragraph 1 of the law quoted above is not applicable on the

request for monetary compensation that derives from the employment relation, therefore this Court has changed the Judgments of the lower instance courts, in the parts pertaining to the claimants' statement of claim for the payment of the unpaid monthly difference for the time period 01.12.2004 until 01.01.2007, by rejecting the statement of claim as not grounded. Pursuant to the employment contracts established on 01.10.2004 the claimants worked for the respondent from 01.12.2004 until 01.01.2007, for an indefinite period of time, and pursuant to Article 2 in these contracts their monthly payment was set at the amount of 296 €. Pursuant to this contract, for the performed work, the claimants earned the monthly salaries from the respondent, as they had not challenged the signing of the contracts, a fact that was not contested between the litigating parties."

23. On 10 July 2013, the Applicants requested from the Supreme Court of Kosovo to provide logical interpretation of paragraph II of the enacting clause and of the reasoning of the Judgment Rev. No. 25/2012.

24. On 4 September 2013, the Supreme Court of Kosovo, by Decision Rev. No. 25/2012 rejected the Applicant's request as ungrounded.

25. In the abovementioned Decision, the Supreme Court of Kosovo, reasoned among the other:

"The Supreme Court of Kosovo, having examined the case file and the abovementioned Judgment found that the claimants' request to correct and logically interpret paragraph II of the enacting clause of this Judgment is not grounded, because the Judgment in question does not contain clerical errors pursuant to the provision of the Article quoted above, and for this part the Court has provided comprehensible reasons for rendering a decision pursuant to the provision of Article 224.1 of the LCP."

Relevant provisions

Law no. 03/L-006 on Contested Procedure, Article 224.1

"224.1 If the court of revisions ascertains that the material good right was applied wrongfully, through a decision it approves the revision presented or changes the decision attacked."

Applicant's allegations

26. The Applicants allege that *"it is not clear in what aspect have the lower court judgments been modified when the Revision was filed due to violation of the claimants' rights due to non-payment of difference of personal income for the period stated in the Judgment of the Supreme Court of the Republic of Kosovo, because this claim was also rejected by the lower court judgments*."

27. The Applicants allege violation of Article 31 [Right to Fair and Impartial Trial], Article 49 [Right to Work and Exercise Profession] and of Article 54 [Judicial Protection of Rights] of the Constitution.

Allegations of KEK Legal Office

28. The KEK Legal Office, among the other, alleged: "*KEK J.S.C. alleges and is convinced that the court decisions – Judgments and Decisions of the Municipal, District and of the Supreme Court of Kosovo are fair, lawful and meritorious, therefore setting from this principle, proposes that the Referral is rejected as inadmissible".*

The admissibility of the Referral

29. The Court observes that, in order to be able to adjudicate the Applicants' Referral, it is necessary to examine first whether they have fulfilled the admissibility requirements laid down in the Constitution as further specified in the Law and the Rules of Procedure.

30. Regarding the Applicants' Referral, 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".*

31. 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. 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".

32. In the present case, the Court notes that the Applicants are authorized parties, that they have exhausted all legal remedies in compliance with Article 113.7 of the Constitution and that the Referral was submitted within the time limit of (4) four months, as provided by Article 49 of the Law.

33. 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".

34. Regarding the Applicants' allegations, the Court notes that the Supreme Court of Kosovo has clearly explained the relations between the Applicants as the employees and the KEK as employer based on the contract established by the consent of both parties and the rights and obligations deriving from such a contract; and moreover, the Supreme Court of Kosovo has also made clear assessment of the decisions of the lower instance courts.

35. The Constitutional Court recalls that it is not a fact-finding Court and that correct and complete determination of the factual situation is within the full jurisdiction of regular courts, while 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 case, *Akdivar v. Turkey*, No. 21893/93, ECtHR, Judgment of 16 September 1996, para. 65, see also case KI86/11, *Applicant Milaim Berisha*, Resolution on Inadmissibility of 5 April 2012).

36. Moreover, the Referral does not indicate that the regular courts have 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 determine whether the regular courts' proceedings were fair in their entirety, including the way in which evidence was taken (See case *Edwards v. United Kingdom*, No. 13071/87, Report of the European Commission of Human Rights of 10 July 1991).

37. The fact that the Applicants disagree with the outcome of the case cannot of itself raise an arguable claim of a breach of Article 31 [Right to Fair and Impartial Trial] and of Article 49 [Right to Work and Exercise Profession] of the Constitution (See case *Mezotur-Tiszazugi Tarsulat vs. Hungary*, No. 5503/02, ECHR, Judgment of 26 July 2005)·

38. In these circumstances, the Applicants have not substantiated their allegations of a violation of Article 31 [Right to Fair and Impartial Trial] and of Article 49 [Right to Work and Exercise Profession] 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.

39. Accordingly, the Referral is manifestly ill-founded and must be declared 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 47 of the Law, and Rule 36 (1) c) of the Rules of Procedure, on 8 May 2014, unanimously:

DECIDES

I. TO DECLARE the Referral 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	**President of the Constitutional Court**
Altay SuroyProf.	Dr. Enver Hasani

KI193/13 and KI213/13, New Company Agricultural land SHKABAJ L.L.C, Resolution of 5 May 2014 - Constitutional Review of Decision Rev. no. 229/2012, of the Supreme Court of Kosovo, of 10 June 2013 and Decision Rev. no. 70/2013, of the Supreme Court of Kosovo, of 12 July 2013

Joined cases KI193/13 and KI213/13, Decision of 5 May 2014.

Key words: individual referral, non-exhaustion of legal remedies, protection of property, equality before the law, right to fair and impartial tria.

The Applicant submitted the Referral in accordance with Article 113.7 of the Constitution, challenging the Decisions Rev. no. 229/2012 of 10 June 2013, and Rev. no. 70/2013, of 12 July 2013, of the Supreme Court of Kosovo, by which according to the Applicant's claims were violated Articles 24 [Equality Before the Law], 31 [Right to Fair and Impartial Trial], 32 [Right to Legal Remedies] and 102 [General Principles of the Judicial System] of the Constitution of the Republic of Kosovo.

The Applicant filed two claims with the Municipal Court in Prishtina (the current Basic Court) for vacation from the immovable property and compensation for the lost profit, with a justification that the respondent Fehmi Sahiti, without permit and authorization entered into possession and unlawful use and did not vacate the immovable property, the parcel agricultural land, at the place called "Dragodan", Cadastral Municipality Obiliq.

The President of the Constitutional Court rendered the decision on the joinder of the cases KI193/13 and KI213/13, because it is the same subject matter with two different decisions and almost identical factual situation.

The Supreme Court of Kosovo, by Decision Rev. no. 70/2013, and Decision Rev. no. 229/2012, REJECTED the revision of the representative of the claimant as inadmissible.

Deciding on the Referral of the Applicant, New Company Agricultural land SHKABAJ L.L.C**.** and taking this into account, on the basis of documentation submitted to the Constitutional Court by the Applicant, the Court notes that by the Decisions Rev. no. 229/2012, of 10 June 2013, and Rev. no. 70/2013, of 12 July 2013, of the Supreme Court of Kosovo, *"against the ruling by which this court is declared incompetent for this legal matter, the revision was not allowed since by this is not finalized the contested procedure in the final form."* At the same time, the cases were remanded to the Special Chamber of the Supreme Court

for retrial in order that the competent court can decide on the subject matter of this dispute.

The Court wishes to reiterate that the rule of exhaustion of legal remedies exists to provide relevant authorities, including the courts, with an opportunity to prevent or rectify the alleged violations of the Constitution. The rule is based upon the assumption that the legal order in Kosovo shall provide effective legal remedies to violations of constitutional rights. Therefore, the Court concluded that the Applicant has not exhausted all legal remedies provided by law for it to be able to file a Referral with the
Constitutional Court, and therefore, it must declare the Referral inadmissible, in compliance with Article 47.2 of the Law, and Rule 36 (1) a) of the Rules of Procedure.

RESOLUTION ON INADMISSIBILITY
in
Case no. KI193/13 and KI213/13
Applicant
New Company Agricultural land SHKABAJ L.L.C.
Constitutional review of the Decision of the Supreme Court of Kosovo, Rev. no. 229/2012, of 10 June 2013 and the Decision of the Supreme Court of Kosovo, Rev. no. 70/2013, of 12 July 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 Referral was submitted by legal entity "New Company Agricultural land Shkabaj L.L.C." (hereinafter: the Applicant), which before the Constitutional Court of Kosovo is represented by the lawyer, Mr. Gafurr Elshani.

Challenged decision

2. The Applicant challenges two decisions of the Supreme Court of Kosovo, namely:
   - The Decision of the Supreme Court of Kosovo Rev. no. 229/2012, of 10 June 2013, which was served on the Applicant on 15 July 2013 , and
   - The Decision of the Supreme Court of Kosovo Rev. no. 70/2013, of 12 July 2013, which was served on the Applicant on 23 August 2013.

Subject matter

3. The subject matter is the constitutional review of the Decision of the Supreme Court of Kosovo, Rev. no. 229/2012, of 10 June 2013, and Rev. no. 70/2013, of 12 July 2013, by which, according to Applicant's allegations, were violated Articles 24 [Equality Before the Law], 31 [Right to Fair and Impartial Trial], 32 [Right to Legal Remedies] and 102[General Principles of the Judicial System] of the Constitution of the Republic of Kosovo.

Legal basis

4. The Referral is based on Articles 113.7 and 21.4 of the Constitution (hereinafter: the Constitution); Article 47 of the Law on the Constitutional Court of the Republic of Kosovo, no. 03/L-121 (hereinafter: the Law) and Rule 56 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 11 November 2013, the Applicant submitted the Referral KI193/13 to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 20 November 2013, the Applicant submitted the Referral KI213/13 to the Court.

7. On 27 January 2014, the President of the Court rendered the decision on the joinder of the cases KI193/13 and KI213/13 and appointed Judge Kadri Kryeziuas Judge Rapporteur and the Review Panel, composed of Judges: Robert Carolan(Presiding), Almiro Rodriguesand Enver Hasani.

8. On 5 February 2014, the Constitutional Court forwarded to the Supreme Court the copy of the Referral and informed the Applicant that the procedure of the constitutional review of the Decision, as per joined cases KI193/13 and KI213/13 has been initiated.

9. On 5 May 2014, after having reviewed of the report of the Judge Rapporteur Kadri Kryeziu,the Review Panel composed of judges: Robert Carolan (Presiding), Almiro Rodriguesand Enver Hasani,

made a recommendation to the full Court on the inadmissibility of the Referral.

Summary of facts for Referral KI193/13

10. On 29 December 2010, the Applicant filed a claim with the Municipal Court in Prishtina (the current Basic Court) for vacation of the immovable property and compensation for the lost profit, with a justification that the respondent Azem Sallahu, without permit and authorization entered into possession and unlawful use and did not vacate the immovable property, P-71914056-00161-3, the parcel agricultural land, at the place called "Dragodan - Kodra", in a surface area of 10800 m², Cadastral Municipality Prishtina.

11. On 13 October 2011, the Municipal Court in Prishtina, by Decision C. no. 2945/10, is declared "*incompetent on this legal matter and the respondent is instructed that regarding this initiates the proceedings in the Special Chamber of Supreme Court of Kosovo.*"

12. On 1 November 2011, the Applicant filed an appeal against the Decision of the Municipal Court in Prishtina, C. no. 2945/10, of 13 October 2011, due to substantial violations of the contested procedure provisions and erroneous application of the material law.

13. On 24 January 2012, the District Court in Prishtina, by Decision Ac. no. 1432/2011, "*The appeal of the authorized representative of the claimant New Company Agricultural Land Shkabaj IS REJECTED as ungrounded, whereas the ruling of Municipal Court in Prishtina, C. no. 2945/2010 of 13.10.2011 IS UPHELD.*"

14. On16 March 2012, the Applicant submitted the request to the Supreme Court for issuing legal stance regarding the jurisdiction.

15. On 27 March 2012, the President of the Supreme Court in Response Agj. No. K136/2012, to the request for issuing legal stance, regarding the jurisdiction, states as the following:

> *"The issue of jurisdiction is regulated by law and this court cannot take a legal stance on every disagreement of parties by court decisions, you have had legal opportunities and ways to challenge such decision, i.e. to request the initiation of the procedure for protection of legality or to file a revision if the law in the concrete case enabled such thing and then this court as the last authority would decide in relation to this matter. As*

regards to jurisdiction, if the court considers that there is no territorial or real jurisdiction then it is declared incompetent and submits the case to the court for which thinks it is competent, and if the court to which was proceeded the case, thinks that it is not its jurisdiction it opens the conflict of jurisdiction, which is resolved by higher court; from this it results that no legal requirement for legal stances is fulfilled, but the jurisdiction is resolved by higher court, in regular procedure provided by law."

16. On 5 April 2012, against the Decision of the Municipal Court in Prishtina, C. no. 2945/10 of 13 October 2011 and the Decision of the District Court in Prishtina Ac. no. 1432/2011 of 24 January 2012, the Applicant filed a revision due to substantial violation of the contested procedure provisions and erroneous application of the material law.

17. On 10 June 2013, the Supreme Court of Kosovo, by Decision Rev. no. 229/2012, "*Revisionof the representative of the claimant filed against the Ruling of District Court in Prishtina Ac. no. 1432/11 of 24.01.2012, is rejected as inadmissible" with the following reasoning:*

"Regarding the revision of the claimant's representative, the Supreme Court of Kosovo, concluded that the revision is inadmissible since pursuant to Article 228, paragraph 1 of LCP, the parties can file a revision against final rulings by which is finalized the proceedings of the second instance court, by which this court was declared incompetent on this legal matter, the revision was not allowed since by this is not completed the contested procedure in the final form ".

Summary of facts for Referral KI213/13

18. On 22 September 2010, the Applicant filed a claim with the Municipal Court in Prishtina (the current Basic Court) for vacation from the immovable property and compensation for the lost profit, with a justification that the respondent Fehmi Sahiti, without permit and authorization entered into possession and unlawful use and did not vacate the immovable property, P-72614055-01832, the parcel agricultural land, at the place called "Dragodan", in a surface area of 60 are, Cadastral Municipality Obiliq.

19. On 18 October 2011, the Municipal Court in Prishtina, by Decision C. no. 2029/10 is declared, "*incompetent for this legal matter and the respondent is instructed that with regards to this initiates the proceedings in the Special Chamber of Supreme Court of Kosovo.*"

20. On 18 November 2011, the Applicant filed an appeal against the Decision of the Municipal Court in Prishtina C. no. 2029/10, of 18 October 2011, due to substantial violations of the contested procedure provisions and erroneous application of the material law.

21. On 28 September 2012, the District Court in Prishtina, by Decision Ac. no. 923/2012, "*The appeal of the authorized representative of the claimant New Company Agricultural Land Shkabaj IS REJECTED as ungrounded, whereas the ruling of Municipal Court in Prishtina, C. no. 2029/2010 of 13.10.2011 IS UPHELD.*"

22. On16 March 2012, the Applicant submitted the request to the Supreme Court for issuing legal stance regarding the jurisdiction.

23. On 27 March 2012, the President of the Supreme Court in Response Agj. No. K136/2012, to the request for issuing legal stance, regarding the jurisdiction, states as the following:

> *"The issue of jurisdiction is regulated by law and this court cannot take a legal stance on every disagreement of parties by court decisions, you have had legal opportunities and ways to challenge such decision, i.e. to request the initiation of the procedure for protection of legality or to file a revision if the law in the concrete case enabled such thing and then this court as the last authority would decide in relation to this matter. As regards to jurisdiction, if the court considers that there is no territorial or real jurisdiction then it is declared incompetent and submits the case to the court for which thinks it is competent, and if the court to which was proceeded the case, thinks that it is not its jurisdiction it opens the conflict of jurisdiction, which is resolved by higher court; from this it results that no legal requirement for legal stances is fulfilled, but the jurisdiction is resolved by higher court, in regular procedure provided by law."*

24. On 12 November 2012, against the Decision of the Municipal Court in Prishtina, C. no. 2029/10 of 18 October 2011 and the Decision of the District Court in Prishtina Ac. no. 923/2011 of 28 September 2012, the Applicant filed revision due to substantial violation of the

contested procedure provisions and erroneous application of the material law.

25. On 12 July 2013, the Supreme Court of Kosovo, by Decision Rev. no. 70/2013, "*Revisionof the representative of the claimant filed against the Ruling of District Court in Prishtina Ac. no. 923/12 of 28 September 2012, is rejected as inadmissible" with the following reasoning:*

> *"Regarding the revision of the claimant's representative, the Supreme Court of Kosovo, concluded that the revision is inadmissible since pursuant to Article 228, paragraph 1 of LCP, the parties can file a revision against final rulings by which is finalized the proceedings of the second instance court, by which this court was declared incompetent for this legal matter, the revision was not allowed since by this is not finalized the contested procedure in the final form".*

Applicant's allegations

26. The Applicant alleges that Decisions of the Supreme Court of Kosovo Rev. no. 229/2012, of 10 June 2013 and Rev. no. 70/2013, of 12 July 2013, violated Articles 24 [Equality Before the Law], 31 [Right to Fair and Impartial Trial], 32 [Right to Legal Remedies] and 102[General Principles of the Judicial System] of the Constitution of the Republic of Kosovo.

27. The Applicant considers that *"By the abovementioned decisions the Applicant considers that its rights to fair and impartial trial were violated, since the parties in proceeding were not treated equally and that the court have not reviewed the evidence and the facts that the claimant offered – Company Agricultural Land Shkabaj LLC, and moreover by the Ruling of revision Rev.229/2012 of 10.06.2013 was violated the right to extraordinary legal remedy because even the Court in page 2 of reasoning of judgment of Revision erroneously interprets the Article 228, paragraph 1, since the Ruling Ac.no.1432/2011 is final and as regards to the matter of contest on competency is completed the proceeding. In the concrete case, the proceedings in the Courts were not fair and in most of the cases were impacted by each other without analyzing the facts independently".*

28. The Applicant addresses the Constitutional Court by the following request:

"... that Constitutional Court of the Republic of Kosovo concludes that final Ruling of the Supreme Court of Kosovo Rev.no.229/2012 of 10.06.2013 and previous judgments that foreran the same contain violation of Constitution and applicable Law regarding the fair and impartial trial to the detriment of appellant and by declaring incompetent the Municipal Court in Prishtina, even though by law such thing is not guaranteed. The same rulings must be abrogated and the case to be retried in impartial manner and in compliance with evidence."

Assessment of admissibility of the Referral

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

30. In this respect, the Court refers to Articles 21.4 and 113.7 of the Constitution, which provide:

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

"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. As well as Article 47 of the Law on Constitutional Court of the Republic of Kosovo, which provides:

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

32. Furthermore, the Court refers to Rule 36 (1) a) of the Rules of Procedure, which provides:

(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...".

33. Taking this into account, on the basis of documentation submitted to the Constitutional Court by the Applicant, the Court notes that by the Decisions of the Supreme Court of Kosovo, Rev. no. 229/2012, of 10 June 2013, and Rev. no. 70/2013, of 12 July 2013 "*... against the ruling by which this court is declared incompetent for this legal matter, the revision was not allowed since by this is not finalized the contested procedure in the final form."*At the same time, the cases were remanded to the Special Chamber of the Supreme Court for retrial, in order that the competent court can decide on the subject matter of this dispute.

34. The Court wishes to reiterate that the rule of exhaustion of legal remedies exists to provide relevant authorities, including the courts, with an opportunity to prevent or rectify the alleged violations of the Constitution. The rule is based upon the assumption that the legal order in Kosovo shall provide effective legal remedies to violations of constitutional rights (see, *mutatis mutandis* ECtHR, *Selmouni vs. France*, no. 25803/94, decision of 28 July 1999)·

35. This Court has provided the same reasoning when rendering the Decision of 27 January 2010, on inadmissibility, on the basis of non-exhaustion of all legal remedies in the case AAB-RIINVEST University LLC, Prishtina vs. Government of the Republic of Kosovo, case no. KI41/09, and the Decision of 23 March 2010, in the case *Mimoza Kusari-Lila vs. Central Election Commission*, Case no. KI73/09.

36. Therefore, the Court concludes that the Applicant has not exhausted all legal remedies provided by law, for it to be able to file a Referral with the Constitutional Court, and therefore, it must declare the Referral inadmissible, in compliance with 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, Articles 20 and 47 of the Law and Rules 36 (1) a) of the Rules of Procedure, on 5 May 2014, unanimously

DECIDES

I. TO DECLARE the Referral 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	**President of the Constitutional Court**
Kadri Kryeziu	Prof. Dr. Enver Hasani

KO103/14, The President of the Republic of Kosovo, Judgment of 30 June 2014 - Concerning the assessment of the compatibility of Article 84 (14) [Competencies of the President] with Article 95 [Election of the Government] of the Constitution of the Republic of Kosovo

Case KO103/14, Decision of 30 June 2014.

Keywords: The President of the Republic of Kosovo, constitutional interpretation, competencies of the president, election of the government, political party, coalition.

The Referral was lodged by the President of the Republic of Kosovo, Her Excellency Atifete Jahjaga, pursuant to Article 84, paragraph 9 and Article 113, paragraph 3, requesting from the Court to give interpretation on several notions, such as: *the party or the coalition that has won the elections*, *necessary to create the Government, according to the same procedure and majority in the Assembly,* which are which are used under Article 95 of the Constitution, and to specify the order of precedence between Article 84, paragraph 14, and Article 95 of the Constitution as they relate to the competence of the President to mandate the candidate for Prime Minister after elections.

The Court found that the Referral of the Applicants is admissible since it meets all the requirements of admissibility which are foreseen by the Rules of Procedure. In assessing the merits of the Referral, the Court concluded that:

- the candidate for Prime Minister is appointed by the President of the Republic through a decision in which the person is explicitly mentioned;

- the proposal for the appointment must stem from a political party or coalition which will forward the name of the person for candidate for Prime Minister to the President of the Republic. The wording used clearly indicates that the name of the candidate has to be proposed by a political party or coalition registered in order to participate in the general elections. As a result, it is not within the discretion of the President of the Republic to propose on her/his own initiative such a candidate;

- the political party mentioned in Article 84 (14) must be a political entity registered by Central Election Commission (CEC) and must have passed the threshold established by CEC after the elections; that the term "coalition" in Article 84 (14) of the Constitution concerns eligible political entities which were certified by CEC as a "coalition to compete the relevant elections under one name" and passed the threshold established by CEC after the elections. Thus, coalitions which are not-certified by CEC are not eligible under Article 84 (14) to propose a candidate for Prime Minister;

- the criteria for proposing the government after elections, used in Article 95, paragraph 1 are cumulative and are a prerequisite for the President of the Republic to make the necessary consultations with the party or coalition that won the majority of seats in the Assembly.

- the democratic rule and principles, as well as political fairness, foreseeability and transparency require the political party or coalition that won the highest number of seats as a result of the elections to be given the possibility to propose a candidate for Prime Minister to form the Government;

- if the proposed composition of the Government does not receive the necessary votes in the Assembly, it is the discretion of the President of the Republic, after consultations with the parties or coalitions, to decide which party or coalition will be given the mandate to propose another candidate for Prime Minister.

JUDGMENT
in
Case No. KO103/14
Applicant
The President of the Republic of Kosovo
Concerning the assessment of the compatibility of Article 84 (14) [Competencies of the President] with Article 95 [Election of the Government] of the Constitution of the Republic of Kosovo

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, and
Arta Rama-Hajrizi, Judge

Applicant

1. The Referral was lodged by the President of the Republic of Kosovo, Her Excellency Atifete Jahjaga (hereinafter: the "Applicant").

Subject Matter

2. The Referral contains a request for the assessment of the compatibility of Article 84 (14) [Competencies of the President] with Article 95 [Election of the Government] of the Constitution of the Republic of Kosovo (hereinafter: the "Constitution").

3. The subject matter are the following questions that have been referred to the Constitutional Court of the Republic of Kosovo (hereinafter: the "Court") by the Applicant:

   a. *Definition of the term "won", as used under Article 95, paragraph 1, of the Constitution?*

i. *On what basis is the party or coalition that "won" the elections determined according to this constitutional provision, who makes this determination and on what basis?*

ii. *Is the constitutional attribute of the party or coalition that "won" the majority in the Assembly under Article 95, paragraph 1, of the Constitution measured by their acts prior or after the election day? Does the certification of results impacts the answer to this question?*

iii. *Can the constitutional attribute of the party or coalition that "won" the majority in the Assembly under Article 95, paragraph 1, of the Constitution be changed after elections and, if yes, how?*

iv. *What are the constitutional prerogatives of the party or coalition that "won" the majority in the Assembly under Article 95, paragraph 1, of the Constitution?*

b. *Define the phrase "necessary to create the Government", as used under Article 95, paragraph 1, of the Constitution?*

c. *Clarify the phrase "according to the same procedure", as used in Article 95, paragraph 4, of the Constitution?*

i. *Does this mean that the candidate should be proposed in consultation with the same party or coalition as the first time (Article 95, paragraph 1, of the Constitution) or can this candidate be proposed in consultation with another party or coalition?*

ii. *Can the candidate proposed for the second time be a person that is not a member of the party with which the consultations are made according to Article 95, paragraphs 1 and 5, of the Constitution?*

iii. *Can the candidate proposed under Article 95, paragraph 4, of the Constitution be a person that does not belong to any party?*

d. *Define the phrase "majority in the Assembly" as used under Article 84, paragraph 14, of the Constitution?*

i. *Does this phrase mean the party or coalition that has 51% of the majority of the Assembly or the party or coalition that has the most members of the Assembly?*

ii. *If the answer to the preceding question is that the party or coalition with the most members of the Assembly constitutes a "majority in the Assembly" under Article 84, paragraph 14, if there is a party and coalition that both have such a majority, which takes precedence?*

iii. *Does the phrase "majority in the Assembly" differ in any manner with the phrase "majority of the Assembly"? [Emphasis added]?*

iv. *How is the President required to confirm that a party or a coalition holds the majority in the Assembly?*

e. *Finally and most importantly, please specify the order of precedence between Article 84, paragraph 14, and Article 95 of the Constitution as they relate to the competence of the President to mandate the candidate for Prime Minister after elections?*

Legal Basis

4. The Referral is based on Articles 84.9 and 113, paragraphs 3.1 and 3.5, of the Constitution 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 19 June 2014 the Applicant submitted the Referral to the Court.

6. On 20 June 2014 pursuant to Rule 33 of the Rules of Procedure, the President of the Constitutional Court, by Decision No. GJR. KO103/14, appointed Judge Snezhana Botusharova as Judge Rapporteur. On the same date, the President of the Constitutional Court, by Decision No. KSH. KO103/14, appointed the Review Panel composed of Judges Robert Carolan (Presiding), Ivan Čukalović and Arta Rama-Hajrizi.

7. On 20 June 2014 the Court notified the Applicant of the registration of the Referral.

8. On the same date the Court sent a copy of the Referral to the Caretaker Government of the Republic of Kosovo (hereinafter: the "Caretaker Government") and the Secretary General of the Assembly of the Republic of Kosovo (hereinafter: the "Secretary General of the Assembly"). The latter was requested to submit to the Court a copy of the *Travaux Preparatoires* ("preparatory works") of the Constitution in relation to Article 84 (14) and Article 95 of the Constitution.

9. On the same date the Secretary General of the Assembly replied to the Court that they do not have *Travaux Preparatoires* of the Constitution in relation to Article 84 (14) and Article 95 of the Constitution.

10. On 23 June 2014 the Court requested from the Central Election Commission (hereinafter: the "CEC") the following documents and information:

    a. CEC decisions certifying political parties, non-governmental organisations, independent candidates and coalitions starting from first parliamentary elections after the war in Kosovo to this day;
    b. Certification of election results, starting from first parliamentary elections after the war in Kosovo to this day; and
    c. Are the election results, starting from first parliamentary elections after the war in Kosovo to this day, sent to the President of the Republic of Kosovo?

11. On 24 June 2014 CEC replied to the Court submitting the requested documents and information.

12. On 26 June 2014 Judge Kadri Kryeziu notified in writing the Court for his exclusion from the deliberations for the period June-July 2014 until the Court decides regarding certain allegations raised against him.

13. On 30 June 2014 the Court deliberated and voted on the case.

Admissibility of the Referral

14. In order for the Court to be able to adjudicate the Applicant's Referral, it is necessary to examine first whether the admissibility requirements laid down in the Constitution, as further specified in the Law on the Constitutional Court of the Republic of Kosovo (hereinafter: the "Law") and the Rules of Procedure have been fulfilled.

15. In this respect, the Court refers to Article 113.1 of the Constitution which provides: *"The Constitutional Court decides only on matters referred to the Court in a legal manner by authorized parties."*

16. The Applicant argues:

> *"...*
>
> *[...] Article 84, paragraph 9, of the Constitution provides the President with the authority to refer questions to the Constitutional Court. The authority provided to the President under the aforementioned constitutional provision is broad in its scope and is not subject to any reservation, including but not limited to the specific cases enumerated under Article 113 of the Constitution. Consequently, it can be deduced that the President of Kosovo can refer questions to the Constitutional Court, provided that such questions fall within the jurisdiction of the Constitutional Court, i.e. they relate to the interpretation of the Constitution or review of compatibility of laws and other acts with the Constitution, as it is stipulated under Article 112 of the Constitution.*
>
> *Although the jurisdiction of the Constitutional Court is specifically regulated under Article 113, the outer limits of the Constitutional Court's competence are delineated by Article 112 of the Constitution, which provides that "the Constitutional Court is the final authority for the interpretation of the Constitution and the compliance of laws with the Constitution." [Emphasis added]. The mandate vested with the Constitutional Court to be the final authority for the interpretation of the Constitution, enshrined under Article 112 of the Constitution, carries the responsibility for the Constitutional Court not only to ensure compliance of laws and other acts with the Constitution but also to guarantee consistent application of the constitutional provisions and avoid of any conflicts between such provisions. Due to the importance of the mandate of the Constitutional Court to ensure the consistency of the*

constitutional provisions with each other, the Constitutional Court is obliged to perform this function whenever a question of compatibility of constitutional provisions is posed to it by the public authorities that are mandated to enforce specific constitutional provisions. Indeed, the purpose of Article 84, paragraph 9, of the Constitution is precisely to enable the President to refer questions about compatibility and consistency of constitutional provisions during the exercise of her constitutionally mandated competences and duties. This argument is corroborated by the fact that a similar right has been granted to the Government of Kosovo under Article 93, paragraph 10, of the Constitution. This proves that the intention of the aforementioned constitutional provisions is to empower the institutions, whose competences derive from and are enumerated in the Constitution, with the authority to pose questions to the Constitutional Court with the aim of ensuring that the exercise of their functions is in full accordance with the letter and the spirit of the Constitution.

In light of the above, it is clear that a request filed to the Constitutional Court by the President of Kosovo on the basis of Article 84, paragraph 9, of the Constitution on the assessment of the compatibility of constitutional provisions relating to the exercise of her mandate is admissible.

An application of this nature should be deemed admissible for the following reasons: (i) the President of Kosovo is mandated to pose such questions under Article 84, paragraph 9, of the Constitution; (ii) the nature of the questions is exclusively constitutional as they relate to the constitutional competences of the President; and (iii) the questions are aimed at ensuring consistent application of the constitutionally mandated competences of the President. With respect to the above, it should be noted that the Constitutional Court, in the Case No. KO 98/11, when reviewing the admissibility of the application made by the Government of Kosovo under Article 93, paragraph 10 - which is of identical nature as Article 84, paragraph 9, of the Constitution - ruled that "(i)f the questions are constitutional questions then the Government will be an authorized party and the (r)eferral will be admissible." This proves that the Constitutional Court has recognized the importance of the active role the authorized parties have to pose questions of constitutional nature that enable the Constitutional Court to exercise its mandate to interpret the Constitution with the aim of ensuring its consistency. In light of

this, and for this reason alone, this request should be declared admissible.

Without prejudice of to the aforementioned analysis, it should be noted that the authority of the President to file this request also indirectly derives from Article 113, paragraph 3, point 1 and 5, of the Constitution. As it is evident, point 1 of Article 113, paragraph 3, of the Constitution speaks about the conflict between the constitutional competences of the Assembly, the President and the Government. Although the text of this constitutional provision is limited to external conflicts in the exercise of the competences of the aforementioned institutions, the value that is sought to be protected by it is consistent application of the Constitution, which may also be undermined when there is an internal conflict in the discharge of the constitutional competencies of these institutions. Since this request relates to the exercise of the President's competencies to mandate the candidate for the Prime Minister after elections, it is clear that such a question falls well within the value that is sought to be protected by Article 113, paragraph 3, of the Constitution. Consequently, for this reason alone this request should be declared admissible.

In addition to the above, the application should also be declared admissible under point 5 of Article 113, paragraph 3, of the Constitution as the question seeks to prevent a violation of the Constitution in the process governing the formation of democratically elected institutions, such as the Assembly and the Government. The aforementioned legal provision authorizes the President to pose questions on whether a violation of the Constitution occurred during the election of the Assembly. The value that is protected by this constitutional provision is constitutional compliance in the most important process for any democratic society, election of its representative and governing institutions. Taking into account the President's role as the guarantor of constitutional functioning of institutions, enshrined under Article 84 of the Constitution, it is the President's obligation to ensure that such violations are not only addressed when they occur but also prevented whenever this is possible. In this respect, the most prudent manner to proceed forward when facing a direct incompatibility of two constitutional provisions when exercising a constitutionally mandated authority is to seek guidance in the Constitutional Court in accordance with Article

84, paragraph 9, of the Constitution. On the basis of the above, this request should be deemed admissible solely for this reason.

…"

17. Consequently, the Applicant argues that the requirements specified both in Article 84 (9) and Articles 113.3.1 and 113.3.5 of the Constitution are satisfied in the present case.

18. Article 84 (9) of the Constitution reads as follows:

"Article 84 [Competencies of the President]

The President of the Republic of Kosovo…

(9) may refer constitutional questions to the Constitutional Court…."

19. Thus, pursuant to Article 84 (9) of the Constitution, the President of the Republic of Kosovo is authorized to refer constitutional questions to the Court.

20. The Court has, therefore, to consider whether the raised questions are "constitutional questions" in line with Article 84 (9) of the Constitution.

21. For the proper consideration of the issue it is necessary to summarize the factual background of the case that raised the questions put to the Court.

Summary of the facts related to the questions at issue

22. On 7 May 2014 the Assembly of the Republic of Kosovo in its extraordinary plenary session decided for the dissolution of the fourth legislature of the Assembly of the Republic of Kosovo.

23. On 8 May 2014 the President of the Republic of Kosovo decreed the early election to take place on 8 June 2014.

24. On 8 June 2014 the elections took place in the Republic of Kosovo.

25. On 27 June 2014 CEC published the election results.

Conclusion on admissibility

26. It is not the task of the Court to evaluate the facts of the particular case, but the above mentioned facts appear to have raised constitutional questions under two constitutional provisions, i.e. Article 84 (14) and Article 95 of the Constitution.

27. Consequently, based on Article 84 (9) of the Constitution, the Court finds that the questions submitted by the Applicant are of a constitutional nature. They aim at ensuring the consistent application of the President of the Republic's mandated constitutional competences in accordance with the letter and spirit of the Constitution.

28. Taking these considerations into account, the Court considers that there is no ground to declare the Referral, which raises important constitutional questions, inadmissible or to go into the additional admissibility grounds submitted by the Applicant.

Comparative analysis

29. Before entering into the analysis of the constitutional questions, the Court will conduct a comparative study of relevant constitutional provisions of the Constitutional Framework for Provisional Self-Government in Kosovo (hereinafter: the "Constitutional Framework") and of a number of neighboring and other countries.

Constitutional Framework for Provisional Self-Government in Kosovo

30. The Constitutional Framework, in Article 9.1.26 and Article 9.2.4 provides:

Chapter 9 - Provisional Institutions of Self-Government

Section 1: The Assembly

Responsibilities of the Assembly

9.1.26 The Assembly shall have the following responsibilities:

(d) Endorsing or rejecting the Prime Minister candidate together with the list of Ministers of the Government proposed by the Prime Minister candidate;

Section 2: The President of Kosovo

9.2.4 The President of Kosovo shall exercise the following duties in accordance with this Constitutional Framework and the applicable law:

(b) Following consultations with the political parties represented in the Assembly, propose to the Assembly the Prime Minister;

Albania

31. The Constitution of Albania, in Article 96 provides:

1. At the beginning of a legislature, as well as when the position of Prime Minister is vacant, the President of the Republic appoints the Prime Minister on the proposal of the party or coalition of parties that has the majority of seats in the Assembly.

2. If the Prime Minister appointed is not approved by the Assembly, the President appoints a new Prime Minister within 10 days.

3. If the newly appointed Prime Minister is not approved by the Assembly, the Assembly elects another Prime Minister within 10 days. In this case, the President appoints the new Prime Minister.

4. If the Assembly fails to elect a new Prime Minister, the President of the Republic dissolves the Assembly.

Bulgaria

32. The Constitution of the Republic of Bulgaria, in Article 99 provides:

1. Following consultations with the parliamentary groups, the President shall appoint the Prime Minister-designate nominated by the party holding the highest number of seats in the National Assembly to form a government.

2. Should the Prime Minister-designate fail to form a government within seven days, the President shall entrust this

task to a Prime Minister-designate nominated by the second largest parliamentary group.

3. Should the new Prime Minister-designate also fail to form a government within the period established by the preceding paragraph, the President shall entrust the task to a Prime Minister-designate nominated by one of the minor parliamentary groups.

4. Should the consultations prove successful, the President shall ask the National Assembly to elect the Prime Minister designate.

5. Should no agreement on the formation of a government be reached, the President shall appoint a caretaker government, dissolve the National Assembly and schedule new elections within the period established by Article 64 para 3. The President's act on the dissolution of the National Assembly shall also establish the date of the new general elections.

6. The procedure for forming a government established by the preceding paragraphs shall further apply in the cases referred to in Article 111 para 1.

7. In the cases referred to in paras. 5 and 6, the President shall not dissolve the National Assembly during the last three months of his term of office. Should Parliament fail to form a government within the established period, the President shall appoint a caretaker government.

Croatia

33. The Constitution of Croatia, in Articles 98, 110, 111 and 112 provides:

Article 98
The President of the Republic shall:

- *Call elections for the Croatian Parliament and convene their first session;*
- *Call referenda, in conformity with the Constitution;*
- *Confide the mandate to form the Government to the person who, upon the distribution of the seats in the Croatian*

Parliament and consultations held, enjoys confidence of the majority of its members;
- *Grant pardons;*
- *Confer decorations and other awards specified by law;*
- *Perform other duties specified by the Constitution.*

Article 110

The person to whom the President of the Republic confides the mandate to form the Government shall propose its members.

- *Immediately upon the formation of the Government, but not later than 30 days from the acceptance of the mandate, the mandatary shall present the Government and its program to the Croatian Parliament and demand a vote of confidence to be passed.*

- *The Government shall assume its duty if the vote of confidence is passed by a majority vote of all members of the Croatian Parliament.*

- *The Prime Minister and the members of the Government shall take a solemn oath before the Croatian Parliament. The text of the oath shall be determined by law.*

- *Upon the decision of the Croatian Parliament to express confidence to the Government of the Republic of Croatia, the ruling on the appointment of the Prime Minister shall be brought by the President of the Republic, with the counter signature of the President of the Croatian Parliament, and the ruling on the appointment of the members of the Government shall be brought by the Prime Minster with the counter signature of the President of the Croatian Parliament.*

Article 111

If the mandatary fails to form the Government within the term of 30 days from the day of the acceptance of the mandate, the President of the Republic may decide to extend the term for not more than 30 additional days.

If the mandatary fails to form the Government during the extended term, or if the proposed Government fails to obtain

confidence of the Croatian Parliament, the President of the Republic shall confide the mandate to form the Government to another person.

Article 112

If the Government is not formed in accordance with Articles 110 and 111 of the Constitution, the President of the Republic shall appoint temporary non-party Government and simultaneously call early elections for the Croatian Parliament.

Germany

34. The Basic Law of the Republic of Germany, in Article 63 provides:

Article 63 [Election of the Federal Chancellor]

1. The Federal Chancellor shall be elected by the Bundestag without debate on the proposal of the Federal President.

2. The person who receives the votes of a majority of the Members of the Bundestag shall be elected. The person elected shall be appointed by the Federal President.

3. If the person proposed by the Federal President is not elected, the Bundestag may elect a Federal Chancellor within fourteen days after the ballot by the votes of more than one half of its Members.

4. If no Federal Chancellor is elected within this period, a new election shall take place without delay, in which the person who receives the largest number of votes shall be elected. If the person elected receives the votes of a majority of the Members of the Bundestag, the Federal President must appoint him within seven days after the election. If the person elected does not receive such a majority, then within seven days the Federal President shall either appoint him or dissolve the Bundestag.

Greece

35. The Constitution of Greece, in Article 37 provides:

Article 37

1. *The President of the Republic shall appoint the Prime Minister and on his recommendation shall appoint and dismiss the other members of the Cabinet and the Undersecretaries.*

2. *The leader of the party having the absolute majority of seats in Parliament shall be appointed Prime Minister. If no party has the absolute majority, the President of the Republic shall give the leader of the party with a relative majority an exploratory mandate in order to ascertain the possibility of forming a Government enjoying the confidence of the Parliament.*

3. *If this possibility cannot be ascertained, the President of the Republic shall give the exploratory mandate to the leader of the second largest party in Parliament, and if this proves to be unsuccessful, to the leader of the third largest party in Parliament. Each exploratory mandate shall be in force for three days. If all exploratory mandates prove to be unsuccessful, the President of the Republic summons all party leaders, and if the impossibility to form a Cabinet enjoying the confidence of the Parliament is confirmed, he shall attempt to form a Cabinet composed of all parties in Parliament for the purpose of holding parliamentary elections. If this fails, he shall entrust the President of the Supreme Administrative Court or of the Supreme Civil and Criminal Court or of the Court of Audit to form a Cabinet as widely accepted as possible to carry out elections and dissolves Parliament.*

4. *In cases that a mandate to form a Cabinet or an exploratory mandate is given in accordance with the aforementioned paragraphs, if the party has no leader or party spokesman, or if the leader or party spokesman has not been elected to Parliament, the President of the Republic shall give the mandate to a person proposed by the party's parliamentary group. The proposal for the assignment of a mandate must occur within three days of the Speaker's or his Deputy's communication to the President of the Republic about the number of seats possessed by each party in Parliament; the aforesaid communication must take place before any mandate is given.*

Macedonia

36. The Constitution of the Republic of Macedonia, in Articles 84 and 90 provides:

Article 84

The President of the Republic of Macedonia

- *nominates a mandator to constitute the Government of the Republic of Macedonia;*

Article 90

The President of the Republic of Macedonia is obliged, within 10 days of the constitution of the Assembly, to entrust the mandate for constituting the Government to a candidate from the party or parties which has/have a majority in the Assembly.

Within 20 days from the day of being entrusted with the mandate, the mandator submits a programme to the Assembly and proposes the composition of the Government.

The Government is elected by the Assembly on the proposal of the mandator and on the basis of the programme by a majority vote of the total number of Representatives.

Portugal

37. The Constitution of Portugal, in Article 187 provides:

Title IV – Government

Chapter II. Formation and responsibilities

Article 187. Formation

1. *The President of the Republic shall appoint the Prime Minister after consulting the parties with seats in Assembly of the Republic and in the light of the electoral results.*

2. The President of the Republic shall appoint the remaining members of the Government upon a proposal from the Prime Minister.

Slovenia

38. The Constitution of the Republic of Slovenia, in Article 111 provides:

Article 111. Election of the President of the Government

After consultation with the leaders of parliamentary groups the President of the Republic proposes to the National Assembly a candidate for President of the Government.

The President of the Government is elected by the National Assembly by a majority vote of all deputies unless otherwise provided by this Constitution. Voting is by secret ballot.

If such candidate does not receive the necessary majority of votes, the President of the Republic may after renewed consultation propose within fourteen days a new candidate, or the same candidate again, and candidates may also be proposed by parliamentary groups or a minimum of ten deputies. If within this period several candidates have been proposed, each one is voted on separately beginning with the candidate proposed by the President of the Republic, and if this candidate is not elected, a vote is taken on the other candidates in the order in which they were proposed.

If no candidate is elected, the President of the Republic dissolves the National Assembly and calls new elections, unless within forty-eight hours the National Assembly decides by a majority of votes cast by those deputies present to hold new elections for President of the Government, whereby a majority of votes cast by those deputies present is sufficient for the election of the candidate. In such new elections a vote is taken on candidates individually in order of the number of votes received in the earlier voting and then on the new candidates proposed prior to the new vote, wherein any candidate proposed by the President of the Republic takes precedence.

If in such elections no candidate receives the necessary number of votes, the President of the Republic dissolves the National Assembly and calls new elections.

Electoral history of Kosovo

39. On 17 November 2001 Kosovo held its first general parliamentarian elections under the provisions of the Constitutional Framework. The party LDK (Lidhja Demokratike e Kosovës) won 46.2 % of the votes, receiving 47 seats in the Assembly. The second largest party was PDK (Partia Demokratike e Kosovës), who won 25.5 % and received 26 seats in the Assembly. It was followed by the party Aleanca Kthimi who won 10.9 %, receiving 22 seats in the Assembly and the party AAK (Aleanca për Ardhmërinë e Kosovës), who won 7.8 % of the votes, receiving 8 seats in the Assembly.

40. The party LDK failed to get the sufficient support to govern alone. Following this failure the party LDK withdrew from the request to have the Prime Minister post and agreed to nominate as designee for Prime Minister Mr. Bajram Rexhepi from the second largest party, i.e. the PDK. Pursuant to the Constitutional Framework, Article 9.2.4 (b), the President of Kosovo proposed to the Assembly for Prime Minister Mr. Bajram Rexhepi who was endorsed by the Assembly, pursuant to Article 9.1.26 (d).

41. On 23 October 2004 Kosovo held its second general parliamentarian elections under the provisions of the Constitutional Framework. Based on the information received by CEC, the Court notes that the party LDK won 45.42 % of the votes, receiving 47 seats in the Assembly, PDK won 28.85 % of the votes, receiving 30 seats in the Assembly, AAK won 8.39 % of the votes, receiving 9 seats in the Assembly, and ORA won 6.2 % of the votes, receiving 7 seats in the Assembly.

42. The party LDK failed to get the sufficient support to govern alone. Following this failure the party LDK withdrew from the request to have the Prime Minister post and agreed to nominate as designee for Prime Minister Mr. Ramush Haradinaj from the third largest party, i.e. the AAK. Pursuant to the Constitutional Framework, Article 9.2.4 (b), the President of Kosovo proposed to the Assembly for Prime Minister Mr. Ramush Haradinaj who was endorsed by the Assembly, pursuant to Article 9.1.26 (d).

43. On 17 November 2007 Kosovo held its third general parliamentarian elections under the provisions of the Constitutional Framework. Based on the information received by

CEC, the Court notes that the party PDK received 37 seats in the Assembly while LDK received 25 seats in the Assembly.

44. Following the elections in 2007, the President of Kosovo proposed to the Assembly for Prime Minister Mr. Hashim Thaçi who was endorsed by the Assembly, pursuant to Article 9.1.26 (d) of the Constitutional Framework.

45. On 12 December 2010 Kosovo held its general parliamentarian elections under the current Constitution, whereby PDK won 32.11 % of the votes, receiving 34 seats in the Assembly, LDK won 24.69 % of the votes, receiving 27 seats in the Assembly, and Vetëvendosje won 12.69 % of the votes, receiving 14 seats in the Assembly.

46. Following the elections in 2010, the Acting President of the Republic nominated as candidate for Prime Minister Mr. Hashim Thaçi, who was endorsed by the Assembly on 22 February 2011.

Merits of the Referral

Arguments submitted by the Applicant

47. The Court notes that the Applicant submitted the following arguments:

> "*Article 84 of the Constitution enumerates the constitutional competences of the President. As it is evident, the majority of these competences relate to the authority to appoint the heads of different public institutions, including but not limited to the judiciary, security forces and diplomatic missions. The common denominator of these competencies of the President is the fact that - while the role of the President in this respect is of final nature - the actual act of appointment is rather formal. This is due to the fact that the President's act is preceded by a comprehensive appointment process vetted and certified by other constitutionally mandated institutions, such as the Judicial Council, the Prosecutorial Council or the Government.*
>
> *In light of the above and prior to posing specific questions regarding the compatibility of Article 84, paragraph 14, with Article 95 of the Constitution, the Constitutional Court is requested to clarify the nature of the competencies of the President to appoint and/or mandate public officials to discharge their constitutionally mandated competencies based*

on our constitutional order in general and specifically the appointment of the candidate for Prime Minister after elections? Namely, is the competence of the President in this respect formal in that it certifies that the process that preceded the act of appointment was carried out in accordance with the Constitution or substantive in that the President may exercise (full) discretion when exercising the aforementioned competencies

With respect to the question of incompatibility, which has indeed warranted the submission of this request, it should be noted that Article 84, paragraph 14, of the Constitution provides that the President "appoints the candidate for Prime Minister for the establishment of the Government after proposal by the political party or coalition holding the majority in the Assembly." [Emphasis added]. On the other side, Article 95, paragraph 1, of the Constitution states that "[a]fter elections, the President of the Republic of Kosovo proposes to the Assembly a candidate for Prime Minister, in consultation with the political party or coalition that has won the majority in the Assembly necessary to establish the Government." The conflict between these two constitutional provisions is threefold. While the text in Article 84, paragraph 14, of the Constitution is the party or coalition "holding the majority in the Assembly", the text provided under Article 95, paragraph 1, of the Constitution is the party or the coalition that "has won the majority in the Assembly necessary to establish the Government." The incompatibility between these two constitutional provisions is exacerbated by the fact that while the text in Article 84, paragraph 1, of the Constitution is in present tense, the text under Article 95, paragraph 1, of the Constitution is in past tense. Finally, while the text according to Article 84, paragraph 14, contains no qualification, the test in Article 95, paragraph 1, *is qualified with the phrase "necessary to establish the Government."*

The Court's considerations

48. The Court notes that the Applicant requests the assessment of the compatibility of Article 84 (14) [Competencies of the President] with Article 95 [Election of the Government] of the Constitution raising questions enumerated above.

49. Democracy, *"vox populi"* (voice of the people), requires the election of those who are going to represent the people's voice in the legislative body of the state. In a parliamentary democracy this is the supreme governing entity vested with a variety of competencies, at the same time subordinate to the principle of separation of powers and check and balances. One of the main responsibilities of the parliament is to decide by voting whom to empower with executive functions. The government stems from the prevailing political power within the parliament and is rooted into the political force that wins the elections. This can be an absolute or relative win.

50. As seen above, each country has its own legal provisions, laid down in its constitution, laws or other legal instruments relating to these issues.

51. The Court notes that when constitutional provisions are not clear one of the options for interpretation is to go back to the *Travaux Preparatoires* in order to better understand how and why the drafters formulated the text of these constitutional provisions as they stand. However, as to the Constitution, the Court already asked the Assembly, in Case KO98/11 of 20 September 2011 to provide the *Travaux Preparatoires* of the Constitution. The Court never received an answer.

52. In the present case, the Court again asked the Secretary General of the Assembly to present the *Travaux Preparatoires* of the Constitution in relation to Article 84 (14) and Article 95 of the Constitution. On 20 June 2014 the Secretary General of the Assembly replied to the Court that they do not have *Travaux Preparatoires* of the Constitution.

53. Therefore, in the absence of the *Travaux Preparatoires* of the Constitution, the Court has to interpret itself, pursuant to Article 112 of the Constitution, in which manner the President of the Republic is empowered, under the above Articles of the Constitution, to appoint the candidate for Prime Minister and according to which procedure.

54. Article84 (14) [Competencies of the President] of the Constitution provides as follows:

> *"The President of the Republic of Kosovo: appoints the candidate for Prime Minister for the establishment of the*

Government after proposal by the political party or coalition holding the majority in the Assembly".

55. Article95 [Election of the Government] of the Constitution provides:

> *1. After elections, the President of the Republic of Kosovo proposes to the Assembly a candidate for Prime Minister, in consultation with the political party or coalition that has won the majority in the Assembly necessary to establish the Government.*
>
> *2. The candidate for Prime Minister, not later than fifteen (15) days from appointment, presents the composition of the Government to the Assembly and asks for Assembly approval.*
>
> *3. The Government is considered elected when it receives the majority vote of all deputies of the Assembly of Kosovo.*
>
> *4. If the proposed composition of the Government does not receive the necessary majority of votes, the President of the Republic of Kosovo appoints another candidate with the same procedure within ten (10) days. If the Government is not elected for the second time, the President of the Republic of Kosovo announces elections, which shall be held not later than forty (40) days from the date of announcement.*
>
> *5. If the Prime Minister resigns or for any other reason the post becomes vacant, the Government ceases and the President of the Republic of Kosovo appoints a new candidate in consultation with the majority party or coalition that has won the majority in the Assembly to establish the Government.*
>
> *6. After being elected, members of the Government shall take an Oath before the Assembly. The text of the Oath will be provided by law.*

56. The Court reiterates that its main jurisdiction is laid down in Article 112 of the Constitution, which stipulates:

"*1. The Constitutional Court is the final authority for the interpretation of the Constitution and the compliance of laws with the Constitution.*

2. The Constitutional Court is fully independent in the performance of its responsibilities."

57. The Court notes that the Applicant in the Referral has raised detailed questions stemming from the necessity, according to her, for a constitutional assessment of the compatibility of Article 84 (14) and Article 95 of the Constitution. The Articles relate, respectively, to the competencies of the President of the Republic and to the procedure to be followed for the establishment of the Government after a general election. The Court considers that it is sufficient to make the interpretation of Article 84 (14) in conjunction with Article 95 of the Constitution.

58. Within its authority under Article 112 of the Constitution, the Court will make the necessary interpretation. In doing so, the Court shall follow the letter and spirit of the Constitution and the principles of democracy and democratic governance.

Functions and role of the President of the Republic

59. The Court notes that Article 83 of the Constitution refers to the status of the President of the Republic in the following terms: *"The President is the head of state and represents the unity of the people of the Republic of Kosovo."*

60. Furthermore, pursuant to Article 4.3 of the Constitution, *"[...] the President of the Republic of Kosovo is the legitimate representative of the country, internally and externally, and is the guarantor of the democratic functioning of the institutions of the Republic of Kosovo, as provided in the Constitution.*"

61. The Court recalls that the mandate of the President of the Republic is inviolable so as to ensure adherence to the principle of the Separation of Powers and to preserve certainty in the legal and constitutional order. (See, Cases KO 29/12 and KO 48/12, Proposed Amendments of the Constitution submitted by the President of the Assembly of the Republic of Kosovo on 23 March 2012 and 4 May 2012, Judgment of 20 July 2012).

62. The Court considers that some of the powers of the President of the Republic touch very clearly upon the political life of the country, as

the ones mentioned in the Articles of the Constitution, subject matter of the Referral.

63. Bearing in mind the considerable powers granted to the President of the Republic under the Constitution, the Court considers that it is reasonable for the public to assume that their President, "representing the unity of the people" and not a sectional or party political interest, will represent them all. Every citizen of the Republic is entitled to be assured of the impartiality, integrity and independence of their President. This is particularly so when the President of the Republic exercises political powers such as choosing between competing candidates from possible coalitions to become Prime Minister (Case KI47/10, Applicant: Naim Rrustemi and 31 other Deputies of the Assembly of the Republic of Kosovo, Judgment of 28 September 2010.)

64. The subject of the present Referral indeed concerns the power of the President of the Republic, as the head of state and representing the unity of the people of the Republic of Kosovo, to appoint a candidate for Prime Minister in accordance with the procedure to be followed for the establishment of a government after general elections.

65. Since the Articles 84 (14) and 95 of the Constitution are closely interlinked, the Court will interpret them together.

Interpretation of Article 84 (14) of the Constitution

66. The text of Article 84 (14) of the Constitution authorizes the President of the Republic to take part in the formation of the new government. The Article enumerates a number of elements:

(a) The President appoints the candidate for Prime Minister;

(b) After proposal by the political party or coalition;

(c) Holding the majority in the Assembly.

67. As to point (a) *The President appoints the candidate for Prime Minister*, the Court considers that the text of the Article is clear and unambiguous: the candidate for Prime Minister is appointed by the President of the Republic through a decision in which the person is explicitly mentioned. In this respect, the Court reiterates that the Acting President of the Republic on 18 February 2011, by

virtue of Articles 84 (14), 90 and 95, paragraph 1, of the Constitution and Decision No. 231-2011 of the Central Election Committee of 7 February 2011, nominated the *"[…] candidate, Mr. Hashim Thaçi, candidate for Prime Minister for the establishment of the Government of the Republic of Kosovo."*

68. As to point (b) *After proposal by the political party or coalition*, the Court is of the view that the proposal for the appointment must stem from a political party or coalition which will forward the name of the person for candidate for Prime Minister to the President of the Republic. The wording used clearly indicates that the name of the candidate has to be proposed by a political party or coalition registered in order to participate in the general elections. As a result, it is not within the discretion of the President of the Republic to propose on her/his own initiative such a candidate.

69. The term "political party" mentioned in Article 84 (14) is defined in Article 3 [Definitions] and referred to in Article 17 of Law No. 03/L-073 of 5 June 2008 which provides as follows:

"*Article 3 [Definitions]*

For the purpose of this law,

[…]

"Political Party" shall mean an organization of individuals who voluntarily associate on the basis of common ideas, interests or views, for the purpose of obtaining influence and having their representatives elected to public office or as otherwise defined by applicable legislation;

[…].

Article 17 [Political Parties]

17.1 A Political Party may be certified to participate in an election, provided that its registration under UNMIK Regulation No. 2004/11 is not under suspension.

17.2 The Office shall inform the CEC regarding the registration status of each applicant Political Party prior to the conclusion of the certification procedure."

70. In light of these provisions, the Court is of the view that the political party mentioned in Article 84 (14) must be a political entity registered by CEC and must have passed the threshold established by CEC after the elections.

71. Furthermore, the term "coalition" used by Article 84 (14), is referred to in Article 3 [Definitions] and Article 18 [Coalitions] of the Law on general elections, providing as follows:

"*Article 3 [Definitions]*

For the purpose of this law,

[…]

"Coalition" shall mean a coalition of two or more Political Entities;

[…].

"Article 18 [Coalitions]

18.1 A Coalition may be certified to contest an [the Court notes that the translation is wrong because the Albanian version states "to compete" inthe election] election under one name, provided that it consists solely of Political Parties that are eligible to be certified under 15.4.

18.2 The CEC shall treat a Coalition as a single Political Entity from the day the Coalition is certified by it until the results of the election are certified. A Political Party may not withdraw from a Coalition once it has been certified, until the results of the election are certified.

18.3 Upon dissolution of a Coalition, each of the registered Political Parties that were members of the Coalition shall be responsible for a share of all Liabilities incurred by the Coalition proportional to the agreement of the Coalition, including any outstanding fines imposed by the CEC or the ECAC.

18.4 A political party that is a member of a Coalition cannot participate as a member of another Coalition or as a separate political party in the same election.

[…].”

72. In light of the above provisions, the Court considers that the term “coalition” in Article 84 (14) of the Constitution concerns eligible political entities which were certified by CEC as a “coalition to compete the relevant elections under one name” and passed the threshold established by CEC after the elections. Thus, coalitions which are not-certified by CEC are not eligible under Article 84 (14) to propose a candidate for Prime Minister.

73. As to point (c), *Holding the majority in the Assembly*, the Court notes that in order to enable the voters to cast their votes, the political party or coalition which, in accordance with the abovementioned law, has been registered as an electoral subject, has its name on the electoral ballot, participated in the elections and passed the threshold, is entitled under Article 84 (14) of the Constitution to propose a person as the candidate for Prime Minister.

74. In this respect, hereinafter, the use of the terms “political party or coalition” when they are mentioned in connection with Article 84 (14) and Article 95, paragraph 1 and 4, of the Constitution it is meant a political party or coalition that is registered under the Law on General Elections, participates as an electoral subject, is included in the electoral ballot, passes the threshold and, thus, acquires seats in the Assembly.

75. This political party or coalition shall hold the majority in the Assembly. In the Court’s interpretation, “majority” has the same sense as applied in the constitutional jurisprudence and practice and shall be in compliance with the constitutional principles in a democratic society. The majority may be absolute, more than the half of all seats in the Assembly, or relative, i.e. more seats than the other political parties or coalitions that have been registered in accordance with the Law on General Elections.

76. The Court reiterates that on 12 December 2010 the Republic of Kosovo held its general parliamentarian elections under the current Constitution. Based on the certified election results PDK did not have an absolute majority of the seats in the Assembly.

77. The Court notes that the Acting President of the Republic, pursuant to the constitutional provisions and the election results, appointed Mr. Hashim Thaçi as a candidate for Prime Minister from the party PDK, the party that won the relative majority, i.e.

most of the seats in the Assembly compared to the other political parties that were registered in accordance with the Law on General Election, participated in the elections and passed the threshold.

78. Furthermore, the Court notes that the Acting President of the Republic in his decision for appointment of the candidate for Prime Minister stated:

> *"II. The nominated candidate Mr. Hashim Thaçi in the shortest period of time is invited to make the necessary consultations with the political parties for the new government and to come up with proposal before the Parliament of the Republic of Kosovo."*

79. As a result, on 22 February 2011, Mr. Hashim Thaçi was endorsed as Prime Minister of the new government with 65 votes for, 1 abstain and 0 against during the extra ordinary plenary session.

80. The requirement of "holding the majority in the Assembly" under Article 84 (14) of the Constitution must be read in conjunction with the provision of Article 95, paragraph 1, of the Constitution, i.e. the political party or coalition that has won the majority of seats in the Assembly, i.e. the highest number of seats.

81. The Court notes that Article 95, paragraph 1, deals with the procedure for the President of the Republic to propose to the Assembly *"[...] a candidate for Prime Minister, in consultation with the political party or coalition that has won the majority in the Assembly necessary to establish the Government."* So, in this Article a number of elements can be distinguished:

(a) The President proposes to the Assembly a candidate for Prime Minister;

(b) In consultation with the political party or coalition;

(c) That won the majority in the Assembly;

(d) Necessary to establish the Government.

82. These elements are cumulative and are a prerequisite for the President of the Republic to make the necessary consultations with the party or coalition that won the majority of seats in the Assembly.

83. As to point (a) *The President proposes to the Assembly a candidate for Prime Minister*, the Court refers to the previous establishment of the Government in 2011, whereby through Decision of 18 February 2011, the Acting President of the Republic, Mr. Jakup Krasniqi, nominated Mr. Hashim Thaçi as candidate for Prime Minister for the establishment of the Government to the Assembly on the basis of the certified election results sent on 8 February 2011 to the Acting President of the Republic by CEC and proposed him as such to the Assembly.

84. As to point (b) *In consultation with the political party or coalition* and (c) *That won the majority in the Assembly* combined, the Court notes that the above mentioned Decision of the Acting President of the Republic also invited the nominated candidate to make the necessary consultations with the political parties for the new government, since his party had no absolute majority in the Assembly. In this connection, the Court reiterates that the President of the Republic can only consult with the political party or coalition that has won the majority in the Assembly be it absolute or relative.

85. As to point (d) *Necessary to establish the Government*, the Court considers that the words "necessary to establish the Government" means that such political party or coalition to be consulted is the one that has enough seats in the Assembly to constitute the majority. Thus, whether the political party or coalition will have the necessary votes for the establishment of the Government will be determined by the voting in the Assembly.

86. Therefore, the President of the Republic cannot predict that the political party or coalition he/she has to consult for the nomination of the candidate for Prime Minister will obtain a sufficient majority of votes in the Assembly to establish the Government proposed by the candidate for Prime Minister. Therefore, the words "necessary to establish the Government" has the same meaning as in Article 84 (14) of the Constitution to the effect that the political party or coalition can only be the one that has won the highest number of votes in the elections, respectively most of the seats in the Assembly. Evidently, this party or coalition has received greatest support by the voters to rule the country.

87. However, the Court notes that it is not excluded that the party or coalition concerned will refuse to receive the mandate.

88. The democratic rule and principles, as well as political fairness, foreseeability and transparency require the political party or coalition that won the highest number of seats as a result of the elections to be given the possibility to propose a candidate for Prime Minister to form the Government. The President of the Republic does not have the discretion to approve or disapprove the nomination of the candidate for Prime Minister by the party or coalition, but has to assure his/her appointment.

Interpretation of Article 95, paragraph 4, of the Constitution

89. As to the interpretation of Article 95, paragraph 4, the Court notes that the provision spells out the procedure according to which the President of the Republic appoints another candidate for Prime Minister, following the same procedure, if the proposed composition of the Government does not receive the necessary votes in the Assembly. This Article enumerates two elements:

    (a) President appoints another candidate;

    (b) With the same procedure.

90. The Article is silent on the question which party or coalition proposes the new candidate for Prime Minister. In the Court's view, it is the discretion of the President of the Republic, after consultations with the parties or coalitions, to decide which party or coalition will be given the mandate to propose another candidate for Prime Minister.

91. It is not to be excluded that the President of the Republic may decide to give the same party or coalition another chance to propose another candidate who may be successful in establishing a new Government by obtaining the necessary votes in the Assembly.

92. The Court considers that the President of the Republic has to assess what is the highest probability for a political party or coalition to propose a candidate for Prime Minister who will obtain the necessary votes in the Assembly for the establishment of a new Government.

93. The Court reiterates that Article 95, paragraph 4, of the Constitution requires another candidate for Prime Minister, but leaves open the question which party or coalition will be given the mandate to propose a candidate for Prime Minister.

94. Since, under the Constitution the President of the Republic represents the state and the unity of the people, it is the President's responsibility to preserve the stability of the country and to find prevailing criteria for the formation of the new government in order for elections to be avoided.

95. Therefore, the Court concludes that the constitutional provisions are sufficiently clear and compatible to lead to the establishment of a new government in accordance with the will of the voters.

FOR THESE REASONS

The Constitutional Court pursuant to Articles 84 (9) and 112 of the Constitution and Rule 56.1 of the Rules of Procedure, on 30 June 2014,

DECIDED

I. TO DECLARE, unanimously, the Referral admissible;

II. TO HOLD, by majority, that:

a. Articles 84 (14) and 95 of the Constitution are compatible;

b. The use of the terms "political party or coalition" when they are mentioned in connection with Article 84 (14) and Article 95, paragraphs 1 and 4, of the Constitution means a political party or coalition that is registered under the Law on General Elections, participates as an electoral subject, is included in the electoral ballot, passes the threshold and, thus, acquires seats in the Assembly;

c. A party or coalition that has won the majority in the Assembly as stipulated in Article 95, paragraph 1, of the Constitution means this party or coalition that has the majority of the seats in the Assembly, be it absolute or relative;

d. The President of the Republic under Article 95, paragraph 1, of the Constitution proposes to the Assembly the candidate for Prime Minister nominated by the political party or coalition that has the highest number of seats in the Assembly;

e. The President of the Republic does not have the discretion to refuse the appointment of the proposed candidate for Prime Minister;

f. In case the proposed candidate for Prime Minister does not receive the necessary votes, the President of the Republic, at his/her discretion, pursuant to Article 95, paragraph 4, of the Constitution, appoints another candidate for Prime Minister after consultation with the parties or coalitions (registered in accordance with the Law on General Elections) that meet the above mentioned requirements, i.e. a party or coalition that was registered as electoral subject in accordance with the Law on General Elections, has its name on the electoral ballot, participated in the elections and passed the threshold;

g. It is not excluded for the President of the Republic to decide to give the initial party or coalition according to Article 95, paragraph 1, of the Constitution a chance to propose another candidate for Prime Minister;

III. TO NOTIFY this Judgment to the Parties and publish in the Official Gazette, in accordance with Article 20.4 of the Law;

IV. TO DECLARE this Judgment effective immediately.

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

Case No. KO-103/14
Applicant
The President of the Republic of Kosovo
Concerning the assessment of the compatibility of Article 84, paragraph 14, with Article 95 of the Constitution of the Republic of Kosovo

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
Arta Rama-Hajrizi, Judge.

DISSENTING OPINION of JUDGE ROBERT CAROLAN

Her Excellency, the President of the Republic of Kosovo, has requested that this Court clarify what her authority and responsibility is under the Constitution with respect to the appointment of the Prime Minister of the Republic of Kosovo. She also asks this Court to clarify whether there is a conflict between Article 84(14) and 95, paragraph 1 of the Constitution with respect to her authority and responsibility in the appointment of the Prime Minister.

I respectfully disagree with and dissent from the opinion of the majority of this Court for the following reasons.

As head of the state representing the unity of the people, the President of the Republic is non-political. Article 83 of the Constitution provides:

> *The President is the head of state and represents the unity of the people of the Republic of Kosovo.*

In that role the President is required to propose to the Assembly a candidate for the Assembly to approve as Prime Minister. This candidate has to be approved by a majority of the deputies in the Assembly before he or she can then be appointed by the President. If the candidate appointed does not have the approval of the majority of the deputies in the Assembly, it is quite likely that he or she would not be able to form a

Government requiring the approval of a majority of the deputies in the Assembly.

Before making this proposal the President must first consult with **either** the political party **or** the coalition that has won the majority in the Assembly, not the national elections, necessary to establish the Government. *See*Article 95.1 of the Constitution. The Government is then established once it receives the majority vote of all deputies of the Assembly. *See*Article 95.3 of the Constitution.

If the candidate then proposed by the President is then approved by a majority vote of the deputies in the Assembly, the President is then required to appoint that successful candidate as Prime Minister. *See*Article 84(14) of the Constitution. If the candidate proposed by the President is not approved by a majority of the deputies in the Assembly, then the President must propose another candidate under the same procedure. If that procedure does not result in a candidate receiving the majority vote of the deputies of the Assembly, the President must then announce another round of national parliamentary elections. *See* Article 95.4 of the Constitution.

.

The President is authorized and required by Article 95, paragraph 1 of the Constitution to:

> *After elections, the President of the Republic of Kosovo proposes to the Assembly a candidate for Prime Minister, in consultation with the political party or coalition that has won the majority in the Assembly necessary to establish the Government.* (emphasis added.)

If the candidate proposed by the President receives the approval by majority vote of the deputies in the Assembly, then the President of the Republic is authorized and required by Article 84(14) of the Constitution to:

> *Appoint(s) the candidate for Prime Minister for the establishment of the Government after proposal by the political party **or** coalition holding the majority in the Assembly*; (emphasis added.)

If the proposed candidate is then not elected by a majority of the members of the Assembly, Article 95, paragraph 4 provides that the President shall:

> *".....appoint(s) another candidate with the same procedure within ten (10) days."*

Therefore, Articles 84(14) and 95, paragraph 1 of the Constitution are compatible and consistent. Both Articles 84 and 95 direct and authorize the President in proposing and appointing a candidate for prime minister to consult the political party **or** coalition that holds the majority in the Assembly necessary to establish the Government. It is quite likely that the drafters of the Constitution intended that the term "political party or coalition holding the majority in the Assembly" in Article 84(14) means the same as "political party or coalition that has won the majority in the Assembly necessary to establish the Government" in Article 95.1. Indeed, before the President can act to appoint the prime minister pursuant to Article 84(14) that candidate has to have obtained the approval of the party or coalition in the Assembly holding the majority in the Assembly, not the political party or coalition that won the elections.

For purposes of interpreting Articles 95, paragraph 1 and 84(14) of the Constitution the Court is also asked whether a "political party" or "coalition" must exist before the parliamentary elections occur. Although the election laws of Kosovo may place some restrictions on who or what can be a "political party" or "coalition" for purposes of participating in an election, the Constitution has no similar restriction on whether either entity must exist before the elections. For example, the Law on Elections in Kosovo, No.03/L-073, defines a "coalition" and "political parties." That law relates to the conduct of elections and who may participate, not the procedure for appointing a prime minister of the Assembly.

It is important to remember that the Constitution of the Republic of Kosovo was ratified on 9 April 2008 and became effective on 15 June 2008. The Law onElections in Kosovo, No. 03/L-073, relating to political parties and coalitions who wish to participate and contest elections in Kosovo was adopted on 5 June 2008, 57 days after the Constitution was ratified. Both the Constitution and the Law on Elections use the term "coalitions." There is no authority to conclude that the term "coalition" has the same meaning in the Constitution as in the Law, which was adopted after the Constitution was adopted. Therefore, it would be a mistake to assume that the drafters of the Constitution, in using the term "coalition" in the Constitution, intended that it be interpreted in the same manner that it may be interpreted in the Law on Elections. For example, the Law on Elections requires that a "coalition" must be officially registered a specified number of days before an election to be allowed to participate in and contest an election. The

Constitution does not have a similar restriction or interpretation of what constitutes a "coalition." *Merriam Webster Dictionary,* on the other hand, defines the common use of the term "coalition" as:

> *"a group of people, groups, or countries who have joined together for a common purpose."*

It isreasonable to conclude that the drafters of the Constitution intended this definition, not the more restrictive one contained in the Law on Elections, which they could not have been aware of when they adopted the Constitution.

It is quite likely that the drafters of the Constitution considered the Constitutional Framework for the Provisional Government of Kosovo, UNMIK Regulation 2001/9, when they drafted Articles 95 and 84(14) of the Constitution. It had been in existence for the previous eight years and was the governing framework for the Provisional Institutions of Self Government of Kosovo. With respect to the appointment of the prime minister, Article 9.3.8 of the Constitutional Framework is instructive with respect to the intent of the drafters of the current Constitution. It specifically provides:

> *Election of the Prime Minister and Ministers*
>
> *9.3.8 Following Assembly elections, or if the Prime Minster resigns or his office becomes vacant for another reason, the President of Kosovo shall, following consultations with the parties, coalitions or groups represented in the Assembly, propose to the Assembly a candidate for Prime Minister. The proposed candidate shall present a list of proposed Ministers to the Assembly. The Prime Minister shall be elected together with the Ministers by a majority of the members of the Assembly.*(Emphasis added.)

Like the current Constitution, the Constitutional Framework authorized the President of Kosovo to consult with not just a single political party in the Assembly, but rather with multiple parties, coalitions and groups in the Assembly with the same objective of having the President propose the candidate for prime minister that was most likely to be elected by a majority of the members of the Assembly. Like the current Constitution, the Constitutional Framework did not require that "coalitions or groups" be registered or in formal existence before the elections for the Assembly

in order to be consulted by the President of Kosovo in his or her decision on proposing a candidate for prime minister.
Indeed, the previous practice in Kosovo of appointing a prime minister has allowed a post parliamentary election "coalition", formal or informal, to apparently be formed to allow for the successful appointment of a prime minister by a majority in the Assembly. In the four previous parliamentary elections in Kosovo no political party won an absolute majority of the seats in the Assembly. In each case, either a formal or informal coalition was formed after the elections so as to then allow the candidate proposed for prime minister to then win the approval of the majority in the Assembly necessary to establish a Government.

The Constitution expects the Assembly, by majority vote of the members of the Assembly, to elect a prime minister. If the Assembly is unable to achieve that Constitutional objective after two rounds of voting, there must be parliamentary elections. It is reasonable to conclude that subsequent parliamentary elections, which may or may not result in a new Assembly that will be able to elect a prime minister, was not preferred by the drafters of the Constitution. Therefore, it is quite clear that the drafters of the Constitution intended to give the President broad authority in nominating a candidate, who would have the best chance of obtaining the approval of the majority in the Assembly necessary to establish a government, to maximize the chance of a successful election of this candidate in the Assembly.

The Constitution requires that the prime minister must be approved by a majority in the Assembly before he or she can be appointed. The Constitution authorizes and requires the President to consult with either the major political party **or** coalition in the Assembly necessary to establish the Government before proposing to the Assembly a candidate for prime minister. This requirement should maximize the chances that the proposed candidate will be approved so as to avoid the dissolution of the Assembly and subsequent elections that may or may not be equally unsuccessful in being able to establish a Government. The drafters of the Constitution intended that a majority of the members in the Assembly should elect their prime minister. Any other interpretation could result in the prime minister not having the support of the members in the Assembly resulting in almost certain failure of the government, a result that could not have been intended by the drafters of the Constitution.

The majority of this Court have erroneously concluded that the drafters of the Constitution intended that the term "won the majority in the Assembly necessary to establish the Government" as it appears in Article 95.1 of the Constitution means "the majority who won the previous elections" even though nowhere in the Constitution is such a term ever

used or referenced. It is important to recognize that the drafters understood that in many instances the political party or coalition formed before the election may not win an absolute majority of the seats in the Assembly resulting in a plurality of parties gaining seats in the Assembly. If that happens as it has in every parliamentary election in Kosovo to date, the majority of the Court fail to explain how the term "necessary to form the Government" simply means the political party or coalition who received the most votes in the previous election even though to form the Government such a group would need the approval of more than just the members of their political party or coalition that may have been formed before the elections.

The majority of the Court also conclude that if the first candidate proposed by the President fails to be approved by the majority of the members of the Assembly, then she must use a different procedure in proposing the next candidate for prime minister. This conclusion is clearly erroneous and ignores the explicit language of Article 95.4 of the Constitution. That Article expressly provides:

> *If the proposed composition of the Government does not receive the necessary majority of votes, the President of the Republic of Kosovo appoints another candidate with the same procedure within ten (10) days.* (emphasis added.)

Once again, the President can consult with whoever she believes is the political party or coalition holding the majority in the Assembly necessary to form the Government.

Respectfully submitted,
Robert Carolan
Judge

KI22/14, Lulzim Hoti, Resolution of 12 May 2014 - Constitutional Review of the Ruling of the Supreme Court, Rev. no. 237/2013, of 5 November 2013

Case KI22/14, Decision of 12 May 2014.

Keywords: individual referral, presumption of innocence, right to fair and impartial trial, right to work and exercise profession

The applicant, Lulzim Hoti, filed a Referral pursuant to Article 113.7 of the Constitution of Kosovo challenging the Ruling of the Supreme Court, Rev. no. 237/2013, dated 5 November 2013 as being taken in violation of Article 31 [Right to Fair and Impartial Trial], the principle of the presumption of innocence and Article 49 [Right to Work and Exercise Profession] of the Constitution. The Applicant alleged that both these principles were violated since the entire conducted procedure was led by personal criteria and by prejudice of guilt.

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, Rule 36 (1) c) and Rule 36 (2) a) and d) of the Rules of Procedure.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI22/14
Applicant
Lulzim Hoti
Constitutional review of the Ruling of the Supreme Court, Rev. no. 237/2013, dated 5 November 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 Mr. Lulzim Hoti (hereinafter: the "Applicant"), residing in Prizren.

Challenged decision

2. The final ruling is the ruling of the Supreme Court, Rev. no. 237/2013, of 5 November 2013, which was served on the Applicant on an unspecified date.

3. However, the Constitutional Court of the Republic of Kosovo (hereinafter: the "Court") notes that the Applicant in the Referral form specifically challenges the Judgment of the Municipal Court of Prizren, C. no. 232/08, of 24 May 2010.

Subject matter

4. The subject matter is the constitutional review of the ruling of the Supreme Court by which the Applicant alleges that Article 31 [Right to Fair and Impartial Trial], the principle of the presumption of innocence and Article 49 [Right to Work and

Exercise Profession] of the Constitution of the Republic of Kosovo (hereinafter: the "Constitution") have been violated.

Legal basis

5. 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 (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 6 February 2014, the Applicant submitted the Referral to the Court.

7. On 6 March 2014, the President of the Court, by Decision No.GJR.KI22/14, appointed Judge Robert Carolan as Judge Rapporteur. On the same date, the President of the Court, by Decision No.KSH.KI22/14, appointed the Review Panel composed of Judges Snezhana Botusharova (Presiding), Kadri Kryeziu and Arta Rama-Hajrizi.

8. On 10 March 2014, the Court notified the Applicant of the registration of the Referral and sent a copy of the Referral to the Supreme Court and the Ministry of Justice.

9. On 12 May 2014, 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 5 March 2007, the Disciplinary Commission of the Ministry of Justice issued a decision whereby it found that the Applicant was in serious violation of *"[...] Article 30.1 (a), (b) of the Code of Conduct for Civil Servants, provided by UNMIK Administrative Directive no. 2003/2 on application of UNMIK Regulation no. 2001/36 on Civil Service of Kosovo, and in compliance with point 4, item 42.1., 4.2.2. of Administrative Directive no. MPS/DCAS 2003/04 according to Article 4, item 4.1, 4.2, 4.5 and 4.6 of Code of Conduct of Civil Servants No. 01/2006 and according to Code of Discipline of Correctional Service of Kosovo PSV 9.2, the first Standard item 4 under (f), (g), (h) and (k) and the fourth standard item 7 under (b), (d), (f) and (g)."* Thus, the Disciplinary

Committee terminated the employment contract of the Applicant. The Applicant complained against this decision to the Independent Oversight Board of Kosovo.

11. On 7 May 2007, the Independent Oversight Board of Kosovo rejected as premature the complaint of the Applicant because the Applicant had not complained to the Appeals Commission within the Ministry of Justice. Following this, the Applicant complained to the Appeals Commission of the Ministry of Justice.

12. On 6 August 2007, the Appeals Commission of the Ministry of Justice rejected as ungrounded the complaint of the Applicant and upheld the decision of the disciplinary commission of 5 March 2007. The Applicant filed a complaint against this decision with the Independent Oversight Board of Kosovo.

13. On 5 October 2007, the Independent Oversight Board of Kosovo rejected the complaint of the Applicant as ungrounded and upheld the decision of the Appeals Commission of the Ministry of Justice of 6 August 2007. The Independent Oversight Board held that *"Based on the submissions it is seen that the disciplinary procedure is conducted correctly. The personnel officers acted based on the report of a disciplinary violation and requested the initiation of disciplinary procedure and the case was referred to the disciplinary committee. The Decision of the disciplinary committee is lawful and grounded on the factual situation, statements of parties and evidence presented by parties. The appellant has not presented evidence by which would testify that he has not committed disciplinary violation, which by Discipline Code of Correctional Service of Kosovo is determined as a serious violation of discipline."*

14. On 24 May 2010, the Municipal Court in Prizren (Judgment C. no. 232/08) rejected as ungrounded the complaint of the Applicant who requested the annulment of the Decision of the Independent Oversight Board of Kosovo. The Municipal Court held that *"By viewing and evaluating the administered evidence mentioned above it was confirmed that on 25.08.2006 the disciplinary procedure was initiated against the claimant, because the claimant received cigarettes and money from family members for prisoner A.A.. The Disciplinary Committee by decision no.44 of 05.03.2007 concluded that by these actions the claimant committed serious disciplinary violations [...]. Against this decision the claimant filed an appeal on 12.03.2007 which the*

Appeals Committee of Ministry of Justice rendered a decision by which the appeal of claimant was rejected and upheld the decision of Disciplinary Committee. The claimant proceeded the procedure with the Independent Oversight Board, as final administrative body, to decide on this matter and on 05.10.2007, this body renders the decision no. A 02 281/2007, whereby the appeal of the claimant was rejected as ungrounded and upheld the decision of Appeals Committee. Therefore, from the abovementioned the court came into conclusion that the decision of the respondent for termination of employment relationship is lawful, since it was based on complete determination of factual situation, by applying precisely the disciplinary procedure provided by applicable legislation for civil servants." The Applicant then complained against this decision to the District Court in Prizren.

15. On 25 September 2012, the District Court of Prizren (Judgment Ac. no. 572/2010) rejected as ungrounded the complaint of the Applicant and upheld the Judgment of the Municipal Court of Prizren of 24 May 2010. The District Court held that *"According to the evaluation of the panel of this court the substantial violations of the contested procedure provisions pursuant to Article 182, paragraph 2 of LCP, for which this court takes care ex officio, do not stand and nor other violations for which the appeal alleges. The first instance court has correctly and completely determined the factual situation and correctly applied the substantive law when it decided as in the enacting clause of judgment, the same has given a grounded reasons and in compliance with situation in case file and proceeded evidence, reasons which are admissible also for the panel of this court."* Approximately nine months laterthe Applicant filed a request for revision to the Supreme Court against this judgment.

16. On 5 November 2013, the Supreme Court (Ruling Rev. no. 237/2013) rejected, as out of time, the request for revision. The Supreme Court held that *"The representative of the Applicant has received the judgment of the second instance court on 8.10.2012 and that the time limit for submitting a request for revision started on 9.10.2012, when the representative of the applicant has received the judgment, and the final day for filing a revision was on 7.11.2012, while the revision was submitted on 5.7.2013, i.e. after the allowed time limit […]."*

Applicant's allegations

17. The Applicant alleges that *"Constitution of the Republic of Kosovo guarantees the right to work and right to innocence. Both these principles were violated since the entire conducted procedure was led by personal criteria and by prejudice of guilt, which never until now was determined in any regular court procedure. Thus termination of employment relationship is initiated and implemented based on assumption of a criminal offence, which was never confirmed."*

Admissibility of the Referral

18. The Court observes that, in order to be able to adjudicate the Applicant's complaint, it is necessary to examine whether he 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 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."*

20. Furthermore, the Court takes into account 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;*
>
> *[...]*

d) when the Applicant does not sufficiently substantiate his claim."

21. The Court notes that the Referral of the Applicant alleges a violation of Article 31 [Right to Fair and Impartial Trial] and Article 49 [Right to Work and Exercise Profession] of the Constitution.

22. However, the Court also notes that the Applicant has failed to clarify how and why these constitutional rights were violated by the challenged decision. Dissatisfaction of the Applicant with a decision or a mere mentioning of articles and provisions of the Constitution do not suffice to build an allegation of constitutional violation. When alleging constitutional violation, the Applicant must provide convincing and well-justified argument in order for the referral to be grounded.

23. The Court notes that it is not the duty of this Court to review the errors of fact or law (legality) allegedly made by the regular courts, unless and only when they violate the rights and freedoms protected by the Constitution (constitutionality). Therefore, the Court may not act as a fourth instance court in this case. It is the role of regular courts to interpret and apply pertinent rules of procedural and material law (see case KI14/13, the Applicant, Municipality of Podujeva, and the Resolution on Inadmissibility of 12 March 2013).

24. Furthermore, the rulings of the Supreme Court and the lower instances courts has provided reasoning in their findings.

25. Consequently, the Court considers that the Referral of the Applicant does not fulfill the admissibility requirements, due to the fact that the Applicant has not been able to justify his allegations and provide evidence to support the allegations of constitutional violation by the challenged decision.

26. Therefore, in compliance with Article 48 of the Law, and Rules 36 (1) c) and (2) a) and d) of the Rules of Procedure, the Referral must be rejected as manifestly ill-founded.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 48 of the Law and Rules 36 (1) c), 36 (2) a) and d) and 56 (2) of the Rules of Procedure, on 12 May 2014, 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**
Robert Carolan	Prof. Dr. Enver Hasani

KI26/12 Bujar Ahmetaj, Resolution of 8 May 2014 - Constitutional Review of Decision no. 557/2009 of the Municipal Court in Prishtina, of 9 February 2012

Case KI26/12, Decision of 8 May 2014.

Key words: individual referral, violation of constitutional rights and freedoms, constitutional review, non-exhaustion of legal remedies.

The Applicant filed his Referral based on Article 113.7 of the Constitution of Kosovo, claiming that his constitutional rights and freedoms have been violated by the judgments of regular courts of all instances. The Applicant challenges Judgment, P. no. 557/2009, of the Municipal Court in Prishtina of 9 February 2012, which was served on him on an unspecified date.

The applicant requests from the Court the following:

– Repeat the judicial proceedings and ascertain the factual situation.

– Give the opportunity to attend the court sessions and take into account the presented evidences what would result to reject of the indictment of Prosecutor and KEK.

– Apply the legal provisions of Criminal Code of Kosovo and Criminal Procedure Code of Kosovo.

– Reject the request of KEK as ungrounded, pursuing to Article 37 of Criminal Code of Kosovo.

– Reject the judgment, which is contrary to the provisions of Criminal Procedure Code of Kosovo, Article 103, par. 2, Article 127 point 3, Article 182 par. i, Article 183, Article 197 par. c.

In addition the applicant requests from the Court "that the decisions of lower instance courts is changed due to lack of evidence and find him not guilty".

The Court notes that the Applicant did not file the appeal with the Municipal Court in Pristine within the legal deadline. 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. Thus, the Applicant actually failing to take some procedural step in

the regular courts in accordance with the established deadline is liable to have his case declared inadmissible, as it shall be understood as a waiver of the right to further proceedings on objecting the violation.The Court also considers that a mere suspicion on the perspective of the matter is not sufficient to exclude an applicant from his obligations to appeal before the competent bodies in due time (see Whiteside v the United Kingdom, decision of 7 March 1994, Application no. 20357/92, DR 76, p.80).It follows that the Referral is inadmissible because of non-exhaustion of all legal remedies provided by law.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI26/12
Applicant
Bujar Ahmetaj
Constitutional Review of Decision no. 557/2009 of the Municipal Court in Prishtina of 9 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
Arta Rama-Hajrizi, Judge

Applicant

1. The Referral was submitted by Mr. Bujar Ahmetaj, residing in Prishtina (hereinafter, the Applicant).

Challenged decision

2. The Applicant challenges Judgment, P. no. 557/2009, of the Municipal Court in Prishtina of 9 February 2012, which was served on him on an unspecified date.

Subject matter

3. The subject matter is the constitutional review of the challenged Decision which allegedly *"is based on a wrongful factual situation"*. The applicant also claims that he was not invited at the hearing.

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 (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. The Applicant submitted the referral on 15 March 2012.

6. On 25 April 2012, the President of the Constitutional Court, with Decision No. GJR. KI26/12, appointed Judge Ivan Čukalović as Judge Rapporteur. On the same date, the President of the Constitutional Court, with Decision No. KSH. KI26/12, appointed the Review Panel composed of Judges Almiro Rodrigues (Presiding), Kadri Kryeziu and Enver Hasani.

7. On 1 March 2013, the Municipal Court was notified of the referral.

8. On 8 May 2014, after having considered the report of Judge Rapporteur, the Review Panel made a recommendation to the Court on the inadmissibility of the Referrals.

Summary of facts

9. On 3 August 2008, Kosovo Energy Cooperation – KEK underwent a meter replacement, whereby it confirmed (confirmation letter 31690 no. 003/43) that the Applicant had *"intervened with his electric meter and thus has misused the electricity"*.

10. On 17 March 2009, the Public Prosecutor in Prishtina filed an indictment (PP. 865-11/2009) against the Applicant for the criminal act Theft from Article 252, paragraph 1 of the Criminal Code of Kosovo.

11. On 30 December 2010, the Public Prosecutor submitted a request for a punitive order (PP865-11/2009).

12. On 11 January 2011, the Municipal Court in Prishtina (Judgement P. 557/2009) declared admissible the request of the Municipal Public Prosecutor in Prishtina and found guilty the Applicant of Article 252 paragraph 1 of the Criminal Code of Kosovo. Based on the request of the Public Prosecutor the Municipal Court in Prishitna issued a Punitive Order in the amount of 200 Euros.

13. The Municipal Court held that *"pursuant to Article 476 of the Provisional Criminal Procedure Code, it is foreseen that for*

criminal offence punishable by a fine or imprisonment of up to three (3) years with the request of the Municipal Public Prosecutor the court issued this fine without holding a hearing".

14. The applicant submitted an appeal against the above mentioned decision of the Municipal Court. The Court is not notified of the content of the appeal as it was not submitted by the Applicant.

15. On 23 February 2011, the Municipal Court in Prishtina (Decision P.no 557/2008) rejected as out of time the appeal of the applicant submitted against the Judgment for issuing a punitive order on 11 January 2011.

16. On 9 March 2011, the Municipal Court in Prishtina (Decision KP no. 56/2011) rejected as ungrounded the appeal submitted by the Applicant against the Judgment of the Municipal Court dated 11 January 2011. An appeal was not permitted against this Decision. Nevertheless the Applicant submitted an appeal against the abovementioned decision.

17. On 9 February 2012, the Municipal Court in Prishtina (Decision P. no. 557/2009) *"pursuant to Article 22 paragraph 3 and Article 445 paragraph 1 of the Criminal Procedure Coe of Kosovo rejected the appeal submitted by the Applicant because an appeal is not allowed against the decision of the Municipal Court dated 11 January 2011".*

Applicants' allegations

18. The applicant requests from the Court the following:

- *Repeat the judicial proceedings and ascertain the factual situation.*
- *Give the opportunity to attend the court sessions and take into account the presented evidences what would result to reject of the indictment of Prosecutor and KEK.*
- *Apply the legal provisions of Criminal Code of Kosovo and Criminal Procedure Code of Kosovo.*
- *Reject the request of KEK as ungrounded, pursuing to Article 37 of Criminal Code of Kosovo.*

– *Reject the judgment which is contrary to the provisions of Criminal Procedure Code of Kosovo, Article 103, par.2, Article 127 point 3, Article 182 par.i, Article 183, Article 197 par.c.*

19. In addition the applicant requests from the Court *"that the decisions of lower instance courts is changed due to lack of evidence and find him not guilty".*

Analyses of the Criminal Procedure Code in other countries

20. While deciding on Applicant's referral, in relation to the Applicant's allegation that he was not present at the hearing, the court as a comparison could take notice of the Criminal Procedure Codes in other countries in the region, such as Bosnia and Herzegovina, Croatia and Montenegro.

Croatia

Article 465
"For offences in the jurisdiction of a single judge which come to the State Attorney's Knowledge on the basis of a credible crime report, the State Attorney may request in a motion to indict that the court issue a criminal order imposing by it a certain punishment or measure on the defendant without holding a trial".

Bosnia

Article 334
"For criminal offenses for which the law prescribes a prison sentence up to five (5) years or a fine as the main sentence, for which the Prosecutor has gathered enough evidence to provide grounds for the Prosecutor's allegation that the suspect has committed the criminal offense, the Prosecutor may request, in the indictment, from the Court to issue a warrant for pronouncement of the sentence in which a certain sentence or measure shall be pronounced to the accused without holding the main hearing".

Montenegro

Article 457

"For criminal offences punishable by a fine or the sentence of imprisonment for a maximum term not exceeding one year as a principal punishment, upon a motion of the State Prosecutor, and with the consent of the defendant, the judge may issue a warrant pronouncing sentence without holding a trial".

Assessment of the admissibility

21. First of all, the Court examines whether the Applicant has fulfilled the admissibility requirements.

22. 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".

23. In addition Article 47 (2) of the Law on Court 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".

24. Moreover, Rule 36 (1) a) of the Rules provides that:

"The Court may only deal with Referrals if: all effective remedies that are available under the law against the Judgment or decision challenged have been exhausted."

25. The Court notes that the Applicant did not file the appeal with the Municipal Court in Pristine within the legal deadline.

26. 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. Thus, the Applicant actually failing to take some procedural step in the regular courts in accordance with the established deadline is liable to have his case declared inadmissible, as it shall be understood as a waiver of the right to further proceedings on objecting the violation.

27. The Court also considers that a mere suspicion on the perspective of the matter is not sufficient to exclude an applicant from his obligations to appeal before the competent bodies in due time (see *Whiteside v the United Kingdom,* decision of 7 March 1994, Application no. 20357/92, DR 76, p.80).

28. It follows that the Referral is inadmissible because of non exhaustion of all legal remedies provided by law.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 47.2 of the Law, Rules 36 (1) a) and 56 (2) of the Rules of Procedure, on 8 May 2014, unanimously

DECIDES

I. TO DECLARE the Referral as Inadmissible;

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

III. This Decision is effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Ivan Čukalović	Prof. Dr. Enver Hasani

KI29/14, Halit Islami, Resolution of 12 May 2014 - Constitutional Review of the Ruling of the Supreme Court, Rev. no. 138/2013, of 11 July 2013

Case KI29/14, Decision of 12 May 2014.

Keywords: individual referral, right to work and exercise profession

The applicant, Halit Islami, filed a Referral pursuant to Article 113.7 of the Constitution of Kosovo challenging the Ruling of the Supreme Court, Rev. no. 138/2013, dated 11 July 2013 as being taken in violation of Article 49 [Right to Work and Exercise Profession] of the Constitution. The Applicant alleged that the employee terminated the employment relationship based on insinuations.

On the issue of the admissibility of the Referral, the Court held, that the Referral was inadmissible as out of time because the final ruling of the Supreme Court, Rev. no. 138/2013 was taken on 7 July 2013, and was served on the Applicant on 12 September 2013, whereas the Applicant filed the Referral with the Court on 11 February 2014, which is more than 4 months from the day upon which the Applicant has been served with the Supreme Court ruling.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI29/14
Applicant
Halit Islami
Constitutional review of the Ruling of the Supreme Court, Rev. no. 138/2013, dated 11 July 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 Mr. Halit Islami (hereinafter: the "Applicant"), residing in the village Brainë, Municipality of Podujeva.

Challenged decision

2. The Applicant challenges the Ruling of the Supreme Court, Rev. no. 138/2013, of 7 July 2013, which was served on the Applicant on 12 September 2013.

Subject matter

3. The subject matter is the constitutional review of the Ruling of the Supreme Court by which the Applicant alleges that Article 49 [Right to Work and Exercise Profession] 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 (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 11 February 2014, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the "Court").

6. On 6 March 2014, the President of the Court, by Decision No.GJR.KI29/14, appointed Judge Robert Carolan as Judge Rapporteur. On the same date, the President of the Court, by Decision No.KSH.KI29/14, appointed the Review Panel composed of Judges Snezhana Botusharova (Presiding), Kadri Kryeziu and Arta Rama-Hajrizi.

7. On 10 March 2014, the Court notified the Applicant of the registration of the Referral and requested the Applicant to submit a power of attorney for Mr. Ramiz Suka who represents the Applicant before the Court. However, the Court has so far not received a reply.

8. On 10 March 2014, the Court sent a copy of the Referral to the Supreme Court and the Student Center of the Ministry of Education, Science and Technology.

9. On 12 May 2014, 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 8 November 2011, the Municipal Court in Prishtina (Ruling C. no. 27/10) rejected the complaint of the Applicant to be re-instated at work with the Student Center of the Ministry of Education, Science and Technology. The Municipal Court held that the Applicant's complaint was not clear and, although the court had requested the Applicant to improve and supplement the complaint,

the Applicant had failed to act accordingly. Therefore, pursuant to Article 102.3 of the Law on Contested Procedure, the court rejected the complaint of the Applicant. The Applicant then complained against this ruling to the District Court in Prishtina.

11. On 6 November 2012, the District Court of Prishtina (Ruling Ac. no. 230/2012) rejected as ungrounded the complaint of the Applicant and upheld the ruling of the Municipal Court of Prishtina of 8 November 2011. The District Court held that *"Since the claim was unclear, because it did not contain the decision that the petition sought to annul, the claim was twice returned to the claimant by the first instance court for supplementing it. The claimant with its submissions did not correct the statement of claim so the first instance court acted upon it. Moreover the claimant did not specify in the statement of claim who was the respondent in this contest, whether it was the Ministry of Education, Science and Technology or the Independent Oversight Board of the Civil Service of Kosovo, and who had rendered the final decision to terminate the employment relationship? As the claim is unclear it cannot be concluded what specifically is proposed by the claimant. Therefore, the first instance court correctly found that the claimant's claim is unclear and that the claimant with his submissions did not correct the claim, which he also admits that he had not acted pursuant to the court's orders."* The Applicant then filed a revision to the Supreme Court against this ruling.

12. On 11 July 2013, the Supreme Court (Ruling Rev. no. 138/2013) rejected as impermissible the revision against the ruling of the District Court in Prishtina. The Supreme Court held that *"Pursuant to the provision of Article 228.1 of the LCP [Law on Contested Procedure] the parties can submit a Revision only against a final Ruling that concludes the procedure of the second instance court. Based on this situation of the case the Supreme Court of Kosovo has found that the Revision in this legal matter is impermissible because the court quashed the claim in this matter pursuant to Article 102.3 of the LCP and pursuant to Article 228.1 of the LCP the procedure in this matter was not concluded with a final decision."*

Applicant's allegations

13. The Applicant alleges that the employee terminated the employment relationship based on insinuations and, therefore,

Article 49 [Right to Work and Exercise Profession] of the Constitution has been violated.

Admissibility of the Referral

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

15. In this respect, the Court 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. […]".*

16. The Court also refers to Rule 36 (1) b) 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, or […]."*

17. The final ruling of the Supreme Court, Rev. no. 138/2013 was taken on 7 July 2013, and was served on the Applicant on 12 September 2013, whereas the Applicant filed the Referral with the Court on 11 February 2014, which is more than 4 months from the day upon which the Applicant has been served with the Supreme Court ruling.

18. It follows that the Referral is inadmissible because of out of time 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 49 of the Law and Rules 36 (1) b) and 56 (2) of the Rules of Procedure, on 12 May 2014, 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

KI33/13, Abdyl Pasjaqa, Resolution of 7 May 2014 - Constitutional Review of the Judgment of the Supreme Court, Pkl. No. 167/12, of 29 November 2012

KI 33/13, Decision of 7 May 2014.

Key words: Individual Referral, manifestly ill-founded, fourth instance doctrine

The subject matter is the constitutional review of the Judgment of the Supreme Court, Rev. No. 31/2013, dated 13 March 2013. The Municipal Court in Prishtina found the Applicant guilty of misappropriation of funds that had been entrusted to him and sentenced him to imprisonment of 3 years and 6 months. Then, the District Court in Prishtina, acting upon the appeal filed by the Applicant, annulled the Decision of the Municipal Court and remanded the case for retrial. Following the retrial, the Municipal Court handed down the same sentence. Once again, the Applicant appealed the second decision of the Municipal Court. For the second time, the District Court found the appeal of the Applicant as well-founded and modified the Judgment of the Municipal Court by acquitting the Applicant from all charges. At a later stage, the Chief State Prosecutor filed a request for protection of legality with the Supreme Court and requested that the second decision of the District Court is annulled and the proceedings in this matter are reopened. The Supreme Court found that the criminal law in this case was violated to the benefit of the defendant and since that was the case – it only found a violation without amending the final decision.

The Applicant then filed a Referral with the Constitutional Court where he alleged that the challenged Judgment violated his rights guaranteed by Article 3 [Equality Before the Law], Article 6 [Symbols], Article 21 [General Principles], Article 24 [Equality Before the Law], Article 31 [Right to Fair and Impartial Trial] paragraphs 2 and 4 and Article 102 [General Principles of the Judicial System] of the Constitution of the Republic of Kosovo. The Applicant argued that the Supreme Court contradicted itself in the reasoning of its judgment.

The Constitutional Court declared the Referral inadmissible for being manifestly ill founded. In its reasoning, the Constitutional Court held that the Applicant did not substantiate his claim on constitutional grounds and he did not provide evidence that his rights and freedoms have been violated by the Supreme Court – whose decision was challenged.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI33/13
Applicant
Abdyl Pasjaqa
Constitutional Review of Decision No. Pkl. no. 167/12 of the Supreme Court of 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

Applicant

1. The Applicant is Mr. Abdyl Pasjaqa, represented by Mr. Sadri A. Godanci, a lawyer practicing in Prishtina.

Challenged decision

2. The Applicant challenges Decision No. Pkl. no. 167/12 of the Supreme Court of 29 November 2012, which was served on him in December 2012.

Subject matter

3. The matter concerns the Applicant's complaint that Judgment Pkl. no. 167/12 of the Supreme Court of 29 November 2012 was taken by violating the law and constitutional principles.

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 Law No. 03/L-121 on the Constitutional Court of the Republic of

Kosovo (hereinafter: the "Law") and Rule 56 (2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the "Rules of Procedure").

Proceedings before the Constitutional Court

5. On 11 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 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 7 May 2014, 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. From the submissions by the Applicant it appears that, at the end of the nineties, he migrated to the UK, where he obtained citizenship and met the D. sisters through a friend of his.

9. On 9 December 2005, by judgment P. no. 152/2005, the Municipal Court in Prishtina found the Applicant guilty, under Article 257 (1) and (3) of UNMIK Regulation 2003/26/Provisional Criminal Code of Kosovo (hereinafter: "PCCK"), of misappropriation of funds which had been entrusted to him by the sisters D. and sentenced him to imprisonment of 3 years and 6 months and payment of a total amount of 210.347, 21 Euros.

10. The Applicant appealed against this decision to the District Court in Prishtina, inter alia, on the ground that the Municipal Court had wrongly established the facts and violated essential provisions of the Provisional Code of Criminal Procedure of Kosovo (hereinafter: "PCPCK") and the PCCK.

11. By decision Ap. Nr. 69/2009 of 15 March 2007, the District Court in Prishtina concluded that the Applicant's appeal was well-founded, since the first instance court in the reasoning of its challenged judgment had not made a complete and correct assessment of all evidence administered in the hearing and had not conducted any assessment or analysis of the evidence pursuant to

Article 387 PCPCK. As a consequence, the District Court annulled the decision of the Municipal Court and remanded the case to the same court for retrial.

12. On 25 July 2008, the Municipal Court in Prishtina, while taking into account the remarks of the appeal court, once more found the Applicant guilty of misappropriation of funds and handed down the same sentence as before.

13. Again the Applicant appealed this decision to the District Court in Prishtina which, by Decision Ap. no. 69/2009 of 14 June 2011, ruled that the appeal of the Applicant was well-founded and modified the Judgment of the Municipal Court in acquitting the Applicant of the charge under Article 257 (1) and (3) PCCK of having misused the trust of the injured parties. According to the District Court, the accuracy of the statements made by the injured parties were very suspicious and, taking into consideration the principle that by lack of sufficient and reliable facts one should always find in favor of the accused based on the principle "*In dubio pro reo*," it acquitted the Applicant.

14. On 15 October 2012, the Chief State Prosecutor filed a request for protection of legality (KMLP. II. 123/12) with the Supreme Court, requesting it to annul Judgment Ap. nr. 69/2009 of the District Court of 14 June 2011 and to reopen the proceedings for review, since, in his opinion, the judgment did not contain reasons for the establishment of the decisive facts, that a hearing should have been held and that the parties were not given any advice as to the legal remedies.

15. The Applicant replied to the request of the Chief State Prosecutor, proposing that the request of the State Prosecutor be rejected as ungrounded and, if not, be rejected as time-barred, since it was filed more than 16 months after the challenged judgment.

16. On 29 November 2012, the Supreme Court, by Judgment Pkl. no. 167/2012, ruled, *inter alia*, that "*the allegations of the public prosecutor that the law has been violated to the benefit of the accused are founded […]*" and *"[T]he allegations of the defense counsel of the accused that the request for protection of legality is time-barred, are ungrounded, since it was filed more than 16 months later, since pursuant to Article 452, paragraphs 2 and 3 of the PCCK, the State Prosecutor has no time limit (like any other party as per Article) to use such a remedy*." The Supreme Court

further ruled that, "*[…] since the criminal law in this case was violated to the benefit of the defendant* [the Applicant]*, it only found the violation without amending the final decision. […]*"

Allegations of the Applicant

17. In the Referral, the Applicant alleges that the Supreme Court has violated the law and constitutional principles, in particular, the Articles 3, 6, 21, 24, 31 and paras. 2 to 4 of Article 102 of the Constitution. In his view, the Supreme Court contradicted itself in the reasoning of its judgment, when it approved the request of the public prosecutor and found that the law had been violated to the benefit of the Applicant, despite the fact that the request was time-barred.

18. Therefore, the Applicant requests the Court to assess the legality of the judgment of the Supreme Court and to render a decision within the competency provided by law and the Constitution.

Admissibility of the Referral

19. 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 as further specified in the Law and the Rules.

20. In this connection, the Court refers to Rule 36 (2) of the Rules of Procedure, stipulating that the Referral should not be manifestly ill-founded.

21. In the present case, the Applicant alleges that Judgment Pkl. no. 167/2012 of the Supreme Court of 29 November 2012 violated his rights guaranteed by Articles 3, 16, 21, 24, 31, 102, paras. 2 to 4 of the Constitution and requests the Court to assess the legality of the judgment of the Supreme Court.

22. In this respect, 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 decisions taken by ordinary courts, including the Supreme Court. In general, "Courts shall adjudicate based on the Constitution and the law" (Article 102 of the Constitution). More precisely, the role of the ordinary courts is to interpret and apply the pertinent rules of both procedural and substantive law (see, *mutatis mutandis*, *Garcia v. Spain* [CG], no. 30544/96, para.28, European Court on Human Rights [ECHR] 1999-I).

23. Moreover, the Court refers to the ECtHR Judgment in Case *DMD Group, A.S. v. Slovakia,* Application 19334/03, of 5 October 2010, in which it was held that: "*The Court further reiterates that, in principle, a violation by a tribunal of* domestic *legal provisions relating to the establishment and competence of judicial organs gives rise to a violation of Article 6 § 1. The Court may therefore examine whether the domestic law has been complied with in this respect. However, having regard to the general principle that it is, in the first place, for the national courts themselves to interpret the provisions of domestic law, the Court finds that it may not question their interpretation unless there has been a flagrant violation of domestic law* (see,*mutatis mutandis, Coëme and Others,* cited above, § 98 in fine, and Lavents, cited above, § 114)."

24. As to the Applicant's case, the Court notes that the Supreme Court decided to approve the request of the State Prosecutor for protection of legality, thereby finding that by judgment of the District Court in Prishtina, Ap. no. 69/2009, dated 14 June 2011, the law was violated to the benefit of the Applicant. The Supreme Court concluded that: "*Nevertheless, since the criminal law in the case was violated to the benefit of the defendant, this Court only found a violation, without amending the final decision.*"

25. The Court, therefore, notes that the Supreme Court did not amend the judgment of the District Court, by which the Applicant was acquitted of the charges, but left the judgment in place.

26. Moreover, with respect to the Decision of the Supreme Court, the Applicant did not substantiate his claim on constitutional grounds and did not provide evidence that his rights and freedoms have been violated by that public authority.

27. Therefore, the Court cannot conclude that the relevant proceedings before the Supreme Court were in any way unfair or tainted by arbitrariness (See case KI14/13, Applicant *Municipality of Podujeva,* Resolution on Inadmissibility of 12 March 2013).

28. In these circumstances, the Court concludes that the Referral is manifestly ill-founded.

FOR THESE REASONS

The Constitutional Court, pursuant to Rule 36 (2) and 56 (2) of the Rules of Procedure, on 7 May 2014, unanimously

DECIDES

I. TO DECLARE the Referral 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 immediately effective.

Judge Rapporteur
Ivan Čukalović

President of the Constitutional Court
Prof. Dr. Enver Hasani

KI198/13, Privatization Agency of Kosovo, Resolution of 13 March 2014 - Constitutional Review of the Decision No. AC-II-12-0193, of the Appellate Panel of the Special Chamber of the Supreme Court, of 4 July 2013

Case KI198/13, Decision of 13 March 2014.

Key words: individual referral (legal entity), property dispute, right to fair and impartial trial, manifestly ill-founded referral

The Applicant claims that the Decision AC-II-12-0193 of the SCSC Appellate Panel, of 5 July 2013, which rejected the appeal of the PAK as inadmissible, and the Judgment C. no. 144/2005, of the Municipal Court in Podujeva, of 13 January 2006, contains the following violations: i) Violation of constitutionality and legality, as provided in Chapter VII, Article 02, paragraph 3 of the Constitution of the Republic of Kosovo, by which is stipulated that the courts adjudicate based on the Constitution and the law. ii) Violation of the European Convention on Human Rights (ECHR), Article 6, by which is provided fair and impartial trial".

In this concrete case, the Applicant has not filed any convincing argument to establish that the alleged violations mentioned in the Referral represent constitutional violations. In this regard, the Court mentioned the case Vanek v. Republic of Slovakia, ECtHR Decision as to the Admissibility, no. 53363/99, of 31 May 2005.

Furthermore, in this case, the Court cannot find that pertinent proceedings held before the Special Chamber of the Supreme Court were in any way unfair or arbitrary and regarding this the Court referred toShub vs. Lithuania, ECtHR Decision as to the Admissibility of Application, no. 17064/06, of 30 June 2009.

In general, the Court finds that the Applicant's Referral does not meet the admissibility criteria, since the Applicant has failed to prove that the challenged decision has violated its rights guaranteed by the Constitution.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI198/13
Applicant
Privatization Agency of Kosovo
Constitutional Review of the Decision of the Appellate Panel of the Special Chamber of the Supreme Court, No. AC-II-12-0193, of 4 July 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. Ramush Bardiqi, Legal Officer.

Challenged decision

2. The Applicant challenges the Decision no. AC-II-12-0193, of 4 July 2013, of the Appellate Panel of the Special Chamber of the Supreme Court (hereinafter: SCSC Appellate Panel), which the Applicant states to have received on 23 July 2013.

Subject matter

3. The subject matter is the constitutional review of the Decision no. AC-II-12-0193 of 4 July 2013, of the SCSC Appellate Panel, in relation to the Applicant's allegation that such decision violates its rights as guaranteed by Articles 31. 2 and 102. 3 of the Constitution, and Article 6 of the ECHR.

Legal basis

4. Articles 113. 7 and 21. 4 of the Constitution, Article 47 of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo, (hereinafter: the Law) and Rule 56 (2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Court

5. On 11 November 2013, the Applicant filed its referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 3 December 2013, the President of the Court, by Decision no. GJR. KI198/13, appointed Judge Altay Suroy as Judge Rapporteur. On the same date, the President appointed the members of the Review Panel, in the following composition: Robert Carolan (Presiding), Ivan Čukalović and Enver Hasani.

7. On 11 December 2013, the Constitutional Court notified the Applicant and the SCSC Appellate Panel of the registration of the referral.

8. On 13 March 2014, 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 13 January 2006, the Municipal Court in Podujeva rendered the Judgment C. no. 144/2005), thereby approving as grounded the claim of the claimant M.H. and ordering the respondent, SOE Fan Besiana FA Zahir Pajaziti, to compensate the claimant M.H. his personal incomes for the period 1993-1999, namely for 63 months and 17 days.

10. On 1 October 2012, the Privatization Agency of Kosovo (hereinafter: PAK), filed a complaint with the Special Chamber of the Supreme Court, for annulment of the Judgment of the Municipal Court in Podujeva, C. no. 144/2005, of 13 January 2006, due to substantial violations of contested procedure.

11. On 4 July 2013, the SCSC Appellate Panel rendered the Decision AC-II-12-0193, thereby rejecting the complaint of the Applicant, due to its filing beyond the legal timeline. The decision of the SCSC Appellate Panel contains the following reasoning:

> *"The appeal is out of time and therefore should be rejected as inadmissible.*
>
> *Pursuant to Article 64.1 of the Annex of the Law no. 04/033 on the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo related matters (hereinafter: the Annex), the Appellate Panel decided to not hold the oral part of the procedure. The Appellant in the appeal has not explained when he was notified of the appealed judgment and the reason why the appeal was filed after more than 6 (six) years after the appealed judgment became final. From the case file it is clear that the respondent was served with the appealed judgment on 19 January 2006. It is indisputable fact that the appellant has not filed appeal in SCSC within legal time limit against the Judgment of the Municipal Court in Podujeva. The fact whether he was informed on time regarding the appealed judgment, has not been determined by the Appellant and the burden of proof lies with him.*
>
> *Because the appeal was filed after more than 6 (six) years from the time when the time limit expired for filing appeal and after waiving the right to appeal against the judgment, it is out of time.*
>
> *The Appellate Panel assesses that the issue whether this Court had jurisdiction regarding the claim, cannot be presented anymore, since the inadmissibility of the appeal does not impede the Court to review the merits of the appeal.*
>
> *One of the fundamental principles of the law is preserving the legal certainty for the parties through the law and the court rulings. The final rulings, where the parties, with or without knowledge miss the deadline to appeal or waive the right to file appeal, cannot become subject to court interference to change them later only due to the fact that the party after the time limit in a certain period has interest to modify them, since this causes legal uncertainty for the involved parties. The review on merits of the appeal, filed out of time would violate the rights of the parties in the procedure to a fair trial*

pursuant to Article 6.1 of European Convention on Human Rights".

Applicant's allegations

12. The Applicant claims that the Decision AC-II-12-0193 of the SCSC Appellate Panel, of 5 July 2013, which rejected the appeal of the PAK as inadmissible, and the Judgment of the Municipal Court in Podujevë, C. no. 144/2005, of 13 January 2006, contains the following violations:

"i) Violation of constitutionality and legality, as provided in Chapter VII, Article 102, paragraph 3 of the Constitution of the Republic of Kosovo, by which is stipulated that the courts adjudicate based on the Constitution and the law.
ii) Violation of the European Convention on Human Rights (ECHR), Article 6, by which is provided fair and impartial trial".

[...]

"The SCSC Appellate Panel did not deal at all with the jurisdiction of the Municipal Court in Podujeva, which court, pursuant to Article 15 of the Law on Contested Procedure, should have ex-officio due regard of its competence regarding the claim, but the Appellate Panel focused the entire legal reasoning on the time limit of the appeal.

PAK considers that the SCSC assessment that PAK appeal was filed out of time does not stand, since the SCSCK has erroneously applied legal provisions of Article 186.1 of LCP, since in this case should have been applied provisions of Article 4, paragraph 5.1 of the Law no. 04/L-033 of the Special Chamber of the Supreme Court and PAK document should be treated by the Court as submission-notification by PAK and not as regular appeal, since in this case, the Court avoided application of concrete provisions, where is explicitly provided that every Judgment or Ruling rendered by a court regarding a claim, matter, proceedings or case, will be invalid and non-executable, while the Special Chamber, based on the submission of a person, or by own initiative, will issue an order with that effect." By applying this legal provision, the Court had legal ground to annul the Judgment of the

Municipal Court in Podujeva no. 144/2005 of 13 January 2006, since the respondent was Socially Owned Enterprise".

[...]

To argue the practice of appeal review on annulment of the judgments rendered by the municipal courts by SCSC, PAK provided the SCSCK decision (see evidence 5, ASC-09-0043 of 11 October 2010)."

13. Furthermore, the Applicant requests from the Constitutional Court to render a judgment declaring the Referral admissible, and annulling the Decision AC-11-12-0193, of 4 July 2013, of the Special Chamber of the Supreme Court of Kosovo, and for the merits of the case to be decided by the Special Chamber itself, pursuant to its subject matter jurisdiction.

Admissibility of the Referral

14. In order to be able to adjudicate the Referral of the Applicant, the Court must first examine whether the Applicant has met the requirements provided by the Constitution, and further specified by the Law and the Rules of Procedure.

15. With respect to the Applicant's Referral, the Court refers to Article 113. 7 and Article 21. 4 of the Constitution which provide 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.

Article 21 [General Principles]

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

25. 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. In all other cases, the deadline shall be counted from the day when the decision or act is publicly announced...".

26. In the present case, the Court notes that the Applicant is an authorized party; it has exhausted all legal remedies provided by Law, in compliance with the requirements of Article 113. 7 of the Constitution, and that the Referral was filed within the four-month time limit, as provided by Article 49 of the Law.

27. In this regard, the Court considers that the Applicant's Referral meets procedural criteria for review, and shall further examine the merits of the Referral, and in this regard, it refers to Rule 36 (1) c) and Rule 36 (2) of the Rules of Procedure, which provide:

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 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".

28. The Court notes that the Applicant mainly alleges violations of Articles 31. 2 and 102. 3 of the Constitution, and violation of legal provisions.

29. In relation to the Applicant's allegations of violation of Article 31. 2 of the Constitution [Right to Fair and Impartial Trial], the Court notes that the right to a fair and impartial trial involves numerous elements, and is a key component in protecting basic rights of the individual against the violations allegedly made by courts or public authorities by their decisions.

30. In this regard, the Court takes note of the Article 31 [Right to Fair and Impartial Trial] of the Constitution, which clearly provides that:

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

31. Article 6 of the European Convention on Human Rights (ECHR) also provides 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".*

32. In this regard, the Applicant does not clearly present how and why its allegation of violation of this concrete provision represents a constitutional violation of its fundamental right for a fair and impartial trial.

33. The reasoning of the Decision of the SPSC Appellate Panel is mainly based on the principle of the guarantee for the legal certainty of final judicial decisions, justifying the decision it made in line with the ECtHR case law regarding cases of similar nature. Below is the conclusion of the Panel with respect to the case:

> *"One of the fundamental principles of the law is preserving the legal certainty for the parties through the law and the court rulings. The final rulings, where the parties, with or without knowledge miss the deadline to appeal or waive the right to file appeal, cannot become subject to court interference to change them later only due to the fact that the party after the time limit in a certain period has interest to modify them, since this causes legal uncertainty for the involved parties. The review on merits of the appeal, filed out of time would violate the rights of the parties in the procedure to a fair trial pursuant to Article 6.1 of European Convention on Human Rights".*

34. Furthermore, the SCSC Appellate Panel decision, as quoted above, provides an extensive and comprehensive reasoning on the facts of the case and their findings.

35. Furthermore, dissatisfaction with the decision or merely the mentioning of articles and provisions of the Constitution does not suffice for the Applicant to raise an allegation of constitutional violation. When alleging Constitutional violations, the Applicant must present convincing and indisputable arguments to support the allegations, for the referral to be grounded.

36. In relation to the allegation of violation of Article 102.3 of the Constitution, *"courts shall adjudicate based on the Constitution and the law",* the Court finds that the Applicant again fails to argue how did the challenged decision infringe upon the right as guaranteed by the concrete provision of the Constitution mentioned above, since the Applicant does not raise any argument or proof that the SCSC Appellate Panel has failed to observe such provisions.

37. In relation to the allegation "*on violation of legal provisions*", the Court finds that such allegations are of legal nature, and as such, do not represent any constitutional grounds of violation of fundamental rights guaranteed by the Constitution.

38. Indeed, the Court does not review the regular courts' decisions on legality, and it does not examine the accuracy of the facts of the case, unless it is fully convinced that such decisions were rendered in a manifestly unfair and arbitrary manner.

16. In cases of alleged violations of constitutional rights, it is the duty of the Court to analyze and examine whether the proceedings, in their entirety, are fair and in compliance with protection expressly provided by Constitution. Hence, the Constitutional Court is not a fourth-instance court, when examining decisions rendered by lower instance courts. It is the duty of regular courts to interpret and apply pertinent rules of procedural and material rights (see, *mutatis mutandis,* Garcia Ruiz v. Spain [GC], no. 30544/96, paragraph 28, European Court for Human Rights [ECtHR] 1999-I).

17. It can be clearly seen that in the course of the proceedings before the SCSC the Applicant was offered all possibilities of filing arguments, facts and evidence before the courts, in relation to the alleged violations of constitutional rights. It is not the duty of the Court to examine decisions of regular courts merely because the Applicant was not satisfied with the outcome of the regular courts' decisions.

18. In this concrete case, the Applicant has not filed any convincing argument to establish that the alleged violations mentioned in the Referral represent constitutional violations (see, Vanek v. Republic of Slovakia, ECtHR Decision as to the Admissibility, no. 53363/99, of 31 May 2005).

19. Furthermore, in this case, the Court cannot find that pertinent proceedings held before the Special Chamber of the Supreme Court 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).

20. In general, the Court finds that the Applicant's Referral does not meet the admissibility criteria, since the Applicant has failed to prove that the challenged decision has violated its rights guaranteed by the Constitution.

21. Therefore, in accordance with Rule 36 (2) (b) and d) of the Rules of Procedure, the Court concludes that this Referral is manifestly ill-founded.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Rule 36 (2) b) and d) and Rule 56 (2) of the Rules of Procedure, on 13 March 2014, unanimously

DECIDES

I. TO DECLARE the Referral 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	**President of the Constitutional Court**
Altay Suroy	Prof. Dr. Enver Hasani

KI212/13, Svetlana Stefanović, Resolution of 12 May 2014 - Constitutional Review of the Request for clarification of the Judgment of the Constitutional Court, KO 108/13, of 9 September 2013

Case KI212/13, Decision of 12 May 2014.

Key words: Individual Referral, unauthorized party

The subject matter is the constitutional review of the Request for clarification of the Judgment of the Constitutional Court, KO 108/13, dated 9 September 2013. The Applicant alleged that she is entitled to benefit from the Law on Amnesty [Law No. 04/L-2009] and that this law should be applied in her case too.

The Applicant filed a Referral with the Constitutional Court requesting clarification of the aforementioned Judgment without providing information regarding any legal or other proceedings or actions in relation to her complaints. The Applicant merely requested clarification of the Judgment of the Constitutional Court without alleging any violation of any Article of the Constitution.

The Constitutional Court declared the Referral inadmissible because the Applicant was not considered to be an authorized party. In its reasoning, the Constitutional Court stated that the Applicant does not articulate an individual right or freedom which may have been violated, nor does she refer to any concrete action or decision of a public authority which may have violated her fundamental rights. Thus, the Constitutional Court found that the Applicant is not an authorized party to request clarification or interpretation of a decision of the Constitutional Court.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI212/13
Applicant
Svetlana Stefanović
Constitutional Review
of the Request for clarification of the Judgment of the Constitutional Court, KO108/13 of 9 September 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. Svetlana Stefanović (hereinafter: the Applicant), with residence in Korminjan i Epërm, Municipality of Kamenica.

Challenged Decision

2. The Applicant does not challenge any specific decision of a public authority.

Subject Matter

3. The subject matter is the Applicant's individual request for clarification of the Judgment (KO108/13) of the Constitutional Court of the Republic of Kosovo (hereinafter: the Court), of 9 September 2013, as towhetheritis applicablein thewhole territoryofthe Republic ofKosovoorpartly.

4. The Applicant does not mention the Articles of the Constitution which may have been violated.

Legal basis

5. 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 Constitutional Court of the Republic of Kosovo (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

6. On 19 November 2013, the Applicant filed her Referral with the Court.

7. On 3 December 2013, the President, by Decision No. GJR. KI212/13, appointed Judge Altay Suroy as Judge Rapporteur. On the same date, the President, by Decision No. KSH. KI212/13, appointed the Review Panel, composed of Judges: Robert Carolan (Presiding), Ivan Čukalovićand Enver Hasani.

8. On 15 April 2014, the Constitutional Court notified the Applicant of the registration of Referral and requested from her to submit the power of attorney for representation before the Court.

9. On 25 April 2014, the Applicant submitted the requested document to the Court.

10. On 12 May 2014 the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the full Court to declare the Referral as inadmissible.

Summary of facts

11. On 31 May 2012, the Municipal Court in Kamenica, by Judgment P. no. 191/2008 convicted the Applicant and imposed a suspended sentence and a fine, for the commission of the criminal offence of Tax Evasion under Article 249, paragraph 1, in conjunction with paragraph 1 of the Provisional Criminal Code of Kosovo.

12. On 24 September 2013, the Judgment of the Municipal Court in Kamenica became final.

13. On an unknown date for the Court, the Basic Court in Gjilan issued the proposal for execution (No. Vepr. Edgj. 366/2013) of the

Judgment of the Municipal Court in Kamenica (P. no. 191/2008 of 31 May 2012).

14. On 8 November 2013, the Applicant submitted the request to grant the amnesty to the Basic Court in Gjilan. The Applicant has not submitted any additional document or information, showing the status of her request for amnesty.

Applicant's allegations

15. The Applicant alleges in her Referral that she is entitled to benefit from the Law on Amnesty [Law no. 04/L/2009] and that this law should be applied in her case too.

16. The Applicant does neither request the constitutional review of the Judgment of the Municipal Court (P. no. 191/2008, of 31 May 2012), nor of the Court of Appeal, which she mentions in the Referral, but has not submitted to the Court.

17. The Applicant justifies her request for clarification of the Judgment of the Constitutional Court (KO108/13, of 9 September 2013), by stating that: *"Despite the fact that this criminal offence was included in the Amnesty Law, in practice, prosecutors and judges, interpret in different ways the Judgment of your Court (...) although the Judgment is clear, that the Law on Amnesty is applied in the whole territory of the Republic of Kosovo, without exception..."*.

18. The Applicant addresses the Court with the request:

> *"To provide an interpretation – clarification of your Judgment KO108/2013 of 09.09.2013 rendered in regards to the Law on Amnesty. Is this Law applied all over the territory of the Republic or only partially.*
>
> *[...]*
>
> *I ask for interpretation of the part of Judgment (...) concerning the criminal offence of the Call for Resistance (Article 411) listed in the mentioned Judgment under 1.1.15, with your position on item 193, according to the offence of Call for Resistance (Article 319), by your position on item 236 and according to the offence Incitement of Resistance (Article 186) with your position on item 263, with the intention of eliminating the dilemmas while applying the Amnesty Law in*

practice, although, in the mentioned Judgment you provided your clear position on item 193".

Admissibility of the Referral

19. First of all, the Court observes 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.

20. The Court has to specifically determine whether the Applicant has met the requirements of Articles 113 (1) and 113 (7) of the Constitution, Article 47 (1) of the Law and Rule 36 (3) c) of the Rules of Procedure.

21. The Court refers to Article 113 (1) and 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".

22. 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."

23. 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;"*

24. As it was stated above, the Applicant requests aclarification of the Judgment(KO108/13, of 9 September2013) of theConstitutionalCourtas towhetheritis applicableinthe wholeterritory theRepublic ofKosovooronlypartially.

25. In the present case, the Court notes that the Applicant has not raised any allegation of violation by a public authority. In fact, the Applicant explicitly stated that *"I do not request the constitutional review"* of the decision rendered by the Court of Appeal, which he has not submitted to the Court and has not challenged the constitutionality of the Judgment (P. no. 191/2008, of 31 May 2012), which already became final.

26. The Court further notes that the Applicant does not provide information regarding any legal or other proceedings or actions in relation to her complaints.

27. With regard to Applicant's right to submit a Referral under 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 she refer to any concrete action or decision of a public authority which may have violated her fundamental rights.

28. 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 clarification or interpretation of the decision of the Constitutional Court.

29. Consequently, for the reason outlined above, the Court finds that the Applicant is not an authorized party and pursuant to Rule 36 (3) item c) the Referral must be rejected as inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Articles 113 (1) and 113 (7) of the Constitution, Article 47 of the Law, Rules 36 (3) c) and 56 (2) of the Rules of Procedure, on 12 May 2014, unanimously:

DECIDES

I. TO DECLARE 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**
Altay Suroy	Prof. Dr. Enver Hasani

KI33/14, Kamer Hajdini, Resolution of date 31 March 2014 - Constitutional Review of Judgment Pml. no. 111/2013 of the Supreme Court of Kosovo of 24 September 2013, served upon the Applicant on 21 October 2013, in connection with Judgment P. no. 248/2012 of the District Court in Prishtina dated 3 September 2012, Judgment PAKR. no. 1327/12 of the Court of Appeal of Kosovo of 3 April 2013, Decision ED. no. 201/13 of the Basic Court in Prishtina of 25 June 2013, Decision P. no. 568/13 of the Court of Appeal of Kosovo of 20 August 2013, Decision P. no. 16/2014 of the Court of Appeal of Kosovo of 21 January 2014

Case KI33/14, Decision of 31 March 2014.

Keywords: individual referral, request for interim measures, manifestly ill-founded

The Applicant submitted his Referral based on Article 113.7 of the Constitution of Kosovo, whereby requesting the constitutional review of ASC-ll-0069 of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo, of 22 April 2013.

The subject matter is the constitutional review of the challenged judgments and decisions of the regular courts which allegedly violate Applicant's rights guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo (hereinafter, the Constitution), Article 6 (Right to a fair trial) of the European Convention on Human Rights (hereinafter, the Convention) and Article 10 of Universal Declaration of Human Rights.

The Applicant claim that the principle of "equality of arms" was not observed, because the regular courts have approved the proposals of the accusatory body for adducing and administration of evidence, whereas the Applicant was allegedly arbitrarily denied of this right; the Court by allegedly refusing to adduce evidence proposed by the Applicant, the regular courts have infringed the presumption of innocence, have prejudged his culpability, and have limited and incapacitated Applicant's right to defend himself from the charges.

Considering the Applicant's allegations regarding the constitutional review of the judgments of the regular courts, the Constitutional Court found that the facts presente by the Applicant do not in any way justify the allegation of violation of his constitutional rights and the Applicant did not sufficiently substantiate his claims. Therefore, the Court concluded that the facts presented by the Applicant do not in any way justify the allegation of violation of his constitutional rights, therefore his Referral is manifestly ill-founded.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI33/14
Applicant
Kamer Hajdini
Constitutional review of Judgment Pml. no. 111/2013 of the Supreme Court of Kosovo dated 24 September 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 Referral was submitted by Mr. Kamer Hajdini who is currently serving an imprisonment sentence in the Correctional Center in Smrekovnica, municipality of Vushtrri. The Applicant has authorized his son Mr. Avni Hajdini to represent him before the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).

Challenged decisions

2. The Applicant challenges Judgment Pml. no. 111/2013 of the Supreme Court of Kosovo dated 24 September 2013, served upon the Applicant on 21 October 2013, in connection with Judgment P. no. 248/2012 of the District Court in Prishtina dated 3 September 2012, Judgment PAKR. no. 1327/12 of the Court of Appeal of Kosovo dated 3 April 2013, Decision ED. no. 201/13 of the Basic Court in Prishtina dated 25 June 2013, Decision P. no. 568/13 of the Court of Appeal of Kosovo dated 20 August 2013, Decision P. no. 16/2014 of the Court of Appeal of Kosovo dated 21 January 2014.

Subject matter

3. The subject matter is the constitutional review of the challenged judgments and decisions of the regular courts which allegedly violate Applicant's rights guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo (hereinafter, the Constitution), Article 6 (Right to a fair trial) of the European Convention on Human Rights (hereinafter, the Convention) and Article 10 of Universal Declaration of Human Rights.

Legal basis

4. The Referral is based on Articles 113.7 and 116.2 of the Constitution, Articles 27 and 47 of the Law, No. 03/L-121, on the Constitutional Court of the Republic of Kosovo (hereinafter, the Law), and Rule 54 and 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 21 February 2014, the Applicant submitted the Referral with the Court.

6. On 27 February 2014, the Court notified about the Applicant about registration of the Referral. On the same date, the Supreme Court of Kosovo, the Court of Appeal of Kosovo, and the State Prosecutor were notified of the Referral.

7. On 28 February 2014, the President of the Constitutional Court, by Decision No. GJR. KI33/14, appointed Judge Ivan Čukalović as Judge Rapporteur. On the same date, the President of the Constitutional Court, by Decision No. KSH. KI33/14, appointed the Review Panel composed of Judges Altay Suroy (presiding), Snezhana Botusharova and Arta Rama-Hajrizi.

8. On 31 March 2014, 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 5 March 2012, the District Public Prosecutor in Prishtina filed indictment (PP. no. 565-1/2009) with the District Court in Prishtina against the Applicant under accusation that he has committed the criminal offences of attempted murder and unauthorized ownership, control, possession or use of weapons as provided by the Provisional Criminal Code of Kosovo (hereinafter, the PCCK).

10. On 20 April 2012, the District Court in Prishtina by Decision KA. no. 205/12 confirmed the indictment of the Public Prosecutor filed against the Applicant.

11. On 3 September 2012, the District Court in Prishtina by Judgment P.no.248/2012 found the Applicant guilty for commission of the criminal offences of attempted murder and unauthorized ownership, control, possession or use of weapons as provided by Article 146 in conjunction with Article 20 and Article 328 paragraph 2 of the PCCK. The District Court in Prishtina pronounced an imprisonment sentence of 2 (two) years and 6 (six) months to the Applicant, which the Applicant would serve once the judgment became final.

12. In the aforementioned Judgment, the District Court in Prishtina reasoned:

> *"The District Prosecution in Prishtina, by indictment PP.no.956-10/11 of 05.03.2012, had charged Kamer Hajdini (the Applicant) with committing the criminal offence of Attempted Murder, as per Article 146, in conjunction with Article 20 of the CCK, and the criminal offence of Unauthorized Ownership, Control, Possession or Use of Weapon, as provided by Article 328, paragraph 2 of the CCK. On this case, the Court concluded the main court hearing on 03.09.2012, during which it initially heard the injured LG, witnesses DH and RM. It also reviewed other submissions proposed as evidence, during the evidentiary hearing: Report on crime scene of 16.12.2011; Crime Investigation Sketch; photographic documentation; Kosovo Police Lab Expert Report, of 26.01.2012; forensic expert report of 17.02.2012, discharge report and history;*

Certificate on confiscation of firearm and ammunition, and other case files, all in an effort of truth-seeking.

... the Court reviewed all statements and other pieces of evidence singularly, and all comprehensively, all in due care, and upon statement of the injured, upon having analyzed carefully the statements of witnesses proposed by the accused, it was clear that apart from their statements, the statement of the defendant (Applicant) was fair, and as such, also credible, and to some extent, also convincing, having in mind the past relations of the parties, the defendant and his former son-in-law, LG, according to their statements, which were rather bad, and especially after the separation of the injured LG and his former wife DH. This was further confirmed in trial.

... the Court did carefully analyze the actions of the defendant, and ultimately found that the defendant did intend to commit the offence charged upon him, and found him guilty.

... based on all the above, the court ascertained the factual condition, beyond reasonable doubt, as described in enacting clauses of the indictment, based on evidence assessed in trial, and in its free conviction, thereby finding that the accused Kamer Hajdini (Applicant) is criminally liable for the offences as per enacting clause of this judgment, and found elements of criminal offence as described in enacting clauses of the present judgment, and found that his actions fully confirm the figure of the criminal offences charged upon him, and therefore, found him guilty, upon having found that at the time of committing criminal offences, he was criminally responsible for the offences, and sentenced him to a single imprisonment period of two (2) years and six (6) months, to be served upon final form of the present judgment, and obviously upon calculation of time spent in detention, from 16.12.2011, until 04.09.2011, in his service of the sentence".

13. On 4 September 2012, the District Court in Prishtina by Decision P. no. 248/2012, released the Applicant from detention until Judgment P. no. 248/2012 of the same court, dated 3 September 2012, becomes final.

14. In an unspecified date the District Public Prosecutor in Prishtina and the injured party LG filed complaints with the Appeal Court of

Kosovo thereby asking for a more severe imprisonment sentence for the Applicant.

15. On 3 April 2013, the Appeal Court of Kosovo by Judgment PAKR. no. 1327/12 upheld Judgment P. no. 248/2012 of the District Court in Prishtina and rejected the complaints of the District Public Prosecutor and of the injured party LG as ungrounded.

16. On 20 May 2013, the Applicant filed a request for protection of legality with the Supreme Court of Kosovo against Judgments and P. no. 248/2012 and PAKR. no. 1327/12 of the District Court in Prishtina respectively of the Appeal Court of Kosovo. The Applicant also filed a request for the delay of enforcement of the imprisonment sentence.

17. On 27 May 2013, the Applicant filed a request with the Basic Court in Prishtina thereby requesting review of criminal procedure P. no. 248/2012 and proposing delay of enforcement of Judgment P. no. 248/2012 of the District Court in Prishtina.

18. On 25 June 2013, the Basic Court in Prishtina by Decision ED. no. 201/13 rejected the request of the Applicant for the delay of imprisonment sentence as ungrounded.

19. On 9 July 2013, the Basic Court in Prishtina by Decision Kp. no. 240/13 rejected the request of the Applicant for the review of the criminal procedure against Judgment P. no. 248/2012 of the District Court in Prishtina as ungrounded.

20. On 20 August 2013, the Appeal Court of Kosovo by Decision PN. no. 568/13 rejected the complaint of the Applicant against Decision ED. no. 201/13 of the Basic Court in Prishtina as ungrounded.

21. On 26 August 2013, the Applicant was sent to serve the imprisonment sentence.

22. On 24 September 2013, the Supreme Court of Kosovo by Judgment Pml. nr. 111/2013 rejected the request for protection of legality filed by the Applicant against Judgment P. no. 248/2012 of the District Court in Prishtina dated 3 September 2012, and Judgment PAKR. no. 1327/2012 of the Appeal Court of Kosovo dated 3 April 2013, as ungrounded.

23. In the abovementioned judgment, the Supreme Court of Kosovo reasoned:

In the request it is claimed that the violations that justify the request are: falsification of the minutes (it is not specified which) by the presiding Judge of the panel, withholding not servicing the minutes to the attorney during the appeal stage, failure to decide on the request for the disqualification of the presiding Judge and the members of the panel, and the rejection of the proposals he made during the first instance procedure for administering evidences, which impacted in the erroneous finding of relevant facts in this criminal matter. The proposals for administering evidences which are specified in the request are visit of the site of the event, hearing the forensic expert but experts of other fields as well (i.e. thoracic surgery), administering as evidence the police report, reading SMS messages sent by LG to DH telephone etc.

The court found this claim as not grounded. The fact that the presiding Judge of the panel has falsified or has abused his position by not providing for reviewing the minutes, could provide the ground for revising the criminal procedure if the other conditions for this extraordinary legal remedy have been met but they constitute no ground for the request for the protection of the legality.

The request for disqualifying the presiding Judge and the members of the panel was presented in the closing statement of the convict's defense counsel, whereas pursuant to Article 42, paragraph 2 of the CPCK applicable at the time (now Article 41, paragraph 2 of the CPCK) the request for the disqualification of a Judge or lay Judge pursuant to Article 40, paragraph 3 of this Code will be submitted prior to the commencement of the judicial hearing. Therefore, failure to decide on this request had no impact in rendering a just decision by the first instance court.

On the other hand, the proposals that are mentioned in the request which the court did not approve, not only because they are related to the finding of the factual situation, do not constitute the ground to permit the request for the protection of the legality pursuant to Article 432, paragraph 2 of the CPCK, but they were taken into consideration by the first instance court.

So, from the minutes of the hearing session of date 26.07.2012 it is found that the convict's defense counsel presented all these proposals during the court hearing and the adjudicating panel in the same panel rendered the Ruling that rejected the proposals, with the reasoning that the court has administered sufficient evidences to clarify the matter whereas the proposed evidences would only repeat the existing evidences and the criminal procedure would be protracted. Therefore the court took the proposals into consideration and provided the legal reasoning for rejecting them, thus the Supreme Court finds that the claims in the request that they have been neglected and the provisions of the criminal procedure have been violated are not grounded.

For these reasons the request for the protection of the legality was considered as not grounded and pursuant to Article 437 of the CPCK it was decided as in the enacting clause of this Judgment".

24. On 21 January 2014, the Appeal Court of Kosovo by Decision PN. no. 16/2014 rejected the complaint of the Applicant lodged against Decision Kp. no. 240/2013 of the Basic Court in Prishtina, as ungrounded.

Applicant's allegations

25. The Applicant claims a violation of Article 31 [Right to Fair and Impartial Trial] of the Constitution, Article 6 (Right to a fair trial) of the Convention and Article 10 of Universal Declaration of Human Rights, by reasoning that:

- the principle of equality of arms was not observed, because the regular courts have approved the proposals of the accusatory body for adducing and administration of evidence, whereas the Applicant was allegedly arbitrarily denied of this right;

- by allegedly refusing to adduce evidence proposed by the Applicant, the regular courts have infringed the presumption of innocence, have prejudged his culpability, and have limited and incapacitated Applicant's right to defend himself from the charges.

26. The Applicant claims that his proposal to hear as witnesses the medical personnel, who took the injured party in the site of occurrence was important, since it would have verified:

- if the injured party had in his waist a fire gun or cold weapon or any other mean, inside his coat, since the Applicant was fearful;

- the statement of the injured party LG that FD (son of Applicant) had thrown stones at him, after he was wounded by the Applicant;

- demeanor of the Applicant after his actions and it is known that he wanted to commit suicide;

- actions of the Applicant's family members especially of FH and DH, injured party, witness and especially the instantaneous remorse of the Applicant.

27. The Applicant claims that hearing of forensic expert was needed due to the fact that forensic expert FB made the expertise without seeing at all the injured party LG, and that the hearing of expert was necessary because: *the expertise does not offer a complete description of injuries, and therein it is stated that in relation to permanent consequences from these injuries it is necessary to wait until completion of medical treatment".*

28. In this regard, the Applicant requests from the Court to:

a. *Impose interim measures until the Court renders a ruling on the admissibility of the referral.*

b. *Suspend immediately the enforcement of Judgment Pml.nr.111/2013 of the Supreme Court of Kosovo dated 24 September 2013, and Decision ED. nr. 201/13 for the enforcement of sentence of Judgment P. nr. 248/12 of the District Court in Prishtina dated 3 September 2012 as well as the Judgment PAKR. nr. 1327/12 of the Court of Appeal of Kosovo dated 3 April 2013.*

c. *Declare the Referral admissible.*

d. *Hold a hearing in accordance with Rule 39 of the Rules of Procedure of the Court.*

e. *Declare invalid Judgment Pml. nr. 111/2013 of the Supreme Court of Kosovo dated 24 September 2013, Judgment P. nr. 248/2012 of the District Court in Prishtina dated 3 September 2012, as well as Judgment PAKR. nr. 1327/12 of the Court of Appeal of Kosovo dated 3 April 2013.*

29. Finally, the Applicant has stated that in similar cases the Court has rendered admissible rulings and has invoked the case-law of the Court, most notably case KI78/12, Applicant *Bajrush Xhemajli,* Judgment of 24 January 2013.

Assessment of admissibility

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

31. 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".*

32. 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. 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".*

33. In the concrete case, the Court considers that the Applicant is an authorized person, he has exhausted all legal remedies as prescribed by Article 113.7 of the Constitution, and the referral is filed within the four months legal deadline in compliance with Article 49 of the Law.

34. 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".*

35. The Court notes that in the case at issue, the Applicant has raised many questions about the proceedings before the trial and appellate courts; however the Applicant has also asked the Court to compare his referral with case KI78/12, Applicant *Bajrush Xhemajli*, Judgment rendered by this Court on 24 January 2013 (hereinafter, "Xhemajli case").

36. The Court notes that there are several key aspects in which the present referral differs from the Xhemajli case. In the case at issue, the Court notes that: i) the Applicant did not prove that hearing certain witnesses and assessing certain evidence was absolutely necessary in order to ascertain the truth, ii) the Applicant did not prove that the failure to hear certain witnesses prejudiced the rights of the defense and fairness of the proceeding as a whole, iii) the Applicant did not prove that the report of expert witness was absolutely necessary because it forms the predominant foundation for the Applicant's conviction, and iv) the Applicant did not prove that the experts involved in the Applicant's case had agreed that they did not evaluate all the factors involved.

37. As to the presentation of certain evidence and hearing of certain witnesses as proposed by the Applicant, the Court considers that the District Court gave a lengthy reply and a good account to almost all of the questions raised by the Applicant followed by the Supreme Court which endorsed the reasons given by the District Court.

38. The Court notes that in the Applicant's case, the regular courts have assessed all the evidence adduced before them (indictment of the prosecutor, sketches, photographs, ballistic and medical reports, testimonies from eye witnesses, etcetera) and furthermore the Applicant was allowed to comment on all evidence and was given the opportunity to defend his case before the regular courts.

39. Considering the proceedings before the regular courts, the Court considers the requirement of a fair trial as enshrined in Article 6 of the Convention is that it covers the proceedings as a whole, and the

question whether a person has had a fair trial is looked at by way of cumulative analysis of all the stages, not merely of a particular incident or procedural defect; as a result defects at one level may be put right at a later stage (see case *Monnell and Morris v. the United Kingdom,* No. 9562/81; 9818/82, ECtHR, Judgment of 2 March 1987 para.55).

40. Furthermore, the Court notes that the regular courts, in addition to appraisal of all evidence adduced before it and in the interest of justice, had taken into account mitigating circumstances such as Applicant's health, relative old age, repentance and the fact that the he is not a serial transgressor of the law before pronouncing the imprisonment sentence.

41. The Constitutional Court recalls 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 case, *Akdivar v. Turkey*, No. 21893/93, ECtHR, Judgment of 16 September 1996, para. 65, also *mutatis mutandis* see case KI86/11, Applicant *Milaim Berisha*, Resolution on Inadmissibility of 5 April 2012).

42. 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 case *Edwards v. United Kingdom*, No. 13071/87, Report of the European Commission of Human Rights of 10 July 1991).

43. The fact that the Applicant disagrees with the outcome of the case cannot of itself raise an arguable claim of a breach of Articles 31 [Right to Fair and Impartial Trial], of the Constitution and Article 6 (right to fair trial) of the Convention (See case *Mezotur-Tiszazugi Tarsulat us. Hungary*, No. 5503/02, ECtHR, Judgment of 26 July 2005).

44. In these circumstances, the Applicant has not substantiated his allegation for violation of Articles 31 [Right to Fair and Impartial

Trial], of the Constitution and Article 6 (right to fair trial) of the Convention because the facts presented by him do not show in any way that the regular courts had denied him the rights guaranteed by the Constitution and the Convention.

45. Consequently, the Referral is manifestly ill-founded and must be declared inadmissible pursuant to Rule 36 (1) c) of the Rules of Procedure.

46. As to the Applicant's request to hold an oral hearing, the Court refers to Rule 39 (1) of the Rules of Procedure:

> *"Only referrals determined to be admissible may be granted a hearing before the Court..."*

47. Therefore, the Applicant's request to hold an oral hearing is rejected.

Assessment of the Request for Interim Measure

48. As to the Applicant's request for imposition of interim measures, the Court refers to Article 116.2 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".*

49. The Court also refers to 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".*

50. The Court considers that such a request does not meet the criteria established in Article 116.2 of the Constitution, Article 27 of the Law which would prompt the Court to impose interim measures; therefore the request to impose interim measures is rejected.

FOR THESE REASONS

The Constitutional Court in accordance with Articles 113.7 and 116.1 of the Constitution, Articles 47 and 27 of the Law, and Rules 54 and 56 of the Rules of Procedure, on 31 March 2014, unanimously

DECIDES

I. TO DECLARE the Referral inadmissible;

II. TO REJECT the request of interim measures;

III. TO REJECT the request to hold oral hearing;

IV. TO NOTIFY this Decision to the Parties;

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

VI. This Decision is effective immediately.

Judge Rapporteur **President of the Constitutional Court**
Prof. Dr. Ivan Čukalović Prof. Dr. Enver Hasani

KI54/14, Hamdi Ademi, Resolution of 19 May 2014 - Constitutional Review of the Judgment A. no. 375/2007 of the Supreme Court of the Republic of Kosovo, of 26 November 2007 and of the Decision no. 5054321 of the Appeals Committee of the Ministry of Labor and Social Welfare, of 10 November 2005

Case KI54/14, Decision of 19 May 2014.

Key words: individual referral, administrative contest, social protection of rights, manifestly ill-founded referral

In the present case, the Applicant alleged that the Judgment A. no. 375/2007, of the Supreme Court of the Republic of Kosovo, of 26 November 2007 and the Decision of the MLSW violated his right to benefit disability pension. 16. The Applicant requested, among others, that the Decision no. 5054321 of the Appeals Committee of the MLSW no. 5054321 of 11 November 2005 be rejected as ungrounded and the right to disability pension be recognized to him.

In the present case, the Court noted that the final decision in the Applicant's case is the Judgment A. no. 375/2007, of 26 November 2007.This means that the alleged interference with Applicant's right guaranteed by the Constitution occurred prior to 15 June 2008 that is the date of entry into force of the Constitution and from which date the Court has temporal jurisdiction. The Court, similarly decided in the case KI100/10 Resolution on Inadmissibility, the Applicant *Eduard Thaqi* (also known as Sokol Thaqi) - Constitutional Review of the Decision of the Kosovo Police, no.398-SHPK-2002 dated 22 October 2002.

It followed that the Applicant's referral is incompatible *ratione temporis* with the provisions of the Constitution.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI54/14
Applicant
Hamdi Ademi
Constitutional review of the Judgment of the Supreme Court of the Republic of Kosovo, A. no. 375/2007 of 26 November 2007 and of the Decision of the Appeals Committee of the Ministry of Labor and Social Welfare no. 5054321 of 10 November 2005

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. Hamdi Ademi, from the village Gllamnik, Municipality of Podujeva, who is represented by Mr. Mahmut Hoti, lawyer.

Challenged decision

2. The Applicant challenges the Judgment of the Supreme Court of the Republic of Kosovo A. no. 375/2007of 26 November 2007 (hereinafter: the Supreme Court), and the Decision of the Appeals Committee of the Ministry of Labor and Social Welfare no. 5054321 of 10 November 2005 (hereinafter: the MLSW Appeals Committee).

Subject matter

3. The subject matter is the constitutional review of the Judgment of the Supreme Court A. no. 375/2007 and the Decision of the MLSW

Appeals Committee no. 5054321, regarding the violation of the right to recognition of the status for disability pension.

4. In his Referral the Applicant did not specify any provision of the Constitution.

Legal basis

5. The legal basis is: Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), Article 20 and 47 of the Law on the Constitutional Court of the Republic of Kosovo No. 03/L-121 (hereinafter: the Law) and Rule 56 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

6. On 25 March 2014 the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

7. On 2 April 2014 the President of the Court, by Decision GJR. KI54/14 appointed Judge Ivan Čukalović as Judge Rapporteur. On the same day, the President by Decision KSH. KI54/14 appointed the members of the Review Panel, in the following composition: Altay Suroy (Presiding), Snezhana Botusharova and Arta Rama-Hajrizi.

8. On 18 April 2014, the Court notified the Applicant, the Supreme Court and the MLSW on the registration of Referral.

9. On 19 May 2014, the Review Panel considered the report of the Judge Rapporteur and recommended to the Court the inadmissibility of the Referral.

Summary of the facts

10. On 17 June 2005 the first instance of MLSW, by Decision no. 5054321, rejected the Applicant's request for recognition of the right to benefit disability pension. This instance concluded that the Applicant did not meet requirements under Article 3 of UNMIK Regulation no. 2003/40, on the Law on disability pension. The reason for rejection of the request was based on the conclusion of the Medical Committee of 8 June 2005, which assessed that the

Applicant was not permanently disabled, as provided by the abovementioned legal provision.

11. The Applicant filed an appeal within legal deadline against the said decision, with the Appeals Committee of the MLSW.

12. On 10 November 2005 the MLSW Appeals Committee, by Decision no. 5054321, rejected the Applicant's request for recognition of the right to disability pension, because the Applicant did not offer evidence for fulfillment of requirements to benefit the disability pension, as provided by Article 3 of the Law on disability pensions.

13. The Applicant filed an appeal against the Decision of the MLSW Appeals Committee with the Supreme Court, challenging the legality of the abovementioned decision, because the medical committees did not take into account the fact that his health condition was serious and that he was no longer able to work, and therefore, according to him, the factual situation was not determined in a correct and complete manner.

14. On 26 November 2007, the Supreme Court rendered Judgment A. no. 375/2007, by which the Applicant's appeal was rejected, with the reasoning:

[...]

"Considering that the legally authorized medical committees have confirmed that the claimant has no work disability, the court finds that administrative authorities have correctly applied the provisions of Article 3 of the above mentioned Law, pursuant to which the claimant's claim to recognize his right to disability pension was rejected.

The court assessed the allegations in the claim and found that they do not have influence on this administrative matter in rendering a different decisions, because by the administered evidence pursuant to the above mentioned provisions it has been undoubtedly established that the claimant does not fulfill the legal criteria to recognize his right to disability pension, therefore pursuant to Article 42, paragraph 2 of the LAC it was decided as per the enacting clause of this Judgment."

[...]

Applicant's allegations

15. The Applicant alleges that the Judgment of the Supreme Court of the Republic of Kosovo, A. no. 375/2007, of 26 November 2007 and the Decision of the MLSW violate his right to benefit disability pension.

16. The Applicant requests, among others, that the Decision of the Appeals Committee of the MLSW no. 5054321 of 11 November 2005 be rejected as ungrounded and the right to disability pension be recognized to him.

Admissibility of the Referral

17. In order to be able to review the Applicant's Referral, the Court first examines whether the Applicant has fulfilled the procedural requirements of admissibility, laid down in the Constitution and further specified in the Law and the Rules of Procedure.

18. As to the Applicant's Referral, the Court refers to Rule 36 (3) h) which reads as follows:

> *"A Referral may also be deemed inadmissible in any of the following cases:*
>
> *(h) the Referral is incompatible ratione temporis with the Constitution."*

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

20. The Court notes that the Applicant complains against the Judgment of the Supreme Court of the Republic of Kosovo, A. no. 375/2007, of 26 November 2007, and the Decision of the MLSW.

Thus, the final decision in the Applicant's case is the Judgment A. no. 375/2007, of 26 November 2007.

21. This means that the alleged interference with Applicant's right guaranteed by the Constitution occurred prior to 15 June 2008 that is the date of entry into force of the Constitution and from which date the Court has temporal jurisdiction.

22. The Court, similarly decided in the case KI100/10 Resolution on Inadmissibility, the Applicant *Eduard Thaqi* (also known as Sokol Thaqi) – Constitutional Review of the Decision of the Kosovo Police, no.398-SHPK-2002 dated 22 October 2002.

23. It follows that the Applicant's referral is incompatible *ratione temporis* with the provisions of the Constitution.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113. 7 of the Constitution, Rule 36 (3) h)and Rule 56 (2) of the Rules of Procedure, on 19 May 2014, unanimously:

DECIDES

I. TO DECLARE the Referral 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	**President of the Constitutional Court**
Prof. Dr. Ivan Čukalović	Prof. Dr. Enver Hasani

KI225/13, Hasan Isafi and Muharrem Isafi, Resolution of 12 May 2014-Constitutional Review of Decision CA. no. 972/2013, of the Court of Appeal of Kosovo, of 18 October 2013

Case KI225/13, Decision of 12 May 2014.

Key words; individual referral, manifestly ill-founded, right of servitude, equality before the law, protection of property

The Applicants submitted their referral based on Article 113.7 of the Constitution of Kosovo, challenging the Decision CA. no. 972/2013, of the Court of Appeal of Kosovo, of 18 October 2013, which according to the Applicants' allegation violated Article 46 (Protection of Property), Article 24 (Equality before the Law) and Article 31 (Right to Fair and Impartial Trial) of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), due to a disagreement over property rights between the Applicants and third parties.

On 19 September 2007 the Municipal Court in Gjakova decided upon the claim of H. I. from village Bec, filed against the Applicants, by confirming H. L.'s right of servitude on certain immovable property. The property is located in the subservient plot no. 245/11 KK Bec, starting from a public road that is registered as a cadastral plot no. 247 KK Bec. That court rendered Judgment C. no. 43/07 which confirmed the right of servitude to passage for the claimant H.I.

The dispute over the right of servitude in the certain immovable property was finalized on 18 October 2013, when the Court of Appeal of Kosovo decided upon the Applicants' appeal against Decision E. no.368/09, of the Basic Court in Gjakova, of 22 March 2013, and rendered Decision CA. no. 972/2013, thereby rejecting the appeal as ungrounded.

Considering the Applicants' allegations regarding the constitutional review of the Decision CA. br. 972/2013, of the Court of Appeal of Kosovo, of 18 October 2013, the Constitutional Court considers 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 have not sufficiently substantiated their claims. Therefore, the Court concluded that the facts presented by the Applicants do not in any way justify the allegation of a violation of the constitutional rights, therefore their referral is manifestly ill-founded.

RESOLUTION ON INADMISSIBILITY
in
Case no. KI225/13
Applicants
Hasan Isafi and Muharrem Isafi
Constitutional review of Decision of the Court of Appeal of Kosovo CA. no. 972/2013 of 18 October 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 Referral was filed by Mr. Hasan Isafi and Mr. Muharrem Isafi, from village Bec, Municipality of Gjakova (hereinafter: the Applicants), who are represented by Ms. Shahe Isafi from village Bec, Municipality of Gjakova, by power of attorney (hereinafter: the Applicants' representative).

Challenged decision

2. The Applicants challenge Decision of the Court of Appeal of Kosovo CA. no. 972/2013 of 18 October 2013, which according to the Applicants was served on them on 2 November 2013.

Subject matter

3. The subject matter is the Decision of the Court of Appeal of Kosovo, CA. no. 972/2013, of 18 October 2013, which, according to Applicants' allegations, violated Article 46 (Protection of Property), Article 24 (Equality before the Law) and Article 31 (Right to Fair and Impartial Trial) of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), due to a disagreement over property rights between the Applicants and third parties.

Legal basis

4. The Referral is based on Article 113.7 of the Constitution, Article 20 of the Law on the Constitutional Court of the Republic of Kosovo, No. 03/L-121, (hereinafter: the Law), and Rule 56 (2) of the Rules of Procedure of the Constitutional Court.

Proceedings before the Constitutional Court

5. On 10 February 2014 the Applicants filed the Referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 13 January 2014 the President by Decision GJR. No. KI225/13 appointed Judge Robert Carolan as Judge Rapporteur. On the same day, the President by Decision No. KSH. KI225/13 appointed the Review Panel composed of Judges: Snezhana Botusharova (Presiding), Kadri Kryeziu and Arta Rama-Hajrizi.

7. On 31 January 2014 the Constitutional Court notified the Applicants of registration of the Referral, and requested from the Applicants' representative to fill in the official form of the Court for registration of the Referral.

8. On 10 February 2014 the Applicants' representative submitted to the Court the official form of the Court for registration of the Referral.

9. On 20 February 2014 the Court notified the Court of Appeals of registration of the Referral.

10. On 12 May 2014, after having considered the report of Judge Rapporteur Robert Carolan, the Review Panel composed of Judges: Snezhana Botusharova (Presiding), Kadri Kryeziu and Arta Rama-Hajrizi made a recommendation to the full Court on the inadmissibility of the Referral.

Summary of the facts

11. On 19 September 2007 the Municipal Court in Gjakova decided upon the claim of H. I. from village Bec, filed against the Applicants, by confirming H. L.'s right of servitude on certain immovable property. The property is located in the subservient

plot no.245/11KKBec, starting froma public roadthat isregistered as a cadastralplotno.247KKBec. That court rendered JudgmentC.no.43/07 whichconfirmed the right of servitudetopassagefor the claimantH. I. TheMunicipalCourt in Gjakova furtherstated:

> "*Thecourt also analyzed other options, presented in the expertise ..... but came to conclusion that the approved option has existed since the division of the litigants' predecessors ...*"

12. On 3 February 2009 the District Court in Peja decided upon the appeals of the Applicants against Judgment C. No. 43/07 of 19 September 2007, by rendering Judgment AC. no. 308/09, rejecting these appeals as ungrounded. In its Judgment, the District Court in Peja stated:

> *"The challenged Judgment does not contain essential violations of the contested procedure provisions, and in the correctly determined factual situation the material right has also been correctly applied, the District Court pursuant to Article 368 of the LCP rejected the appeals of the respondents' authorized representatives and upheld the challenged Judgment.*"

13. On 18 March 2009 the Municipal Court in Gjakova decided upon Applicants' request for revision by Decision C. No. 43/07. In that decision it rejected the Applicants' revisions as inadmissible with the reasoning that:

> *"The revisions submitted by the respondents' authorized representatives are inadmissible pursuant to Article 382 of the Law on Contested Procedure and Administrative Directive no. 2001/10 of date 21 June 2001... on the permitted currency to use in Kosovo that envisaged the value of 1600 DM, and this value of contest must be adapted to the value expressed in euro..."*

14. On 9 June 2009 the District Court in Peja, acting upon the Applicants' appeal, rendered Decision Ac. No. 194/09 and rejected the appeals as ungrounded, stating:

> *"Since the challenged Judgment does not contain essential violations of the provisions of contested procedure, and in the correctly determined factual situation the material right was correctly applied, the District Court pursuant to Article 380, paragraph 1, item 2 of the LCP rejected the appeals of the*

respondents' authorized representative and upheld the challenged ruling."

15. On 10 September 2012 the Supreme Court of Kosovo decided upon the Applicants' revision by Decision Rev. No. 432/2009, rejecting the revision as ungrounded and upholding Decision Ac. no. 194/09 of 9 June 2009 of the District Court in Peja.

16. On 22 March 2013 the Basic Court in Gjakova, acting upon the Applicants' objection in the execution matter, rendered Decision E. no. 368/09, thereby rejecting as ungrounded the Applicants' objection against Decision E. no. 368/09 of 27 March 2009, by which the execution was permitted according to the proposal of H. I., based on Judgment C. no. 43/07 of 19 September 2007.

17. On 18 October 2013 the Court of Appeals of Kosovo decided upon the Applicants' appeal against Decision of the Basic Court in Gjakova E. no. 368/09, of 22 March 2013, and rendered Decision CA. no. 972/2013, thereby rejecting the appeal as ungrounded. The Court further stated:

"The panel finds correct and legally grounded this legal stance of the first instance court, since the court decision pursuant to which the execution was set is final and the time limit for the voluntary fulfillment of the obligation set in execution title, pursuant to which the debtors are obliged to respect the right of servitude of the creditor H. I., grounded on the enacting clause of final Judgment of the Municipal Court in Gjakova C. no. 43/07 of 19.09.2007, has expired."

Applicant's allegations

18. The Applicants allege that:

"*According to the abovementioned decisions, I consider that Article 46 of the Constitution of Kosovo, item 1, 2 and 3, Article 24 item 1 and 2 and Article 31, are violated since the parties in first and second case were not allowed to protect their property, despite the fact that they have presented new facts regarding this matter…*".

19. The Applicants conclude by requesting from the Court:

"... the annulment of the decisions rendered by the court and remand of the cases to the first instance for reconsideration and retrial and fair and impartial trial, uninfluenced by outside...".

Admissibility of the Referral

20. The Court observes that, in order to be able to adjudicate the Applicants' Referral, it is necessary first to examine whether they have fulfilled the admissibility requirements laid down in the Constitution and further specified in the Law and the Rules of Procedure.

21. 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".

Regarding these referrals, the Court notes that the Applicants are natural persons and are authorized parties, pursuant to Article 113.7 [Jurisdiction and Authorized Parties] of the Constitution.

22. The Applicants also should prove whether they have fulfilled the requirements of Article 49 of the Law, regarding the submission of the Referral within the provided period of time. From the case file it can be seen that there is no evidence that would disprove the Applicants' allegations that the Judgment of the Court of Appeal of Kosovo, CA. no. 972/203, of 18 October 2013, was served on them on 2 November 2013, therefore the Referral was submitted within four (4) months, as provided by the Law and the Rules of Procedure.

23. As to 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;"

24. 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 Garcia 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).

25. 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, Edwards v. United Kingdom*, App. No. 13071/87, Report of the European Commission of Human Rights, of 10 July 1991).

26. Based on the case file, the Court notes that the reasoning provided in the Judgment rendered by the Court of Appeals of Kosovo is clear and, after reviewing the entire proceedings, the Court also found that the proceedings before the regular courts have not been unfair and arbitrary (See, *mutatis mutandis, Shub v. Lithuania*,No. 17064/06, ECtHR, Decision of 30 June 2009). The Court considers that the Applicant failed to present convincing arguments that would substantiate the alleged violations.

27. Moreover, the Applicants have not submitted any *prima facie* evidence showing a violation of their rights under the Constitution (See *Vanek v. Slovak Republic,* No. 53363/99, ECtHR, Decision of 31 May 2005).

28. For all of the aforementioned reasons, the Court considers that the facts presented by the Applicants do not in any way justify the allegation of a violation of the constitutional rights and the Applicants have not sufficiently substantiated their claims.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Articles 20 and 48 of the Law and Rule 36 (2) b) and d) of the Rules of Procedure, in the session of 12 May 2014, unanimously

DECIDES

I. TO DECLARE the Referral 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	**President of the Constitutional Court**
Robert Carolan	Prof. Dr. Enver Hasani

KI99/14 and KI100/14, Shyqyri Syla and Laura Pula, Decision on interim measure of 3 July 2014 - Constitutional Review of the Decision of the Kosovo Prosecutorial Council related to the election procedure of Chief State Prosecutor, Decision on Interim Measures of 4 July 2014

Joined cases KI99/14 and KI100/14, Decision of 3 July 2014.

Key words: Individual Referral, request for interim measure, prima face case

The subject matter of this Referral is the request for constitutional review of the election procedure for the position of Chief State Prosecutor, respectively, the Decision of the Kosovo Prosecutorial Council on the nomination and proposal of the candidate for the Chief State Prosecutor, KPK No. 151/2014, dated 6 June 2014 (Mr. Shyqyri Syla, KI 99/14) and Decision KPK/146/2014, dated 5 June 2014, regarding the Applicant's request (Mrs. Laura Pula KI 100/14) for reconsideration of the final list of candidate's evaluation.

The Applicants allege that the KPC during the election procedure for the position of Chief State Prosecutor violated their rights guaranteed by the Constitution of the Republic of Kosovo (hereinafter: the "Constitution"), namely Article 3 [Equality before the Law], Article 7 [Values] and Article 24 [Equality before the Law] of the Constitution of the Republic of Kosovo.

In addition, Applicant Mr. Shyqyri Syla, Referral KI99/14, requested from the Constitutional Court to impose an interim measure, namely to suspend the appointment procedure of the nominated candidate by the President of the Republic of Kosovo, awaiting the outcome of the proceedings before the Court.

On 4 July 2014, the Court granted the Applicant's request for interim measure holding that there is a prima facie case of the Referral and that the Applicant put forward enough convincing arguments that the appointment of the candidate for the Chief State Prosecutor by the President of the Republic of Kosovo may result in unrecoverable damages for the Applicant.

DECISION ON INTERIM MEASURES
in
Cases No. KI99/14 and KI100/14
Applicants
Shyqyri Syla and Laura Pula
Constitutional Review of the Decisions of the Kosovo Prosecutorial Council related to the selection procedure for the nomination of the candidate for Chief State Prosecutor

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 and
Arta Rama-Hajrizi, Judge

Applicant

1. The Applicants are Mr. Shyqyri Syla (KI99/14), Chief Prosecutor of the Basic Prosecution Office in Mitrovica and Mrs. Laura Pula (KI100/14), Prosecutor in the Office of the Chief State Prosecutor (hereinafter: the Applicants). The Applicants were candidates in the selection procedure for the position of the Chief State Prosecutor.

Challenged Decision

2. The Applicants challenge the selection procedure for nomination of the candidate for Chief State Prosecutor. Applicant (Mr. Shyqyri Syla, KI99/14), challenges Decision KPK No. 151/2014 of the Kosovo Prosecutorial Council (hereinafter: the KPC) dated 6 June 2014 on nomination of the candidate for the Chief State Prosecutor. Whereas, the Applicant (Mrs. Laura Pula, KI100/14) challenges the Decision, KPK/146/2014 dated 5 June 2014 regarding her request for reconsideration of the final list with candidate's evaluation scores of 31 May 2014.

Subject Matter

3. The subject matter is the constitutional review of the decisions related to selection procedure for nomination of the candidate for the position of Chief State Prosecutor, respectively the Decision of the KPC on the nomination and proposal of the candidate for the Chief State Prosecutor (KPK No. 151/2014, dated 6 June 2014).

4. The Applicants allege that the KPC during the process of selection and nomination of the candidate for the position of the Chief State Prosecutor violated their rights guaranteed by the Constitution, namely Article 3 [Equality before the Law], Article 7 [Values] and Article 24 [Equality before the Law] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution).

5. The Applicant (KI99/14, Mr. Shyqyri Syla) requests from the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) to impose an interim measure, namely to suspend the appointment procedure of the nominated candidate.

Legal basis

6. The Referral is based on Article 113.7 of the Constitution, Articles 27 and 47 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo (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

7. On 12 June 2014, the Applicants individually submitted their Referrals to the Court.

8. On 17 June 2014, the President by Decision GJR. KI99/14 appointed Judge Robert Carolan as Judge Rapporteur. On the same date, the President by Decision KSH. KI99/14 appointed the Review Panel composed of Judges: Snezhana Botusharova (presiding), Ivan Čukalović and Arta Rama-Hajrizi.

9. On 17 June 2014, in accordance with Rule 37.1 of the Rules of Procedure, the President ordered the joinder of Referral KI100/14 with Referral KI99/14. 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 Decisions (GJR. KI99/14 and KSH. KI99/14) of the President on appointment of the Judge Rapporteur and the Review Panel on 17 June 2014.

10. On 19 June 2014, the Court notified the Applicants of the registration of the Referrals and the joinder of Referrals. On the same date, the Court sent copies of the Referrals to the KPC.

11. On 24 June 2014, the Court sent a copy of the Referral to the President of the Republic of Kosovo.

12. On 26 June 2014, Judge Kadri Kryeziu notified in writing the Court for his exclusion from the deliberations for the period June-July 2014 until the Court decides regarding certain allegations raised against him.

13. On 3 July 2014, after having heard the Judge Rapporteur and having discussed the views of the Applicants expressed in their written submissions, the Court decided to grant the Request for Interim Measures pending the publication of the decision of the Court.

Brief Summary of Facts

14. As a result of the internal announcement for the position of the Chief State Prosecutor and the completed selection procedure, the Applicant (Mr. Shyqyri Syla, KI99/14) was among the three highest ranking candidates and subject for the voting procedure for Chief State Prosecutor nominee.

15. On 6 June 2014, the KPC rendered Decision, KPK. No. 151/2014 on the nomination of the candidate for Chief State Prosecutor.

16. On 13 June 2014, the KPC sent to the President of the Republic of Kosovo the proposal for the appointment of the Chief State Prosecutor nominee.

17. To this date, the President of the Republic of Kosovo has not issued a decree on the appointment of the KPC nominated candidate.

Applicant' request

18. The Applicant (Mr. Shyqyri Syla, KI99/14) requests the Court as following:

"To annul the election procedure and impose interim measure to stop the appointment decree."

Request for Interim Measure

19. As stated above, the Applicant (Mr. Shyqyri Syla, KI99/14) requests from the Court to impose an interim measure, namely to suspend the appointment procedure of the nominated candidate by the President of the Republic of Kosovo.

20. The Court, pursuant to Article 116 [Legal Effect of Decision], paragraph 2 of the Constitution, Article 27 of the Law and Rule 55 (4) of the Rules of Procedure, finds that there is a prima facie case of the Referral and that the Applicant put forward enough convincing arguments that the appointment of the candidate for the Chief State Prosecutor by the President of the Republic of Kosovo may result in unrecoverable damages for the Applicant.

21. Therefore, the request of the Applicant for interim measure is granted.

FOR THESE REASONS

The Court, pursuant to Article 116, paragraph 2 of the Constitution, Article 27 of the Law and Rules 55 (4) and 56 (3) of the Rules of Procedure, unanimously

DECIDES

I. TO GRANT, interim measures;

II. TO GRANT interim measures until the Decision of the Court is published and no later than 1 August 2014 from the date of the adoption of this Decision;

III. TO IMMEDIATLY SUSPEND the appointment procedure of the candidate for the Chief State Prosecutor by the President of the Republic of Kosovo;

IV. TO NOTIFY this Decision to the Parties;

V. TO PUBLISH this Decision in accordance with Article 20(4) of the Law; and

VI. TO DECLARE this Decision effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Robert Carolan	Prof. Dr. Enver Hasani

KI35/14, Brahim Rama, Resolution of 27 March 2014 - Constitutional Review of the of the Decision AC-I-13-0079-AooOl-Aoo04, of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo of 23 January 2014

CaseKI35/14, Decision of 27 March 2014.

Key words: Individual referral, manifestly ill-founded

The Appellate Panel of the Special Chamber of the Supreme Court of Kosovo by Decision AC-I-13-0079-AooOl-Aoo04 of 23 January 2014 found that the application of the complainant is time-barred thereby rendering the application as inadmissible on procedural grounds.

The Applicant alleged that he was in a discriminatory manner dismissed from his job and that he was eligible to a share of the proceeds from the privatization of the SOE "Ramiz Sadiku" in Prishtina. The Applicant did not invoke any constitutional provision in particular.

The Constitutional Court declared the Referral as inadmissible as manifestly ill-founded because the allegations and evidence set forth by the Applicant did not show that his constitutional rights were injured by the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo.

RESOLUTION ON INADMISSIBILITY
in
Case no. KI35/14
Applicant
Brahim Rama
Constitutional review of the Decision AC-I-13-0079-A0001-A0004, of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo, of 23 January 2014

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 Mr. Brahim Rama from village Stanovc, Municipality of Vushtrri.

Challenged decision

2. The Applicant challenges the Decision AC-I-13-0079-A0001-A0004, of the Appellate Panel of the Special Chamber of Kosovo (hereinafter: the Special Chamber), of 23 January 2014.

Subject matter

3. The subject matter is the constitutional review of the challenged decision, which is alleged to have been "*discriminatory for the Applicant, because it denies him the right to receive a share from the generated proceeds from the privatization of the 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 on the Constitutional Court of the Republic of Kosovo, No. 03/L-121, (hereinafter, the Law), and Rule 56 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Court

5. On 27 February 2014, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 6 March 2014, the President of the Court, by Decision No. GJR. KI35/14, appointed Judge Arta Rama-Hajrizi Judge Rapporteur. On the same day, the President of the Court, by Decision No. KSH. KI35/14, appointed Review Panel, composed of Judges: Altay Suroy (Presiding), Snezhana Botusharova and Kadri Kryeziu (members).

7. On 11 March 2014, the Applicant and the Special Chamber were notified on registration of the Referral.

8. On 27 March 2014, 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 a certain period of time, the Applicant was employed with the SOE "Ramiz Sadiku" in Prishtina.

10. On 27 June 2006, the SOE "Ramiz Sadiku" in Prishtina was privatized.

11. The final list of eligible employees, to receive 20% share from the proceeds of the privatization of the SOE "Ramiz Sadiku" was published by the Privatization Agency of Kosovo (hereinafter: the PAK) in March 2009 and the deadline for filing appeal with the Special Chamber was 27 March 2009.
12. On an unspecified date, the Applicant filed an appeal with the Special Chamber against the final list published by the PAK.

13. On 10 June 2011, the Trial Panel of the Special Chamber, by Judgment SCEL-09-0001, rejected the Applicant's appeal as ungrounded.

14. On 12 June 2013, the Applicant filed the appeal with the Appellate Panel of the Special Chamber against the Judgment SCEL-09-0001.

15. On 23 January 2014, the Appellate Panel of the Special Chamber, by Decision AC-I-13-0079-A0001-A0004, rejected the Applicant's appeal as inadmissible, because it was out of time.

16. In the abovementioned decision, the Appellate Panel of the Special Chamber reasoned: *"he was served with the appealed Judgment on 29 November 2011, while the deadline for filing appeal was 30 December 2011. The appeal with the Special Chamber was filed on 12 June 2013; consequently, the appeal was out of time, because it was filed after more than one year and a half, therefore, it should be rejected as inadmissible. Since the appeal was filed out of time, The Appellate Panel could not render legal stance regarding the findings and conclusions of the Trial Panel given in the appealed judgment upon the appeal of this appellant filed against the final list"*.

Applicant's allegations

17. The Applicant alleges that *"he was dismissed from his job in a discriminatory manner and that he should be included on the list of employees, eligible to 20% share of the proceeds from the privatization of the SOE 'Ramiz Sadiku' in Prishtina"*.

18. The Applicant also alleges that he was discriminated by decisions of the Special Chamber.

19. The Applicant does not refer to any constitutional provision in particular.

Admissibility of the Referral

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

21. In this respect, the Court refers to Article 113.7 of the Constitution, which provides:

> *"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 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 form the day the law entered into force".*

23. In this case, the Court notes that the Applicant has exhausted all legal remedies in compliance with Article 113.7 of the Constitution and that the Referral was submitted within legal time limit as provided by Article 49 of the Law.

24. 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."*

25. The Applicant alleges in general that *"he has the right to benefit a part of proceeds from the privatization of the SOE 'Ramiz Sadiku'"*.

26. In this particular case, the Court notes that the Applicant has filed an appeal out of the legal deadline with the Appellate Panel of the Special Chamber and therefore his appeal was rejected as out of time; furthermore the referred allegations and evidence presented by the Applicant for violations of the constitutional provisions, do not in any way indicate that the Appellate Panel of the Special

Chamber has denied him the rights guaranteed by the Constitution.

27. In this respect, the Constitutional Court reiterates that the role of the regular courts is to interpret and apply the pertinent rules of both procedural and substantive law (See *García Ruiz v. Spain*, no. 30544/96, ECtHR, Judgment of 21 January 1999, paragraph 28, see also case No. KI70/11, Applicants *Faik Hima, Magbule Hima and Bestar Hima*, Resolution on Inadmissibility of 16 December 2011).

28. The Constitutional Court also reiterates that the correct and complete determination of the factual situation is a full 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 therefore, cannot act as a "fourth instance court" (see cases KI73/13, KI102/13, KI105/13, KI106/13, KI113/13, KI130/13 – Applicants *Hamdi Ademi and 6 others*, Resolution on Inadmissibility of 18 November 2013, see also case *Akdivar v. Turkey*, No.21893/93, ECtHR, Judgment of 16 September 1996, para. 65).

29. 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 evidence was taken, (see case *Edwards v. United Kingdom*, No.13071/87, the Report of the European Commission of Human Rights of 10 July 1991).

30. The Court notes that the Applicant has not submitted evidence that the Special Chamber has acted in an arbitrary or unfair manner, nor has accurately specified what rights and freedoms have been violated by the Special Chamber.

31. Furthermore, the Applicant’s dissatisfaction with the outcome of the case cannot of itself raise an arguable claim for breach of the constitutional provisions (See Case *Mezotur-Tiszazugi Tarsulat vs. Hungary*, No.5503/02, ECtHR, the Judgment of 26 July 2005).

32. Accordingly, the Referral is manifestly ill-founded and should be declared inadmissible, in accordance with Rule 36 (1) c) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 47 of the Law and Rule and 36 (1) c) and 56 (2) of the Rules of Procedure, on 27 March 2014, unanimously

DECIDES

I. TO DECLARE the Referral 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	**President of the Constitutional Court**
Arta Rama-Hajrizi	Prof. Dr. Enver Hasani

KI41/14, Bajram Osmani, Resolution of 19 May 2014 - Constitutional Review of the Judgment AC. no. 4984/2012, of the Court of Appeal of the Republic of Kosovo, of 29 November 2013

Case KI41/14, Decision of 19 May 2014.

Key words: individual referral, civil contest, right to fair and impartial trial, manifestly ill-founded referral.

In this case, the Applicant alleged that the challenged decision AC. no. 4984/2012 of 29 November 2013, violated his rights guaranteed by Article 31 of the Constitution, and Article 6 of ECHR, due to the fact that: "The Court of Appeal was obliged to provide in the reasoning of the Ruling additional reasons as to why the first instance Ruling was modified and to address the essential matter -obstruction to possession, and not review the property relationships, when it specified that the litigating parties had a joint yard and were co-owners, therefore based on this fact pursuant to Article 108 of the Law on Property and other Real Rights provided judicial protection, thus violating the guaranteed right to fair and impartial trial pursuant to Article 31 of the Constitution of the Republic of Kosovo."

However, after having examined the case file, the Court found that the Applicant has not presented any convincing argument indicating violation of the fundamental rights guaranteed by the Constitution. In this respect, the Court referred to the case Vanek v. Slovak Republic,ECHR Decision on admissibility of application no. 53363/99 of 31 May 2005.

In sum, the Court finds that the Applicant's Referral does not meet the admissibility requirements, because the Applicant has failed to prove that the challenged decision violates his constitutionally guaranteed rights. Therefore, pursuant to Rule 36 (2) b) and d) of the Rules of Procedure, the Court concludes that the Referral is manifestly ill-founded.

RESOLUTION ON INADMISSIBILITY
in
Case no. KI41/14
Applicant
Bajram Osmani
Request for constitutional review of the Judgment of the Court of Appeal of the Republic of Kosovo, AC. no. 4984/2012 of 29 November 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. Bajram Osmani, residing in Dragash (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges the Judgment of the Court of Appeal of the Republic of Kosovo, AC. no. 4984/2012 of 29 November 2013 (hereinafter: the challenged decision), which was served on the Applicant on 14 January 2014.

Subject matter

3. The subject matter of this Referral is the constitutional review of the Judgment of the Court of Appeal, AC. no. 4984/2012 of 29 November 2013, regarding the Applicant's allegation for violation of the rights guaranteed by Article 31 of the Constitution and by Article 6 of ECHR.

Legal basis

4. The legal basis is: Article 113.7 of the Constitution, Article 20 and 47 of the Law on the Constitutional Court of the Republic of Kosovo No. 03/L-121 (hereinafter: the Law) and Rule 56 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 5 March 2014, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 1 April 2014, the President of the Court, by Decision no. GJR. KI41/14, appointed Judge Kadri Kryeziu as Judge Rapporteur. On the same day, the President of the Court by Decision nr. KSH. KI41/14 appointed the Review Panel composed of Judges: Robert Carolan (Presiding), Almiro Rodrigues and Ivan Čukalović.

7. On 11 April 2014, the Court notified the Applicant, the Court of Appeal in Prishtina and the interested party B. B., of the registration of Referral.

8. On 19 May 2014, 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 16 October 2012, the Municipal Court in Dragash, by Decision P. no. 72/2012, rejected in entirety the statement of claim of B. B., by which alleged that the Applicant obstructed him in possession of the joint yard (cadastral plot no.836, c.z. Leshtan, in the place calledSelo- Lestane - Selo) due to the fact that the Applicant on29 August 2012put a concrete pillar and then constructed a terrace in a length of 5.50 m and in a width of 1.00 m, with a purpose of constructing other structures on it.

10. On 29 November 2011, the Court of Appeal, by Judgment Ac. no. 4984/2012,modified the Decision of the Municipal Court P. no. 72/2012 and concluded that the Applicanthas obstructed B. B in possession. The Applicant was ordered to return within the time limit of seven (7) days the right of use and possession of the joint yard to the previous situation, from the day the

abovementioned decision was served on him, under the threat of forced execution.

11. Furthermore, the Court of Appeal reasoned its decision as follows:

[...]

"The Court of Appeal did not approve as correct and lawful the first instance's legal stance, because the challenged Ruling does not contain substantial violations of the contested procedure pursuant to Article 182, paragraph 2, items b), g), j), k), and m) that the second instance court reviews ex officio pursuant to Article 184 of the LCP.

Based on this correct and complete determined factual situation that is challenged by the appeal's allegations, the first instance court applied erroneously the material law, which is also reviewed ex officio by the second instance court pursuant to Article 194 of the LCP.

The second instance court took this legal stance, because the obstruction to possession is done in two ways: disturbance and dispossession of property. In relation to disturbance the respondent obstructed the claimant in the possession of things or rights, but the thing is not dispossessed, respectively there is no deprivation of possession. Dispossession occurs upon deprivation of possession. Thus it results to provide protection for the claiming party due to obstruction to possession.

From the case file and uncontested facts it has been determined that the litigating parties had a joint yard, thus they were co-owners and on this ground the claimant was entitled to judicial protection pursuant to Article 108 of the Law on Property and Other Real Rights. The decision on the expenses of the procedure is based on the provisions of Articles 453 and 454 of the LCP.
From the above, the challenged decision had to be modified and the claimant's statement of claim rejected as ungrounded, pursuant to Article 195 item e) in conjunction with Article 209, paragraph 1, item c) of the LCP".

12. On 31 January 2014, the Applicant filed a request for protection of legality with the Office of the State Prosecutor of the Republic of Kosovo against the Judgment of the Court of Appeal, in order to

have the dispute resolved by the Supreme Court of the Republic of Kosovo.

13. On 11 February 2014, the Office of the State Prosecutor, by notification KML. C. no. 14/14, notified the Applicant that the requirements for filing the request for protection of legality were not met.

Applicant's allegations

14. The Applicant alleges that the challenged decision AC. no. 4984/2012 of 29 November 2013, violates his rights guaranteed by Article 31 of the Constitution, and Article 6 of ECHR, due to the fact that: *The Court of Appeal was obliged to provide in the reasoning of the Ruling additional reasons as to why the first instance Ruling was modified and to address the essential matter – obstruction to possession, and not review the property relationships, when it specified that the litigating parties had a joint yard and were co-owners, therefore based on this fact pursuant to Article 108 of the Law on Property and other Real Rights provided judicial protection, thus violating the guaranteed right to fair and impartial trial pursuant to Article 31 of the Constitution of the Republic of Kosovo."*

15. The Applicant also complains against the notification KML C. no. 14/14 of the State Prosecutor, which rejected his request for protection of legality, without any specific reasons and alleges that the State Prosecutor denied him the use of this legal remedy, that is, to have his case reviewed by the Supreme Court of the Republic of Kosovo.

Admissibility of the Referral

16. In order to be able to review the Applicant's Referral, the Court must first examine whether the Applicanthas fulfilled the admissibility requirements laid down in the Constitution as further specified in the Law and the Rules of Procedure.

17. In this case, the Court refers to the Rule 36 (1) c) of the Rules of Procedure, which provides:

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:

[...]

(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";

18. The Court notes that the Applicant alleges violation of Article 31 of the Constitution and Article 6 of ECHR.

19. In this regard, Article 31 [Right to a Fair and Impartial Trial] 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".

20. In addition, Article 6 of ECHR provides:

"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."

21. The Court notes that the challenged decision contains extensive and comprehensive reasoning. In this context, the challenged decision does not contain violations of the rights guaranteed by the Constitution, as alleged by the Applicant. The Court of Appeal, which decision is challenged, has provided sufficient reasons regarding the facts of the case and the findings, which are *ex-officio* examined by that court.

22. It is not sufficient that the Applicant in his Referral only mentions articles or provisions of the Constitution, alleging violation of his rights. The allegation of a violation of articles or provisions of the

Constitution should be substantiated and reasoned in order for the referral to be grounded.

23. The task of the Court regarding alleged violations of the constitutional rights is to analyze and assess whether the proceedings in their entirety were fair and in accordance with the protection, explicitly provided by the Constitution. Thus, the Constitutional Court is not a court of fourth instance, when considering the decisions issued by the courts of lower instance. It is the duty of the regular courts to interpret and apply the pertinent rules of both the 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).

24. The Court notes that in the proceedings before the Court of Appeal the Applicant was afforded ample opportunities to present arguments, facts and evidence, against the allegations of the opposing party, therefore the allegation that the Applicant was denied the right to a fair and impartial trial is not grounded.

25. In the present case, the Applicant has not presented any convincing argument indicating violation of the fundamental rights guaranteed by the Constitution (See, *Vanek v. Slovak Republic*, ECHR Decision on admissibility of application no. 53363/99 of 31 May 2005).

26. Moreover, in this case, the Court cannot consider that the pertinent proceedings conducted before the Court of Appeal, were in any way unfair or arbitrary (see, *mutatis mutandis*, *Shub vs. Lithuania*, ECHR Decision on admissibility of application No. 17064/06 of 30 June 2009).

27. In sum, the Court finds that the Applicant's Referral does not meet the admissibility requirements, because the Applicant has failed to prove that the challenged decision violates his constitutionally guaranteed rights.

28. Therefore, pursuant to Rule 36 (2) b) and d) of the Rules of Procedure, the Court concludes that the Referral is manifestly ill-founded.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, in accordance with Rule 36 (2) b) and d) and Rule 56 (2) of the Rules of Procedure, on 19 May 2014, unanimously:

DECIDES

I. TO DECLARE the Referral 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	**President of the Constitutional Court**
Dr. Kadri Kryeziu	Prof. Dr. Enver Hasani

KI46/14, Slobodan Vujičić, Resolution of 30 June 2014 - Request for Interpretation of Article 57.1 [General Principles] of Chapter III [Rights of Communities and their Members] of the Constitution of the Republic of Kosovo.

Case KI46/14, Decision of 30 June 2014.

Keywords: abstract control, interpretation, non-authorized party

The applicants filed a Referral pursuant to Article 113.7 of the Constitution of Kosovo asking the Court *"[…] since the Montenegrins are not included in the Constitution of the Republic of Kosovo, and that without doubt belong to the same language and religious group as the Serbs, can the party Gradjanska Inicijativa Pripadnika Crnogorske Zajednice (Citizen Initiative of the Members of Montenegrin Community) participate in the national elections and compete for one of the 10 reserved or guaranteed seats for the Serbian community?"*

On the issue of the admissibility of the Referral, the Court held, that the Referral was inadmissible because the Applicant is not an authorized party to request interpretation of constitutional provisions. Hence, the Court held that the Referral was inadmissible pursuant to Article 113.1 of the Constitution.

ESOLUTION ON INADMISSIBILITY
in
Case No. KI46/14
Applicant
Slobodan Vujičić
Request for interpretation of Article 57.1 [General Principles] of Chapter III [Rights of Communities and their Members] of the Constitution of the Republic of Kosovo

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. Slobodan Vujičić (hereinafter: the "Applicant"), residing in Prishtina.

Subject matter

2. The subject matter of the Referral is a request for interpretation of Article 57.1 [General Principles] of Chapter III [Rights of Communities and their Members] of the Constitution of the Republic of Kosovo (hereinafter: the "Constitution").

Legal basis

3. 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 (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

4. On 12 March 2014 the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the "Court").

5. On 1 April 2014 the President of the Court, by Decision No. GJR. KI46/14, appointed Judge Snezhana Botusharova as Judge Rapporteur. On the same date, the President of the Court by Decision, No. KSH. KI46/14, appointed the Review Panel composed of Judges Robert Carolan (Presiding), Almiro Rodrigues and Enver Hasani.

6. On 23 April 2014 the Court notified the Applicant of the registration of the Referral and informed the President of the Assembly of the Republic of Kosovo of the Referral.

7. On 19 May 2014 the Review Panel considered the Report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

Applicant's statements

8. The Applicant is asking the Court *"[...] since the Montenegrins are not included in the Constitution of the Republic of Kosovo, and that without doubt belong to the same language and religious group as the Serbs, can the party Gradjanska Inicijativa Pripadnika Crnogorske Zajednice (Citizen Initiative of the Members of Montenegrin Community) participate in the national elections and compete for one of the 10 reserved or guaranteed seats for the Serbian community?"*

9. The Applicant does not provide any further statements or arguments in support of the Referral.

Admissibility of the Referral

10. The Court notes that, in order to assess the admissibility it has to examine the admissibility requirements laid down in the Constitution, the Law and the Rules of Procedure.

11. In this respect, the Court shall examine whether the Applicant is an authorized party to submit the respective Referral.

12. In the case at hand, the Applicant is seeking an interpretation of the method of application of a provision of the Constitution regarding the 10 guaranteed seats for parties, coalitions, citizens' initiatives and independent candidates having declared themselves representing the Kosovo Serb Community.

13. In this respect, the Court refers to Article 113.1 of the Constitution which provides: *"The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties."*

14. The Court notes that the Applicant asks for an interpretation of the applicability of a constitutional provision related to the next parliamentary elections. The constitutional provision in question is Article 57.1 of Chapter III of the Constitution, which provides: *"Inhabitants belonging to the same national or ethnic, linguistic, or religious group traditionally present on the territory of the Republic of Kosovo (Communities) shall have specific rights as set forth in this Constitution in addition to the human rights and fundamental freedoms provided in chapter II of this Constitution."*

15. The Applicant specifically claims that the Montenegrins belong to the same language and religious group as the Serbs in accordance with Article 57.1 of the Constitution and their party "Gradjanska Inicijativa Pripadnika Crnogorske Zajednice" (Citizen Initiative of the Members of Montenegrin Community) should be able to participate in the national elections and compete for one of the 10 guaranteed seats reserved for the Serbian community.

16. As understood by the Court, where it concerns a request for an interpretation regarding the provisions of the Constitution, there is no constitutional provision that empowers the Applicant to bring such a Referral before the Court. Only the parties explicitly mentioned by the Constitution have such powers.

17. In this respect, the Court refers to Article 93 (10) [Competencies of the Government] of the Constitution *"The Government has the following competencies: may refer Constitutional questions to the Constitutional Court"*. Furthermore, in Case No. KO98/11 the Court held that *"According to Article 93 (10) the Government* may *refer Constitutional questions to the Constitutional Court. If the questions are constitutional questions then the Government will be an authorised party and the Referral will be admissible."* (See Case KO98/11, Applicant: *The Government of the Republic of*

Kosovo, Judgment of 20 September 2011 and See Case KO18/14, Applicant: *Vesna Mikić and 20 other Deputies of the Assembly of the Republic of Kosovo*, Resolution on Inadmissibility of 11 February 2014).

18. Moreover, the Court also refers to Article 84 (9) [Competencies of the President] of the Constitution *"The President of the Republic of Kosovo: may refer constitutional questions to the Constitutional Court."*

19. As far as the Applicant is an individual, he/she is entitled to submit a Referral under Article 113.7 of the Constitution. Under this provision, individuals or legal persons may submit a Referral challenging decisions of public authorities as allegedly being taken in violation of their individual rights and freedoms guaranteed by the Constitution only after exhaustion of all legal remedies provided by law. However, this is not the case in the current Referral.

20. Therefore, the Court concludes that the request for interpretation of Article 57.1 of Chapter III of the Constitution by the Applicant does not fall within the scope of being authorized party.

21. Consequently, the Applicant's Referral is inadmissible, pursuant to Article 113.1 of the Constitution.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.1 of the Constitution and Rule 56 (2) of the Rules of Procedure, on 30 June 2014, 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**

Snezhana Botusharova Prof. Dr. Enver Hasani

KI27/14, Nexhmi Bërnica, Resolution of 12 May 2014 - Constitutional Review of the Decision SCEL-09-0001, of the Trial Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters, of 10 June 2011

Case KI27/14, Decision of 12 May 2014.

Key words; individual referral, constitutional review of decision of Trial Panel of the Special Chamber of the Supreme Court

The Applicant submitted Referral based on Article 113.7 of the Constitution of the Republic of Kosovo, Article 47 of the Law on the Constitutional Court of the Republic of Kosovo No. 03/L-121 and Rule 56 of the Rules of Procedure of the Constitutional Court of Kosovo (hereinafter: the Rules of Procedure).

On 10 February 2014, the Applicant filed Referral with the Constitutional Court of the Republic of Kosovo and requested from the Court the constitutional review of the decision of the Trial Panel of the Special Chamber of the Supreme Court.

In the Referral, the Applicant alleges that the Privatization Agency and the Special Chamber of the Supreme Court of Kosovo have violated his right to work.

Based on the data from the case file, the Court finds that the Applicant filed his Referral on 10 February 2014. The Court, based on the available case files, has found that the last Decision SCEL-09-0001, of the Trial Panel of the Special Chamber was served upon the Applicant on 15 July 2011, and therefore, the Applicant has filed his referral with the Court beyond the timeline as set forth by Article 49 of the Law and Rule 36 (1) b) of the Rules of Procedure**.**

Taking into account all the circumstances of the submitted referral, the Constitutional Court of Kosovo in its session held on 12 May 2014 decided to declare the referral inadmissible because the Referral was submitted out of time.

RESOLUTION ON INADMISSIBILITY
in
Case no. KI27/14
Applicant
Nexhmi Bërnica
Constitutional review of the Decision SCEL-09-0001, of the Trial Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters, of 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

Applicant

1. The Applicant is Mr. Nexhmi Bërnica from Prishtina (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges the Decision SCEL-09-0001, 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), of 10 June 2011, served on the Applicant on 15 July 2011.

Subject matter

3. The subject matter is constitutional review of the decision which allegedly has deprived the Applicant from his enjoyment of right to a share of 20% of the proceeds of privatization of socially-owned enterprise “Ramiz Sadiku” (hereinafter: SOE “Ramiz Sadiku“) in

Prishtina. The Applicant does not specify what articles of the Constitution have been violated.

Legal basis

4. 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 (hereinafter: the Law) and Rule 56 of the Rules of Procedure of the Constitutional Court (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 10 February 2014, the Applicant filed his Referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 6 March 2014, the President of the Court, by Decision No. GJR. KI27/14 appointed Judge Kadri Kryeziuas Judge Rapporteur. On the same date, the President, by Decision no. KSH. KI27/14, appointed the Review Panel composed of judges: Robert Carolan (Presiding), Ivan Čukalović and Almiro Rodrigues.

7. On 13 March 2014, the Court notified the Applicant and the Special Chamber of the Supreme Court of the registration of the referral.

8. On 12 May 2014, after having considered the report of the Judge Raporteur, the Review Panel recommended to the full Court the inadmissibility of the Referral.

Summary of facts

9. On 27 March 2009, the Applicant, dissatisfied with the decision of the Privatization Agency (hereinafter: the Agency), which did not include him in the list of employees entitled to a share of 20% of proceeds of privatization, filed a complaint with the Special Chamber of the Supreme Court.

10. In his complaint with the Special Chamber of the Supreme Court, the Applicant claims to have been an employee of the SOE “Ramiz Sadiku”, from 1980 up to the privatization of SOE “Ramiz Sadiku”.

11. On 15 April 2009, the Agency, by a submission to the Special Chamber, replied to the complaint of the Applicant, thereby stating that there is no evidence to support the legal basis for participation

of the Applicant in the shares of the 20% of the privatization proceeds.

12. On 10 June 2011, the Trial Panel of the Special Chamber rendered the Decision SCEL-09-0001, thereby finding the complaint inadmissible. In its reasoning, the Trial Panel notes: *The Trial Panel considers that the evidence submitted by the complainant do not prove that he has met the conditions set forth by Article 10.4 of the UNMIK Regulation 2003/13. Therefore, his complaint is considered ungrounded, and is rejected as ungrounded".*

13. In the conclusion of the Decision SCEL-09-0001, the Trial Panel of the Special Chamber notes that*: "Pursuant to Article 9.5 of UNMIK Regulation 2008/4, a complaint against this decision is filed in written to the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo for the Kosovo Trust Agency Related Matters, within a deadline of thirty (30) days from the date of service of the present decision".*

Applicant's allegations

14. The Applicant alleges that the Agency and the Special Chamber of the Supreme Court of Kosovo have violated his right to work.

15. The Applicant addresses the Court with the following request:

> *"I request payment of 17 monthly salaries at the amount of 300 Euros, with legal interest, and a share from the 20% of privatization proceeds of SOE "Ramiz Sadiku" in Prishtina".*

Admissibility of Referral

16. The Court notes that in order to be able to adjudicate the complaint of the Applicant, it must assess beforehand whether the applicant has met the admissibility requirements, as provided by the Constitution and further specified by the Law and the Rules of Procedure.

17. 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".

18. The Court further 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 (...)".

19. The Court also takes into account Rule 36 (1) b) of the Rules of Procedure:

"(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...".

20. Based on the data from the case file, the Court finds that the Applicant has filed his referral on 10 February 2014. The Court, based on the available case files, has found that the last Decision SCEL-09-0001, of the Trial Panel of the Special Chamber was served upon the Applicant on 15 July 2011, and therefore, the Applicant has filed his referral with the Court beyond the timeline as set forth by Article 49 of the Law and Rule 36 (1) b) of the Rules of Procedure.

21. The Court recalls that the objective of the four-month legal deadline under Article 49 of the Law and Rule 36 (1) b) of the Rules of Procedure is to promote legal certainty, by ensuring that cases which raising issues under the Constitution are dealt within reasonable time, and that past decisions are not continually open to challenge (see case *O'LOUGHLIN and others v. United Kingdom*, no. 23274/04, ECHR, decision of 25 August 2005).

22. Based on the above, it results that the Referral is out of time.

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, on 12 May 2014, unanimously:

DECIDES

I. TO DECLARE the Referral Inadmissible;

II. To notify this Decision to the parties and to publish this Decision in the Official Gazette, in accordance with Article 20.4 of the Law;

III. This Decision is effective immediately.

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

KI199/13, Sinan Rashica, Resolution of 20 May 2014 - Constitutional Review of Judgment Rev. no. 331/2011 of the Supreme Court of the Republic of Kosovo of 11 January 2013

Case KI199/13, Decision of 20 May 2014.

Key words: right to work, Article 49, individual referral, out of time referral.

The Applicant filed his Referral based on Article 113.7 of the Constitution of Kosovo, claiming that his constitutional rights and freedoms have been violated by the judgment of regular courts. The Applicant alleges that the Judgment of the Supreme Court of Kosovo "denies his right under article 49 of the Constitution for temporary compensation of the salary." The Applicant request from the Constitutional Court "to recognize his right for temporary compensation until the establishment of the Kosovo invalidity pension fund".

The Court found that the Referral of the Applicant was inadmissible based on Rule 36 of the Rules of Procedure and Article 49 of the Law, which states: "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", and based on this the Referral is out of time. The Court justifies its resolution stating that under these circumstances, the Court notes that the Judgment that is challenged by the Applicant is dated 11 January 2013 and the latest decision is dated 14 June 2013, whereas the Referral was submitted on 13 November 2013· The Applicant's Referral is not in compliance with Article 49 of the Law and Rule 36 (1) (b) of the Rules of Procedure as it was submitted more than 1month after the date of the contested decision. Due to the abovementioned reasons, the Court decided to reject the Referral as inadmissible.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI199/13
Applicant
Sinan Rashica
Constitutional review of Judgment Rev. no. 331/2011 of the Supreme Court of the Republic of Kosovo dated 11 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 Referral was submitted by Mr. Sinan Rashica residing in Prishtina (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges Judgment Rev. no. 331/2011 of the Supreme Court of the Republic of Kosovo (hereinafter: Supreme Court), dated 11 January 2013, which was served on him on an unspecified date.

Subject matter

3. The subject matter is the constitutional review of the challenged Decision which allegedly *"denies the right to Article 49 of the Constitution"*.

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 (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 13 November 2013, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: Court).

6. On 3 December 2013, the President of the Court, with Decision No. GJR. KI199/13, appointed Judge Kadri Kryeziu as Judge Rapporteur. On the same date, the President of the Constitutional Court, with Decision No. KSH. KI199/13, appointed the Review Panel composed of Judges Altay Suroy (Presiding), Ivan Čukalović and Enver Hasani.

7. On 5 March 2013, the Supreme Court was notified of the Referral.

8. On 20 May 2014, 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

9. On 13 February 2004, the Kosovo Energy Corporation (hereinafter: KEK), approved the Applicants request for pension under category "A" (No. 43/16) in compliance with UNMIK Regulation 2001/35 and KEK Pension Fund Statute.

10. In the abovementioned decision of KEK it was determined that the payment of the pension for the Applicant will commence on 1 February 2004 and end on 29 February 2009, while the amount of monthly pension shall be 105 Euros. Furthermore the decision 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.

11. According the submitted documents, no appeal was filed against this decision.

12. After 29 February 2009, KEK terminated the payment of the pension of the Applicant as specified in the agreement.

13. The Applicant submitted a claim before the Municipal Court in Prishtina.

14. On 21 February 2011, the Municipal Court in Prishtina (Judgment C.no. 362/2009) approved the claim submitted by the Applicant and ordered the KEK to continue the payments until the establishment of the Kosovo invalidity pension fund.

15. KEK submitted an appeal to the District Court in Prishtina against the judgment of the Municipal Court (Judgment C.no. 362/2009).

16. On 28 June 2011, the District Court in Prishtina (Judgment Ac. no. 497/2011 rejected as ungrounded the appeal submitted by KEK and upheld the judgment of the Municipal Court.

17. On 20 March 2012 the Municipal Court in Prishtina (Decision E. nr. 2139/11) ordered the enforcement of Decision (Judgment C. no. 362/2009).

18. On 4 April 2012 KEK appealed the above mentioned decision and requested that the execution procedure to be suspended until a final decision of the Supreme Court of Kosovo.

19. On 12 April 2013 the Municipal Court in Prishtina (decision E. no. 2139/11) rejected as ungrounded the request to suspend the execution procedure.

20. On 10 August 2011, KEK submitted a request for revision to the Supreme Court of Kosovo.

21. On 11 January 2013, the Supreme Court of Kosovo (Judgment Rev. no. 331/2011) approved the revision submitted by KEK.

22. The Supreme Court held:

> *"The lower instance courts have rightfully and completely confirmed the factual state but wrongfully applied the material right when stating that the claimants statement of claim is grounded. According to the decision number 43/16 dated 13.02.2004, it appears that the claimant himself has applied*

for category I pension, disability at work in accordance with UNMIK regulation number 2001/35 and Pension Fund Status of KEC and this request has been approved by the respondent and based on this decision the pension payment has started from 01.02.2004 and ended on 29.02.2009 in amount of €105 per month. The claimant could have submitted an appeal against this decision in time period of 15 days from the date it was received comity for dispute review through administration of Pension Fund, but the appeal was not submitted and pension was received until 29.02.2009. This court assessed that after payment of the wage as foreseen with the decision, the respondent has no obligation towards the claimant, since it fulfilled the legal obligation which resulted from the above-mentioned decision".

23. On 14 June 2013, the Court of Appeal rejected as ungrounded the appeal submitted by KEK and confirmed the decision of the Municipal Court (E. no. 2139/11 dated 12 April 2012).

Applicant's allegation

24. The Applicant alleges that the Judgment of the Supreme Court of Kosovo *"denies his right under article 49 of the Constitution for temporary compensation of the salary. This right has been recognized by Judgments C. no. 362/2008 dated 21.02.2011 and Ac. no. 497/2011 dated 28.06.2011".*

25. The Applicant further states that *"the reason why he signed and did not appeal the decision of KEK was because KEK promised that it would either be extended or they would be returned to work".*

26. In addition the Applicant request from the Constitutional Court *"to recognize his right for temporary compensation until the establishment of the Kosovo invalidity pension fund".*

Assessment of the admissibility

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

28. 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 (...)".*

29. The Court also takes into consideration 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. Under these circumstances, the Court notes that the Judgment that is challenged by the Applicant is dated 11 January 2013 and the latest decision is dated 14 June 2013, whereas the Referral was submitted on 13 November 2013. The Applicant's Referral is not in compliance with Article 49 of the Law and Rule 36 (1) (b) of the Rules of Procedure as it was submitted more than 1 month after the date of the final decision.

31. The Court recalls that the object of the four month legal deadline under Article 49 of the Law and Rule 36 (1) (b) of the Rules of Procedure is to promote legal certainty, by ensuring that cases raising issues under the Constitution are dealt within a reasonable time and that past decisions are not continually open to challenge (see case *O'Loughlin and Others v United Kingdom*, No. 23274/04, ECHR, Decision of 25 August 2005).

32. Moreover, with reference to cases adjudicated by the Court regarding the Temporary Compensation for the Termination of Employment by KEK, the Court considers that based on the documents submitted and completed proceedings, this Referral differs from the afore-mentioned, because the agreement signed between KEK and other former employees of KEK was until the establishment of the Kosovo Invalidity Pension Fund without any reference to an end date as to the present referral.

33. It results that the Applicant's Referral is out of time.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 49 of the Law and Rules 36 (1) b) and 56 (2) of the Rules of Procedure, on 20 May 2014, unanimously

DECIDES

I. TO DECLEAR the Referral as Inadmissible;

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

III. This Decision is effective immediately.

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

KI227/13, Izjadin Shehu, Resolution of 30 June 2014 - Constitutional Review of the Judgment of Supreme Court, Rev. No. 93/2013, of 20 September 2013

Case KI227/13, Decision of 30 June 2014.

Key words: Individual Referral, manifestly ill-founded

The subject matter is the constitutional review of the Judgment of the Supreme Court, Rev. No. 93/2013, dated 20 September 2013. The Applicant filed a claim against Kosovo Electricity Corporation where he requested the annulment of the notification on the termination of his employment contract. The Municipal Court in Ferizaj rejected his claim as ungrounded. The Applicant then filed an appeal with the Court of Appeal which was also rejected as ungrounded. Lastly, the Supreme Court rejected his request for protection of legality and thus confirmed the Judgment of the Municipal Court in Ferizaj.

The Applicant then filed a Referral with the Constitutional Court where he alleged that the challenged Judgment violated his rights guaranteed by Article 3 [Equality Before the Law], Article 24 [Equality Before the Law] and Article 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo and Article 6 [Right to a Fair Trial] of the European Convention on Human Rights.

The Constitutional Court declared the Referral inadmissible for being manifestly ill founded. In its reasoning, the Constitutional Court reasoned that the facts presented by the Applicant do not in any way justify the allegation of a violation of the constitutional rights.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI227/13
Applicant
Izjadin Shehu
Constitutional review of the
Judgment Rev. No. 93/2013 of the Supreme Court of Kosovo,
of 20 September 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 Mr. Izjadin Shehu, from Ferizaj (hereinafter, the Applicant).

Challenged Decision

2. The Applicant challenges the Judgment Rev. No. 93/2013 of the Supreme Court of Kosovo, dated 20 September 2013, which rejected as ungroundedthe Applicant's request for revision following the judgments of the Municipal Court in Ferizaj and the Court of Appeals which rejected his claim against Kosovo Electricity Corporation (hereinafter, KEC) for annulment of the notification on termination of the employment contract.

3. The Judgment of the Supreme Court was served on him on 11 October 2013.

Subject Matter

4. The subject matter is the constitutional review of the challenged Judgment, which allegedly *"violated his rights guaranteed by the*

Constitution, namely Article 3, paragraph 2 [Equality before the Law], Article 24 [Equality before the Law] Article 31 [Right to Fair and Impartial Trial], and Article 6 [Right to a Fair Trial] of the European Convention on Human Rights (hereinafter, ECHR)".

Legal basis

5. The Referral is based on Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), Articles 22 and 47 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo (hereinafter: the Law).

Proceedings before the Court

6. On 16 December 2013, the Applicant submitted the Referral to the Court.

7. On 15 January 2014, the President appointed Judge Almiro Rodrigues as Judge Rapporteur and the Review Panel composed of Judges Altay Suroy (presiding), Kadri Kyeziu and Arta Rama-Hajrizi.

8. On 22 April 2014, the Court notified the Applicant on the registration of the Referral. On the same date, the Court also informed the Supreme Court of the Referral.

9. On 20 May 2014 the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the full Court to declare the Referral as inadmissible.

Summary of facts

10. On 1 February 2005, the Applicant entered an employment contract with KEC.

11. On 28 October 2008, KEC notified the Applicant on the termination of the employment contract.

12. On 15 December 2008, KEC filed a criminal charge (No. 2008MA25/2) against the Applicant for having allegedly committed the criminal offence of theft.

13. On 3 September 2009, the Municipal Public Prosecutor (PP. No. 22/09) dismissed the criminal charge of KEC against the Applicant

and held that *"considering the situation determined by the calibration sector we consider that no evidence proves the reasonable suspicion that the defendant committed the criminal offence charged with by the criminal charge, therefore, the criminal charge is dismissed."*

14. On an unknown date, the Applicant requested the Municipal Court in Ferizaj the annulment of the termination of his employment contract, reinstatement at his workplace and compensation of income deriving from the employment contract. The Applicant claimed that *"the notification for termination of the employment contract was based on Article 11, paragraph 3, item b of the Essential Labor Law and Article 8, paragraph 13 of the KEC Regulation on Labor that encloses theft of KEC property – theft of electricity, while the expertise performed on the electric meter – calibration center has determined that there is no irregularity found inside the meter, adding that only the meter was damaged while the counter was not manipulated (…) therefore based on the fact that the only reason for termination of employment contract was theft of electricity, and this conclusion is proven to be unfounded by the (…) calibration center."*

15. On 29 January 2008, the Municipal Court (Judgment C. No. 396/08) rejected as unfounded the request of the Applicant.

16. The Municipal Court held that

> *"The respondent respected all the legal-procedural provisions when notifying the claimant for the termination of the employment contract" and "[…] although the claimant refers to the notification of the Municipal Public Prosecutor in Ferizaj PP. No. 22/09, dated 3 September 2009, according to which Izjadin Shehu was acquitted of the criminal charge for the criminal offence (…) of theft, the civil aspect of the of the claimant's accountability still exists […].*
>
> *[…] therefore, considering the fact that the claimant connected the new meter in an unauthorized way and spent electricity whilst not being authorized, presented unauthorized use of employer's assets, therefore it presents behavior of serious nature after which it would be unreasonable to expect extension of the employment relationship (Article 11.3 item (d) of the UNMIK Regulation No. 2001/27), therefore the Court considers the notification for termination of the employment contract No. 949, dated 28 October 2008, (…) to be legal, same*

with the Decision No. 7302, dated 10 November 2008, issued by the respondent following the appeal submitted by the claimant."

17. The Applicant appealed to the District Court in Prishtina, due to essential violation of the contested procedure, erroneous and incomplete determination of the factual situation and erroneous application of material law.

18. On 6 November 2010, the District Court (Decision Ac. No. 558/2011) rejected as ungrounded the appeal of the Applicant and approved the Judgment of the Municipal Court.

19. The Applicant filed a request for revision with the Supreme Court of Kosovo, due to essential violation of provisions of the contested procedure and erroneous application of the material law.

20. On 20 September 2013, the Supreme Court (Judgment Rev. No. 93/2013) decided to *"reject the claimant's revision (...) as ungrounded".*

21. In its reasoning, the Supreme Court held that *"[...] both lower instance Courts, correctly confirmed the factual situation, correctly applied provisions of contested procedure that the claimant refers to and correctly applied the material law, by concluding that the (...) claim is ungrounded. Both challenged Judgments enclose sufficient reasoning for decisive facts, valid for a fair judging of this legal matter, which are recognized by this Court."*

Applicant's allegations

22. The Applicant claims that the Judgment of the Supreme Court *"[...] placed him in an unequal position vis-à-vis his colleague, who was in a same situation, because for the same matter, the same panel decided differently, so that the submitter of the Referral was a victim of injustice and this fact is confirmed by Judgment Rev. No. 246/2013 of 01.10.2013 of the Supreme Court of Kosovo, a Judgment that for the same issue APPROVED the Revision whilst the submitter of this Referral was rejected the Revision."*

23. Thus, the Applicant alleges that the Supreme Court, by rejecting his request for revision and *"(...) by deciding differently in same issues, violated his rights guaranteed by the Constitution, namely*

Article 3, paragraph 2 [Equality Before the Law], Article 24 [Equality Before the Law], Article 31 [Right to Fair and Impartial Trial] and Article 6 [Right to a Fair Trial] of the European Convention on Human Rights (hereinafter, ECHR)".

24. The Applicant also notes that, even though he provided the same allegation, *"the Supreme Court for the same issue (...) emphasized that the Law was violated in detriment of claimant concerning the application of disciplinary procedures (...), a circumstance which was not considered by the Supreme Court when deciding on Izjadin Shehu's Revision."*

25. In the end, the Applicant requests from the Constitutional Court to *"invalidate the Judgment of the Supreme Court and remand the case for retrial".*

Admissibility of the Referral

26. First of all, the Court examines whether the Applicant has fulfilled the Referral admissibility requirements.

27. 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."*

28. 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".*

29. In the instant case, the Court notes that the Applicant, in order to ensure his rights, used judicial proceedings before the first and second instance courts and, finally, before the Supreme Court of Kosovo. The Court also notes that the Applicant was served with the Supreme Court Judgment on 11 October 2013 and filed his Referral with the Court on 16 December 2013.

30. 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.

31. However, the Court also must take into account Article 48 (Accuracy of the Referral) of the Law and Rule 36 of the Rules of Procedure.

> 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.*
>
> Rule 36 of the Rules of Procedure
>
> *"(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."*

32. The Applicant, as said above, challenged before the Supreme Court the Judgment of the Municipal Court and the District Court, due to essential violation of provisions of the contested procedure and erroneous application of the material law.

33. Meanwhile, the Applicant alleges before the Constitutional Court violations of his "*right to equality before the law (Articles 3 and 24 of the Constitution), a fair and impartial trial (Article 31 of the Constitution and Article 6 of the ECHR)".*

34. In fact, the Applicant claims that the Supreme Court violated the principle of equality before the law and his right to a fair and impartial trial by not approving his request for revision as it did in a later case of his colleague (Judgment Rev. No .246/2013, of 1 October 2013). The Applicant claims that his situation is identical to his colleague's.

35. In support of his claim, the Applicant notes that the Judgment of the Supreme Court rendered on his matter differs from the Judgment of the Supreme Court in a later case (Judgment Rev. No. 246/2013, of 1 October 2013) and argues that *"in relation to (in)equality of parties before the law and contradiction of Courts when deciding on the same issues, (...) a Judgment was rendered to invalidate the Judgment of the Supreme Court of Kosovo and the matter was remanded for retrial"*. [The Applicant refers to the Constitutional Court case no. KI120/10, Resolution on Admissibility, 8 March 2013].

36. However, the Court notes that the Supreme Court (in the challenged Judgment Rev. No. 93/2013), when rejecting the revision as ungrounded, held that

> *"From the case file, it results that the respondent implemented a complete disciplinary procedure based on law, against the claimant.*
>
> *[...]*
>
> *In support to the above situation, the Supreme Court completely recognizes the legal views of Courts of lower instance, Judgments of which do not consist of essential violations of provisions of contested procedures (...) while the material law was correctly applied.*
>
> *[...]*
>
> *Respondent KEC - District in Ferizaj, implemented fully and by law, the disciplinary procedure against the claimant, in compliance with provisions of disciplinary procedures provided by Rules of Procedure."*

37. The Court further notes that the Supreme Court (in the Judgment 246/2013) approved the revision of the Applicant's colleague as partly grounded, because *"(...) no disciplinary proceeding has been conducted for the omissions of the duties for which the claimant was found guilty."*

38. In fact, the Supreme Court has decided in both cases differently, because in one case (Judgment Rev. No. 93/2013) the disciplinary procedures for termination of the contract have been respected,

whereas on the other case (Judgment Rev. No. 246/2013) no disciplinary procedures existed.

39. The Applicant referred to the Constitutional Court case KI120/10 – Zyma Berisha apparently intending that the Court would declare his case admissible and invalidate the Judgment of the Supreme Court (Rev. No. 93/2013) as it did so in the Constitutional Court case KI120/10.

40. The Court recalls that the Judgment of the Supreme Court in the case KI120/10 was invalidated because *"[...] the Supreme Court has dealt with the Applicant's case in an evidently arbitrary manner, contrary to the principles elaborated by the ECtHR in (...) judgment Nejdet Sahin and Perihan Sahin v. Turkey [GC], no. 13279/05, 20 October 2011."* The Court held that *"the Supreme Court's judgment, by neglecting the proper assessment of the Applicant's arguments regarding her permanent employment status, even though they were specific, pertinent and important, fell short of the Supreme Court's obligations under Article 6.1 of the ECHR to fulfill the obligation to state reasons (see mutatis mutandis, ECtHR Judgment of 18 July 2006 in the case Pronina v. Ukraine, Application no. 63566/00; see also the Court's Judgment in Case No. 40/09 Imer Ibrahimi and 48 other employees of the KEK i.e. "KEK I judgment)*".

41. However, based on the documents submitted and completed proceedings, the Court considers that the Supreme Court has not dealt with the Applicant's case in an arbitrary manner and it has not failed to provide a proper assessment of his arguments.

42. Furthermore, in the case KI120/10, the Court noted that all seven cases were identical, whereas the Court is not convinced that the two cases of this Referral are identical because the facts of these cases are different as noted by the Supreme Court.

43. Moreover, the Court recalls the general principles to be applied in cases of conflicting decisions of domestic Supreme Courts in apparently similar situations. In the case of *Nejdat Şahin and Perihan Şahin v. Turkey*, No. 13279/05 of 20 October 2011, the Grand Chamber of the ECtHR stated, inter alia

> *"50. [...] save in the event of evident arbitrariness, it is not the Court's role to question the interpretation of domestic law by national courts (see, mutatis mutandis, Ādamsons v. Latvia,*

No. 3669/03, para. 118, 10 May 2007). Similarly, on this subject, it is not in principle its function to compare different decisions of national courts, even if given in apparently similar proceedings"; it must respect the independence of those courts (See *Engel and Others v. The Netherlands,* 8 June 1976, para. 103, Series A no. 22; *Gregório de Andrade v. Portugal,* no. 41537/02, para. 36, 14 November 2006)."

44. In addition, the Court recalls that the key principle to be applied in cases of divergence of decisions of the Supreme Court in apparently similar cases or circumstances is whether or not *"profound and long-standing differences exist"* in the case-law of the Supreme Court (see *Nejdat Şahin and Perihan Şahin v. Turkey*, No. 13279/05, para. 53).

45. In Applicant's case, the Supreme Court decision on his Revision is contrasted with only one decision of the Supreme Court which was taken 10 days later. It is difficult to see how, based on only one decision of the Supreme Court, the Court is to conclude that there are "profound and long-standing differences" in the case law of the Supreme Court which threaten the principle of legal certainty and, thereby, infringe the Applicant's rights enshrined in the Constitution and the ECHR.

46. In the case, the Court notes that the Supreme Court responded on the Applicant's allegations with regards to essential violation of contested procedure and application of material law by holding that *"[...] both lower instance Courts, correctly confirmed the factual situation, correctly applied the material law, by concluding that the claimant's statement of claim is unfounded."*

47. The Court considers that the justification provided by the Judgment of the Supreme Court in answering the allegations made by the Applicant is clear, reasoned and fair.

48. The Constitutional Court also reiterates that it does not 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 Constitutional Court case No. KI70/11, *Applicants Faik Hima, Magbule Hima and Bestar Hima*, Resolution on Inadmissibility of 16 December 2011).

49. The Constitutional Court can only consider whether the regular courts' 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).

50. 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).

51. In this regard, the Court notes that the Applicant has not presented 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 clarify how the referred articles of the Constitution and ECHR support his claim, as required by Article 113.7 of the Constitution and Article 48 of the Law.

52. In sum, the allegations of a violation of his rights and freedoms are unsubstantiated and not proven and thus are manifestly ill-founded.

53. For the foregoing reasons, the Court considers that, in accordance with Rule 36 (1) c) and (2) b), the Referral is inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113 (7) of the Constitution, Article 48 of the Law, Rules 36 (1) c), 36 (2) b) and 56 (2) of the Rules of Procedure, on 30 June 2014, unanimously

DECIDES

I. TO DECLARE 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 **President of the Constitutional Court**

Almiro Rodrigues Prof. Dr. Enver Hasani

KI99/14 and KI100/14, Shyqyri Syla and Laura Pula, Judgment of 3 July 2014 - Constitutional Review of the Decisions of the Kosovo Prosecutorial Council related to the election procedure of Chief State Prosecutor, Judgment of 8 July 2014

Joined cases KI99/14 and KI100/14, Decision of 3 July 2014.

Key words: Individual Referral, request for interim measure, exhaustion of legal remedies, non-discrimination, right to fair proceedings

The subject matter of this Referral is the request for constitutional review of the election procedure for the position of Chief State Prosecutor, respectively, the Decision of the Kosovo Prosecutorial Council on the nomination and proposal of the candidate for the Chief State Prosecutor, KPK No. 151/2014, dated 6 June 2014 (Mr. Shyqyri Syla, KI 99/14) and Decision KPK/146/2014, dated 5 June 2014, regarding the Applicant's request (Mrs. Laura Pula KI 100/14) for reconsideration of the final list of candidate's evaluation.

On 27 March 2014 the Kosovo Prosecutorial Council published the internal announcement for the position of Chief State Prosecutor. The Applicant (Mr. Shyqyri Syla, KI99/14) was among the three highest ranking candidates, whereas the Applicant (Mrs. Laura Pula, KI100/14) was ranked fifth and therefore not subject of further selection proceedings. On 6 June 2014 the KPC composed of seven (7) members held a secret vote and, with four (4) votes elected the nominee for the position of Chief State Prosecutor. The Applicant (Mr. Shyqyri Syla, KI99/14) received three (votes) and, thus, was not elected as Chief State Prosecutor nominee. Consequently, the Applicants filed Referrals with the Constitutional Court.

The Applicants allege that the KPC during the election procedure for the position of Chief State Prosecutor violated their rights guaranteed by the Constitution of the Republic of Kosovo (hereinafter: the "Constitution"), namely Article 3 [Equality before the Law], Article 7 [Values] and Article 24 [Equality before the Law] of the Constitution of the Republic of Kosovo.

On 4 July 2014, the Court granted the Applicant's request for interim measure holding that there is a prima facie case of the Referral and that the Applicant put forward enough convincing arguments that the appointment of the candidate for the Chief State Prosecutor by the President of the Republic of Kosovo may result in unrecoverable damages for the Applicant.

In Applicant's case (Mr. Shyqyri Syla, KI 99/14), the Court considered that the circumstances serve objectively to justify the Applicant's apprehension that the KPC, during its voting procedure for the Chief State Prosecutor nominee by including the member, who was also a candidate for the position of Chief State Prosecutor lacked the necessary appearance of impartiality. Thus, the Court considers that the member who was a candidate for the position of the Chief State Prosecutor should have been excluded from the voting and nomination procedure and replaced by another member.

In relation to Applicant (Mrs. Laura Pula, KI 100/14), the Court held although there are appearances raising serious questions that the Applicant may have been discriminated against because of her gender in the testing procedure, the Court finds that she has not substantiated that she was actually discriminated against in the testing procedure because of her gender. Thus, the aforementioned principle of non-discrimination has not been violated.

Regarding to the right to fair proceedings, the Courts considered that the failure of the KPC in its Decision, KPK No. 146/2014 dated 5 June 2014, to accept its own established rules and to provide a clear reasoning with respect to the essential aspects of the Applicant's factual and legal procedural argument is in breach of the right to fair proceedings.

In conclusion, the Court assessed that the election procedure conducted by the KPC constituted a violation of the right to fair proceedings, guaranteed by Article 31 of the Constitution and Article 6 European Convention on Human Rights and therefore the election procedure for the position of Chief State Prosecutor is to be repeated, without prejudice as to the outcome of that repeated procedure.

JUDGMENT
in
Cases No. KI99/14 and KI100/14
Applicant
Shyqyri Syla and Laura Pula
Constitutional Review
of the Decisions of the Kosovo Prosecutorial Council related to the election procedure of Chief State Prosecutor

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 and
Arta Rama-Hajrizi, Judge

Applicants

1. The Applicants are Mr. Shyqyri Syla (KI99/14), Chief Prosecutor of the Basic Prosecution Office in Mitrovica and Mrs. Laura Pula (KI100/14), Prosecutor in the Office of the Chief State Prosecutor (hereinafter: the "Applicants"). The Applicants were candidates in the election procedure for the position of the Chief State Prosecutor.

Challenged decision

2. The Applicants challenge the election procedure for the position of Chief State Prosecutor. Applicant Mr. Shyqyri Syla, Referral KI99/14, challenges Decision KPK No.151/2014 of the Kosovo Prosecutorial Council dated 6 June 2014 on nomination of the candidate for the Chief State Prosecutor. Whereas, Applicant Mrs. Laura Pula, Referral KI100/14 challenges Decision KPK/146/2014 dated 5 June 2014 regarding her request for reconsideration of the final list with candidate's evaluation scores of 31 May 2014.

Subject matter

3. The subject matter is the constitutional review of the election procedure for the position of Chief State Prosecutor, respectively, the Decision of the Kosovo Prosecutorial Council on the nomination and proposal of the candidate for the Chief State Prosecutor (KPK No. 151/2014, dated 6 June 2014) Mr. Shyqyri Syla and Decision KPK/146/2014, dated 5 June 2014, regarding the Applicant's request Mrs. Laura Pula for reconsideration of the final list of candidate's evaluation.

4. The Applicants allege that the Kosovo Prosecutorial Council (hereinafter: the KPC) during the election procedure for the position of Chief State Prosecutor violated their rights guaranteed by the Constitution of the Republic of Kosovo (hereinafter: the "Constitution"), namely Article 3 [Equality before the Law], Article 7 [Values] and Article 24 [Equality before the Law] of the Constitution.

5. In addition, Applicant Mr. Shyqyri Syla, Referral KI99/14, requested from the Constitutional Court of the Republic of Kosovo (hereinafter: the "Court") to impose an interim measure, namely to suspend the appointment procedure of the nominated candidate, awaiting the outcome of the proceedings before the Court.

Legal basis

6. 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 (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 Court

7. On 12 June 2014 the Applicants individually submitted their Referrals to the Court.

8. On 13 June 2014 the Applicant (KI99/14, Mr. Shyqyri Syla) submitted to the Court the copy of his complaint filed with the Basic Court in Prishtina, Department for Administrative Matters.

9. On 17 June 2014 the President by Decision GJR. KI99/14 appointed Judge Robert Carolan as Judge Rapporteur. On the same date, the President by Decision KSH. KI99/14 appointed the Review Panel composed of Judges: Snezhana Botusharova (Presiding), Ivan Čukalović and Arta Rama-Hajrizi.

10. On 17 June 2014, in accordance with Rule 37.1 of the Rules of Procedure, the President ordered the joinder of Referral KI100/14 with Referral KI99/14. 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 Decisions (GJR. KI99/14 and KSH. KI99/14) of the President on the appointment of the Judge Rapporteur and the Review Panel on 17 June 2014.

11. On 19 June 2014 the Court notified the Applicants of the registration and joinder of the Referrals. On the same date, the Court notified and sent copies of the Referrals to the KPC.

12. On 19 June 2014 the Applicant (KI100/14, Mrs. Laura Pula) submitted to the Court supplemental information and arguments.

13. On 24 June2014 the Court sent a copy of the Referral to the President of the Republic of Kosovo.

14. On 24 June 2014 the KPC submitted to the Court the documents related to the election procedure.

15. On 26 June 2014 Judge Kadri Kryeziu notified the Court in writing of his not taking part in the deliberations for the period June-July 2014 awaiting the Court's decision regarding certain allegations raised against him.

16. On 3 July 2014 the Court decided to grant the Request for Interim Measures.

17. On the same date, the Court deliberated and voted on the case.

Summary of the facts

18. On 27 March 2014 the KCP published the internal announcement for the position of Chief State Prosecutor.

19. On 11 April 2014 the KPC rendered Decision KPK No. 90/2014 on the appointment of the KPC Panel for Preliminary Review. On the same date, the KPC rendered Decision KPK No. 91/2014 on the appointment of the KPC Commission for reconsideration.

20. On 17 April 2014 the KPC Panel for Preliminary Review, upon review of the applications and the documents submitted by the

nine (9) candidates, decided that only six (6) candidates fulfilled the criteria for the position of Chief State Prosecutor as established by the law in force.

21. On 25 April 2014 the Commission for Reconsideration upon review of complaints filed by two (2) not selected candidates during the preliminary review process, decided to approve their request and announced the list of eight (8) candidates eligible for further selection procedure.

22. From 29 until 31 May 2014 the interview process of these eight (8) candidates took place.

23. On 31 May 2014 the KPC published the list with the final evaluation scores for each candidate. Pursuant to the provisions of the Regulation on Criteria and Procedures for Selection and Proposal for Appointment of Chief State Prosecutor (hereinafter: the Regulation),the three highest ranking candidates in the list were eligible for the secret voting procedure.

24. The Applicant (Mr. Shyqyri Syla, KI99/14) was among the three highest ranking candidates, whereas the Applicant (Mrs. Laura Pula, KI100/14) was ranked fifth and therefore not subject of further selection proceedings.

25. Against the aforementioned list with the final evaluation scores, the Applicant (Mrs. Laura Pula, KI100/14) filed with the KPC a request for reconsideration.

26. In her request for reconsideration, the Applicant (Mrs. Laura Pula, KI100/14), claimed that the procedures were violated in terms of awarding scores to the candidates. The Applicant, for the submitted concept document, by one of the members of the Panel stated that she was awarded five (5) points, whereas referring to the table of evaluation scores, considered as an integral part of the Regulation, no less than ten (10) points were required to be awarded.

27. On 5 June 2014 the KPC by Decision KPK/146/2014 rejected as ungrounded the request for reconsideration filed by the Applicant (Mrs. Laura Pula, KI100/14).

28. The KPC in its Decision to reject the Applicant's request for reconsideration held the following:

"The KPC found that the table in page 30 of the Regulation, although it is an integral part of the Regulation, only served as a guiding framework for evaluation, and not as a determining framework for setting the scoring procedure of each KPC member."

29. On 6 June 2014 the KPC composed of seven (7) members held a secret vote and, with four (4) votes elected the nominee for the position of Chief State Prosecutor. The Applicant (Mr. Shyqyri Syla, KI99/14) received three (votes) and, thus, was not elected as Chief State Prosecutor nominee.

30. One of the seven (7) members of the KPC, who voted for the Chief State Prosecutor nominee, was also a candidate in the election procedure for the position of the Chief State Prosecutor. This member was selected as a candidate in the final list of eight (8) candidates of 25 April 2014, but was not selected as a candidate in the final list of the three (3) highest ranking candidates of 31 May 2014, which was the subject of the secret voting by the KPC Panel. Based on the selection procedure files submitted by the KPC, it appears that this candidate, who is a member of the KPC, was not a member of the KPC Panel for Preliminary Review and KPC Commission for Reconsideration.

31. On the same date the KPC rendered Decision KPK No. 151/2014 on the nomination of the candidate for Chief State Prosecutor.

32. On 12 June 2014 the KPC sent to the President of the Republic of Kosovo the proposal for the appointment of the Chief State Prosecutor nominee.

33. On 13 June 2014 against Decision KPK No. 151/2014 on the nomination and proposal of the candidate for the position of the Chief State Prosecutor dated 6 June 2014, the Applicant (Mr. Shyqyri Syla, KI99/14) submitted a claim to the Basic Court in Prishtina, Department for Administrative Matters.

34. To this date, the President of the Republic of Kosovo has not issued a decree on the appointment of the KPC nominated candidate for the position of Chief State Prosecutor.

Applicants' allegations

35. As stated above, the Applicants allege that the KPC during the election procedure for the position of the Chief State Prosecutor violated their rights guaranteed by the Constitution, namely Article 3 [Equality before the Law], Article 7 [Values] and Article 24 [Equality before the Law] of the Constitution.

1. Applicant's allegations (Mr. Shyqyri Syla, KI99/14)

36. The Applicant argues as follows:

> *"On 06.06.2014 a meeting of the Kosovo Prosecutorial Council was held, where votes were cast for a candidate for the position of Chief State Prosecutor. In this meeting, a participant and voting member was also the candidate [...] for the position of Chief Prosecutor, but did not make it to the top three candidates.*
>
> *I consider that the fact that this candidate voted was a matter of conflict of interest, and, furthermore, of arbitrariness, since he did not take part neither in evaluating the documents submitted by the candidates, nor in their interviews, and without having any general knowledge, he casted his vote putting the candidates in an unequal position."*

37. The Applicant requests the Court:

> *"To annul the election procedure and impose interim measure to stop the appointment decree."*

2. Applicant's allegations (Mrs. Laura Pula, KI100/14)

38. The Applicant argues that the KPC arbitrarily failed to comply with the Regulation on Criteria and Procedures on Nomination and Appointment of the Chief State Prosecutor (hereinafter: the Regulation).

39. In this regard, she holds as follows:"*Therefore, this puts into question the principle of legal certainty, since the candidates could not expect that the scoring manners may differ from the one provided by the Regulation on Criteria and Procedureson Nomination and Appointment of the Chief State Prosecutor."*

40. Regarding her allegation regarding a violation of her constitutional rights, guaranteed by Articles 3, 7 and 24 of the Constitution, the Applicant also refers to the provision of the Convention on

Elimination of All Forms of Discrimination Against Women, and argues as following:

> *"The failure to observe gender equality is found in the fact that amongst the eight (8) candidates for Chief Prosecutor, I am the only female candidate. According to the Convention on Elimination of All Forms of Discrimination against Women, discrimination against women is an infringement of equality of rights and respect for human dignity, it hampers participation of women in equal conditions with men in political, social, economic and cultural life, it hampers improvement of welfare of society and family, and furthermore, renders difficult the development of potentials of women in serving their homeland and humanity.*
>
> *According to Article 2, item "q" of this Convention, it is provided that "all forms of discrimination against women are prohibited, and that states shall refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation.*
>
> *Based on the above, we also consider that there has been a violation of Article 22 of the Constitution of the Republic of Kosovo – Universal Declaration on Human Rights, item 6, concretely the Convention on Elimination of All Forms of Discrimination against Women."*

41. With regard to the exhaustion of legal remedies, the Applicant claims the following:

> *"Furthermore, the Law on the KPC does not provide any legal remedy related to complaints against a KPC decision. One must emphasize that the absence of a legal remedy for appealing KPC decisions at a second instance has been identified also by international mechanisms in Kosovo, while the provision of an appeal procedure is also a recommendation of the Venice Commission, which suggested that such a remedy be included when amending the laws on the KPC and the KJC."*

Relevant legal provisions related to the appointment of the Chief State Prosecutor

I. Article 109 [State Prosecutor], paragraph 7 of the Constitution

The Chief State Prosecutor shall be appointed and dismissed by the President of the Republic of Kosovo upon the proposal of the Kosovo Prosecutorial Council. The mandate of the Chief State Prosecutor is seven (7) years, without the possibility of reappointment.

II. Law No. 03/l-224 on the Kosovo Prosecutorial Council

Article 5 [Composition and Selection of Members of the Council]

1. The Council shall be composed of nine (9) members who are citizens of the Republic of Kosovo, five (5) of whom shall be prosecutors.

2. The five (5) prosecutors serving as members of the Council shall include:

2.1. the Chief State Prosecutor;

2.2. one (1) prosecutor from the Special Prosecution Office elected by the prosecutors serving in that Office;

2.3. one (1) prosecutor from Appellate Prosecution Office elected by the prosecutors serving in that Office, and

2.4. two (2) prosecutors from Basic Prosecution Office elected by the prosecutors serving in that Office.

3. The non-prosecutor members of the Council shall be appointed by the Council based on a list of at least five (5) candidates for each position submitted by the relevant bodies and shall include:

3.1. one (1) member from the Chamber of Advocates who has specialized in criminal law, upon the proposal of the Executive Council of the Chamber of Advocates;

3.2. one (1) professor from the law faculties of Republic of Kosovo upon the proposal of the Higher Education Department or other relevant authority related to higher education;

3.3. one (1) representative of civil society with senior professional preparation and with knowledge from the field of human rights.

[…]

Article 20 [Appointment of Chief State Prosecutor and Chief Prosecutors]

1. The Chief State Prosecutor shall be nominated by the Council from among prosecutors and shall be appointed by the President for a seven (7) year term, with no possibility for reappointment.

2. The Council shall appoint Chief Prosecutors for all other units of the State prosecutor. Subject to the qualifications set forth in the Law on State Prosecutors, any prosecutor is eligible to be appointed to the post of the Chief Prosecutor.

3. A Chief Prosecutor shall be appointed by the Council for a four (4) year term, with the possibility for one additional term.

4. In order to ensure that the State Prosecutor reflects the multiethnic nature of Kosovo, the Council shall endeavor to ensure that members of Communities that are not in the majority in Kosovo shall be appointed to management roles.

5. If a candidate proposed as a Chief Prosecutor is a member of the Council, he or she cannot participate in deliberations or voting for the appointment of the Chief Prosecutor.

6. The Council shall be authorized to remove a Chief Prosecutor from that position, pursuant to a performance assessment conducted in accordance with applicable law, or upon a finding of criminal conduct, mismanagement, incompetence, or failure to fulfill the duties of the position.

[…]

III. Regulation on Criteria and Procedures for Selection and Proposal for Appointment of Chief State Prosecutor

Section 9 [KPC Preliminary Review Panel]

1. KPC shall establish a Panel for preliminary review of applications for Chief State
Prosecutor, with the following composition:

1.1 One KPC member; Chair;

1.2 One prosecutor from APO who did not apply for SPP; and

1.3 One prosecutor from SPRK who did not apply for CSP.

2. The Panel shall have a competence and sole responsibility for consideration of applications for CSP if they satisfy the criteria provided for under Section 3 paragraph 1, 2, 3 and 4 and the section 4 of this Regulation.

3. The Panel shall, within 7 days, review the applications and prepare a shortlist of candidates satisfying the criteria for CSP.

4. Candidates who do not meet the criteria for CSP shall be notified in written. The notification should contain also the information on the entitlement of the candidate to make a request for review by the Reconsideration Commission within 5 days from the day of receipt of notification.

5. The candidates who satisfy the criteria for CSP shall be notified in written.

6. Notification regarding the paragraph 4 and 5 of this section shall be published in both official languages on SPO and KPC webpage. The candidates shall be informed by official e-mail or telephone through a message. Acknowledgment of receipt of notification shall be mandatory for all candidates for CSP.

Section 10 [Reconsideration Commission]

1. KPC shall establish a Reconsideration Commission, which shall be competent and in charge to review appeals filed against decisions of the KPC Panel for preliminary review of applications for CSP.

2. The Reconsideration Commission shall be composed of:

2.1 Chief State Prosecutor, Chair;

2.2 One prosecutor from APO who did not apply for SPP; and

2.3 One prosecutor from SPRK who did not apply for CSP.

3. The Commission shall, within 5 days of expiry of deadline for receipt of appeals render a decision on each appeal received.

4. Candidates who filed the appeals and the KPC members shall be notified of the decision of Commission;

5. Decisions of the Commission shall be published on KPC and SPO webpage, at least 24 hours after rendering the decision.

Section 12 [Evaluation Commission, Interview and Voting]

1. KPC members who are not excluded under paragraph 5 of the Article 20 of Law on KPC shall make the Commission for evaluation, interviewing and voting stage.

Section 13 [Evaluation of Candidates for Chief State Prosecutor]

1. Evaluation of candidates for Chief State Prosecutor shall include the personal, professional and moral integrity, which will be based on:

1.1 Performance evaluation in the last three years;
1.2
1.2 Information received from ACA,

1.3 Information received from FIU;

1.4 Information received by KIA;

1.5 Information regarding eventual disciplinary measures imposed against the candidates and information from ODC if any candidate is subject to disciplinary investigations by ODC.

2. Chief State Prosecutor is obliged to request information from paragraph 1, items 1.2; 1.3; 1.4; and 1.5 of this section for all the candidates who applied for CSP. These information will be

put in the file of the candidate and KPC members will have access on them.

The information from paragraph 1, items 1.2; 1.3; 1.4 and 1.5 of this section for the candidates disqualified by the panel and the Commission on re-consideration shall be submitted to the future Chief State Prosecutor.

Section 16 [Scoring of Candidates]

1. Scoring of candidates shall be based on forms number two 2 and 3.

2. Each KPC member shall put the points for candidates according to form 2 and

3. Points of all KPC members shall be summarized in a single form for each candidate.

4. Following the scoring of candidates, KPC shall list the candidates according to the points acquired during the evaluation and interviewing process, shortlisting three candidates with majority of points.

5. Each KPC member shall put the points for a candidate not more than 100 (one hundred) points as follows:

5.1 Regarding the self-evaluation documents one candidate can get mostly 20 (twenty) points;

5.2 On concept-paper one candidate can get mostly 30 (thirty) points;

5.3 Regarding the verbal interview one candidate can get mostly 20 (twenty) points;

5.4 On the integrity one candidate can get mostly 30 (thirty) points;

6. The three candidates with majority of points shall undergo a secret ballot process by KPC members.

7. A candidate included in the shortlist of three (3) candidates for KPC voting may, within three (3) days of notification, ask the KPC to reconsider his/her request only on grounds of

procedural violations in the course of implementation of this Regulation.

8. The notification from paragraph 7 of this section is done in written form and there is attached a copy of general points of the candidate.

9. The candidates which are not listed among the three (3) first candidates with the highest number of points have the right to have access in his/her evaluation documents to verify the pointing. Nevertheless, the candidate has no right to know the identity of KPC member who made evaluation and individual pointing.

10. KPC shall, within seven (7) days upon receiving the request of the candidate to verify the pointing shall decide if such request will be granted or rejected and it shall promptly inform in writing the candidate of the decision being rendered.

Section 17 [Voting Process for Chief State Prosecutor]

1. First three (3) candidates who get more points will undergo the process of secret ballot.

2. Voting of three (3) candidates ranked according to the points shall be done in secret ballot by the KPC members, excluding KPC member if he is one of three candidates for whom there will be voted.

3. If the secret ballot results to be even, another secret ballot will be conducted again, only for the candidate who received even votes until the voting in which a candidate gets the necessary votes for CSP.

4. The candidate who in the secret ballot acquires the majority of votes of KPC members shall be proposed for appointment as Chief State Prosecutor of Kosovo, to the President of Republic of Kosovo.

5. A proposal for appointment shall be signed by the KPC Chair. The proposal for appointment shall contain a written reasoning, including the whole selection process of the proposed candidate for appointment as Chief State Prosecutor.

6. KPC shall submit the proposal for appointment to the President of State no later than five (5) days from the day the KPC decision was rendered.

7. The KPC secret ballot shall be open to public, but KPC may vote to close the part of the meeting discussing merits of candidates for CSP.

Admissibility of the Referral

42. First of all, in order to be able to adjudicate the Applicants' Referral, the Court has to examine whether the Applicants have met the requirements of admissibility, which are foreseen by the Constitution and further specified by the Law and Rules of Procedure.

43. 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."

44. The Court considers that the Applicants are authorized parties, in compliance with Article 113, paragraph 7, of the Constitution.

45. The Court also refers to Articles 48 and 49 of the Law, which provide that:

"48. 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.

49. 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."

46. The Court also takes into account Rule 36 (1) of the Rules of Procedure, which stipulates:

"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."

47. As stated above, the Applicants challenge the election procedure for the position of Chief State Prosecutor. In this regard, Applicant (Mrs. Laura Pula, KI100/14) specifically challenges Decision KPK No. 146/2014 of the KPC Panel for Reconsideration, dated 5 June 2014, whereas Applicant (Mr. Shyqyri Syla, KI99/14) challenges KPC Decision KPK No. 151/2014, dated 6 June 2014, on the nomination of the candidate for Chief State Prosecutor.

48. The Court notes that the provisions of the law in force, Law No. 03/L-224 on the Kosovo Prosecutorial Council, does not envisage legal remedies against the decisions challenged by the Applicants.

49. In this respect, the Court considers that the Applicants are only obliged to exhaust *"[...] remedies that are accessible, capable of providing redress in respect of their complaints and offering reasonable prospects of success. The remedy's basis in domestic law must therefore be clear* "(See Case *Scavuzzo-Hager and Others v. Switzerland,* App. No. 41773/98, ECHR, 7 February 2006,).

50. However, the Court notes that even if there are legal remedies, in the Applicants' case they are not proved to be efficient. Moreover, taking into consideration the specificity of the election procedure for the position of Chief State Prosecutor and the necessity this to be done in a timely fashion, the Court is of the opinion that there is no legal remedy to be exhausted.

51. In this regard, with reference to cases adjudicated by the Court regarding the appointment and reappointment procedure of judges and prosecutors, specifically with reference to the case No. KI114/10, *Vahide Badivuku,* Constitutional Court, Resolution on Inadmissibility of 8 May 2011,the Court considers that based on the circumstances of the case and completed proceedings, this

Referral differs from the aforementioned case for the following reasons:

52. Firstly, before the entry into force of Law No. 03/L-199 on Courts, the administrative conflict procedure against the final administrative acts was initiated in the Supreme Court. Upon entry into force of the aforementioned Law on Courts (1 January 2013), the administrative conflict procedure is regulated as follows:

Article 14 [The Administrative Matters Department of the Basic Court]

"1. 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.

2. All cases before the Administrative Matters Department of the Basic Court shall be adjudicated by one (1) professional judge unless otherwise provided by Law."

53. Secondly, the Court notes that there is only one position of Chief State Prosecutor as, for example, compared to multiple positions for the appointment or reappointment of judges and prosecutors. The Court is thus aware that it has received several Applications from judges and prosecutors who did not get reappointed. The present case, however, is factually distinguishable. First, because in those other cases there have been multiple positions and the regular courts could remedy the Applications if a violation was proven months later. Second, in the present case, it does not appear that there is sufficient time for any other Court to address that remedy before the appointment by the President of the Republic of Kosovo.

54. The Court, thus, concludes that the Applicants have no available remedies to exhaust before pursuing their claims of a constitutional violation.

55. In addition, the Court also holds that the Applicants submitted their Referrals to the Court within the four (4) months time limit.

56. Further, the Court notes that the Applicants have indicated what constitutional rights they claim to have been violated and they challenge the concrete DecisionsKPK No. 146/2014, dated 5 June 2014, and KPK No. 151/2014, dated 6 June 2014.

57. Therefore, the Court concludes that the Referrals are admissible.

Merits of the case

58. The Applicants mainly allege that the challenged Decisions rendered during the election procedure for the position of Chief State Prosecutor violated their rights as guaranteed by Articles 3 [Equality Before the Law], 7 [Values] and 24 [Equality Before the Law] of the Constitution.

59. In this respect, the Court refers to the aforementioned provisions of the Constitution:

Article 3 [Equality Before the Law]

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.

Article 7 [Values]

1. The constitutional order of the Republic of Kosovo is based on the principles of freedom, peace, democracy, equality, respect for human rights and freedoms and the rule of law, non-discrimination, the right to property, the protection of environment, social justice, pluralism, separation of state powers, and a market economy.

2. The Republic of Kosovo ensures gender equality as a fundamental value for the democratic development of the society, providing equal opportunities for both female and male

participation in the political, economic, social, cultural and other areas of societal life.

Article 24 [Equality Before the Law]

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, relation to any community, property, economic and social condition, sexual orientation, birth, disability or other personal status.

3. Principles of equal legal protection shall not prevent the imposition of measures necessary to protect and advance the rights of individuals and groups who are in unequal positions. Such measures shall be applied only until the purposes for which they are imposed have been fulfilled.

60. Regarding the rights sought by the Applicants, the Court recalls that *"it is master of the characterization to be given in law to the facts of the case and is not bound by the characterization given by an applicant or a government. A complaint is characterized by the facts alleged in it and not merely by the legal grounds or arguments relied on."* (See *mutatis mutandis* Case *Ştefănică and others v. Romania*, App. No. 38155/02, ECtHR, Judgment of 2 November 2010, par. 23)·

61. Therefore, the Court will analyze the complaints of the Applicants based on the alleged facts and the evidence attached to the Referrals regarding their allegations of violation of fundamental rights guaranteed by the Constitution and the European Convention on Human Rights (hereinafter: the "ECHR").

62. In this respect, the Court shall also assess the applicability of the requirements laid down in Article 31 [Right to Fair and Impartial Trial] of the Constitution and Article 6 [Right to a Fair Trial] ECHR with regard to the election procedure conducted by the KPC.

63. Article 31 of the Constitution establishes:

"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."

64. In addition, Article 6 (1) ECHR establishes:

"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."

65. The Court further refers to Article 53 [Interpretation of Human Rights Provisions] of the Constitution, which 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."

66. The Court notes that in the Applicant's case (Mrs. Laura Pula, KI100/14), the Decision on rejecting her request for reconsideration (KPK/146/2014 dated 5 June 2014) was rendered by the Commission for Reconsideration established by the KPC according to the aforementioned applicable legal provisions. Whereas the Decision on the nomination of the candidate for Chief State Prosecutor (KPK No. 151/2014 dated 6 June 2014) was rendered by seven (7) members of the KPC following a secret vote.

67. In this respect, the Court notes that the KPC, as a body established by the Constitution, during the election procedure for the position of Chief State Prosecutor should comply and meet the requirements laid down in Article 31 of the Constitution and Article 6 ECHR.

68. Consequently, the Court shall review the merits of each of the Applicants' allegations.

1. Merits of the case of Applicant Mr. Shyqyri Syla, Referral KI99/14

69. Referring to the election procedure in the Applicant's case, the Court recalls that theApplicant was among the three highest ranking candidates, who were eligible to being submitted to a

further selection procedure, namely the vote by secret ballot by the KPC.

70. Consequently, on 6 June 2014 the KPC composed of seven (7) members conducted a vote by secret ballot, whereby the nominee for the position of Chief State Prosecutor was elected with four (4) votes out of seven (7) votes. The Applicant received three (3) votes and, thus, was not elected as Chief State Prosecutor nominee.

71. The Court further recalls that one of the seven (7) members of the KPC, who voted for the Chief State Prosecutor nominee, was also a candidate in the election procedure for the position of Chief State Prosecutor. This member, as a candidate was selected in the final list of eight (8) candidates of 25 April 2014, but was not selected in the final list of the three (3) highest ranking candidates, subject of the secret voting by the KPC.

72. Based on the above facts, the Applicant challenges the Decision of KPC on the nomination of the candidate for the position of Chief State Prosecutor (KPK No. 151/2014 dated 6 June 2014), and argues that:

> *"I consider that the voting of this candidate was a conflict of interest, and furthermore there was arbitrariness, since he did not take part in evaluating the documents submitted by the candidates, and neither in their interviews, and without having any general knowledge, he cast the voting putting the candidates in an unequal position."*

73. The Court considers that the KPC during the election procedure for the position of Chief State Prosecutor has to meet the principles and requirements set forth in Article 6 ECHR and the European Court of Human Right's (hereinafter the "ECtHR") case law in order to ensure transparent, fair, objective and an election procedure based on equality.

74. As to whether the KPC has met the procedural guarantee including appearances of "impartiality", the Court further refers to the ECtHR's settled case-law. In the Wettstein case, the ECtHR held that the existence of impartiality for the purposes of Article 6, paragraph 1, must be determined according to: "*(i) a subjective test, where regard must be had to the personal conviction and behaviour of a particular judge – that is, whether the judge held any personal prejudice or bias in a given case; and (ii) an objective test, that is to say by ascertaining whether the tribunal*

itself and, among other aspects, its composition, offered sufficient guarantees to exclude any legitimate doubt in respect of its impartiality" (See, among other authorities, *mutatis mutandis* Case *Wettstein v. Switzerland*, App. No. 33958/96, ECtHR, par.42).

75. In this respect, the Court specifically referring to the importance and nature of the position of Chief State Prosecutor notes that even appearances of impartiality are of great importance (See *mutatis mutandis* Case *De Cubber v. Belgium*, App. No. 9186/ 80, ECtHR, Judgment of 26 October 1984, par. 26). What is at stake is the confidence which a public authority such as the KPC during the election procedure for the position of Chief State Prosecutor in a democratic society must inspire in the public as well as the public confidence in the person elected as Chief State Prosecutor.

76. In the Court's view, these circumstances serve objectively to justify the Applicant's apprehension that the KPC, during its voting procedure for the Chief State Prosecutor nominee by including the member, who was also a candidate for the position of Chief State Prosecutor lacked the necessary appearance of impartiality. Thus, the Court considers that the member who was a candidate for the position of the Chief State Prosecutor should have been excluded from the voting and nomination procedure and replaced by another member.

77. Based on the foregoing, the Court finds that, in the present case there has been a violation of the right to fair proceedings guaranteed by Article 31 of the Constitution and Article 6, paragraph 1, ECHR.

78. Furthermore, the Court does not consider it necessary to deal further with the Applicant's allegations of a violation of Articles 3, 7 and 24 of the Constitution, in particular as it has found violations of Article 31 of the Constitution and Article 6 ECHR.

2. Merits of the case of Applicant Mrs. Laura Pula, Referral KI100/14

79. The Court notes that based on the list of 31 May 2014 with the final evaluation scores for each candidate published by the KPC, the Applicant was ranked fifth and therefore was not subject of the voting and nomination procedure. Following the publication of this list, the Applicant filed with the KPC a request for reconsideration.

80. In her request for reconsideration, the Applicant argued that one of the members of the Panel, for the concept document she submitted, awarded her five (5) points, whereas as to the table of evaluation scores, considered as an integral part of the Regulation, no less than ten (10) points were required to be awarded.

81. Consequently, on 5 June 2014, the KPC by Decision KPK/146/2014, rejected as ungrounded the request for reconsideration filed by the Applicant, holding the following:

> *"The KPC found that the table in page 30 of the Regulation, although it is an integral part of the Regulation, only served as a guiding framework for evaluation, and not as a determining framework for setting the scoring procedure of each KPC member."*

82. In this regard, the Applicant argues as follows:

> "*Therefore, this puts into question the principle of legal certainty, since the candidates could not expect that the scoring manners may differ from the one provided laid down in the Regulation on Criteria and Procedureson Nomination and Appointment of the Chief State Prosecutor."*

83. Based on the above, the Applicant alleges a violation of the principle of legal certainty.

84. The Court recalls that this principle is enshrined explicitly in one of the fundamental rights covered by the Constitution and the ECHR, namely the right to a fair trial. In this regard, the Court considers that the principle of legal certainty is at stake if legal obligations are not fully respected. The Court recalls that this principle is also to be guaranteed during the election procedure conducted by all public authorities. Hence, the KPC during the election procedure was required to keep the same standard towards each of the candidates.

85. The Court notes that the KPC accepted that the aforementioned annex with the evaluationprocedure is an integral part of the Regulation. Therefore, the Court holds that the annex clearly establishes the evaluation method by providing the minimum and maximum points for the concept documents and other evaluation components during the election procedure. Therefore, the KPC, by

ignoring its own established rules, created a situation characterized by the presumption of arbitrariness.

86. As a consequence, the aforementioned KPC Decision, by which the Applicant's request for reconsideration was rejected, lacks also clear reasoning. The right to a reasoned decision is rooted in a more general principle embodied in the ECHR, protecting an individual from arbitrariness. In this regard, *"the Decision should contain reasons that are sufficient to reply to essential aspects of the party's factual and legal substantive or procedural argument"* (See *mutatis mutandis* Case *Torija v. Spain*, App. No. 18390/91, ECHR, Judgment of 9 December 1994, par. 30).

87. Based on the foregoing, the Court finds that there is violation of the right to fair proceedings guaranteed by Article 31 of the Constitution and Article 6 ECHR.

88. With regards to the Applicant's allegation of violation of the principle of non-discrimination, the Court notes that under the Constitution, one of the values upon which the constitutional order of the Republic of Kosovo is based is the principle of non-discrimination. In this regard, the Republic of Kosovo has "to *ensure gender equality as a fundamental value for the democratic development of the society, providing equal opportunities for both female and male participation in the political, economic, social, cultural and other areas of societal life."*

89. The Court notes that the aforementioned principle, which is enshrined in the Constitution, namely Articles 3, 7 and 24, must be guaranteed throughout the entire election procedure in the institutions of the Republic of Kosovo.

90. As to the present case, the Applicant (Mrs. Laura Pula, KI100/14), was the only female applicant submitting the "concept document" as part of the testing and scoring procedures. In this relation, the Applicant alleges:

> *"The failure to observe gender equality is found in the fact that amongst the eight (8) candidates for Chief Prosecutor, I am the only female candidate. According to the Convention on Elimination of All Forms of Discrimination against Women, discrimination against women is an infringement of equality of rights and respect for human dignity, it hampers participation of women in equal conditions with men in political, social,*

economic and cultural life, it hampers improvement of welfare of society and family, and furthermore, render difficult the development of potentials of women in serving for their homeland and humanity.
According to Article 2, item "q" of this Convention, it is provided that "all forms of discrimination against women are prohibited, and that states shall refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation"

91. Although there are appearances raising serious questions that the Applicant may have been discriminated against because of her gender in the testing procedure, the Court finds that she has not substantiated that she was actually discriminated against in the testing procedure because of her gender. Thus, the aforementioned principle of non-discrimination has not been violated.

92. Based on the foregoing, the Court considers that the failure of the KPC in its Decision, KPK No. 146/2014 dated 5 June 2014, to accept its own established rules and to provide a clear reasoning with respect to the essential aspects of the Applicant's factual and legal procedural argument is in breach of the right to fair proceedings.

93. Thus, the Court considers that there is a violation of Article 31 of the Constitution, in connection with Article 6 ECHR.

Conclusion

94. In conclusion, the Court assesses that the election procedure conducted by the KPC constitutes a violation of the right to fair proceedings, guaranteed by Article 31 of the Constitution and Article 6 ECHR. Thus, the Court holds that the election procedure for the position of Chief State Prosecutor is to be repeated, without prejudice as to the outcome of that repeated procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution and Rule 56 (1) of the Rules of Procedure, at its session held on 3 July 2014, unanimously

DECIDES

I. TO DECLARE the Referrals admissible;

II. TO HOLD that there has been violation of Article 31 of the Constitution in conjunction with Article 6 ECHR;

III. TO ANNUL the challenged Decisions KPK No. 146/2014 and KPK No. 151/2014 on the Nomination of the candidate for Chief State Prosecutor;

IV. TO ORDER the KPC to repeat the election procedure for the position of Chief State Prosecutor in conformity with this Judgment, without prejudice as to the outcome of that repeated procedure;

V. TO ORDER the KPC, 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;

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 Judgment effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Robert Carolan	Prof. Dr. Enver Hasani

KI216/13, Agron Vula, Resolution of 23 January 2014 - Constitutional Review of the Judgment Rev. no. 22/2011, of the Supreme Court with a request for Interim measures of 3 June 2013

CaseKI216/13, Decision of 23 January 2014.

Key words:Individual Referral,Interim Measure

The Applicant alleged that his human rights have been violated by Judgment of the Supreme Court, but also by the court decisions of the courts of lower instances: 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, Article 6 [The right to a fair trial] and Article 13 [The right to an effective remedy] of the ECHR, and [Protection of property] of Protocol 1 of the ECHR.

The Applicant alleged that the Court should apply the Interim Measure of the Prohibition of Execution of the Judgment Rev. 22/2013, of the Supreme Court, because it is discriminatory and unconstitutional.

The Applicant has not provided arguments on the nature of the violation, has not clarified the circumstances in which it has potentially occurred, has not specified the scope of the violation or the constitutional consequences, and in fact, he has only attached to Referral the court decisions related to the case and has emphasized that the Decision of the IOBK, as it is, should have been implemented, even though he has also initiated a court dispute which was concluded as unfavorable for the Applicant.

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 20 of the Law on Constitutional Court and Rule 56 of the Rules of Procedure, on 23 January 2014, unanimously declares the Referral inadmissible as manifestly ill-founded and the Court finds no reason to apply the interim measure, and as such it is rejected.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI216/13
Applicant
Agron Vula
Request for Constitutional review of the Judgmentof the Supreme Court, Rev. no. 22/2011, of 3 June 2013, with a request for Interim measures

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. Agron Vula, from Gjakova, represented by lawyer Mr. Teki Bokshi, from Gjakova.

Challenged decision

2. The challenged decision is the Judgment of the Supreme Court, Rev. no. 22/2011, of 3 June 2013, which was served on the Applicant on 27 August 2013.

Subject matter

3. The subject matter is the constitutional review of the Judgment of the Supreme Court, by which the Applicant's revision was rejected as ungrounded and the judgments of the lower instance courts, by which the Applicant's claim for damage compensation was rejected, are considered legally grounded and as such remain effective.

Legal basis

4. Article 113.7 of the Constitution of the Republic of Kosovo, Article 47 of the Law on the Constitutional Court of the Republic of Kosovo, No. 03/L-121 and Rule 56 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo.

Proceedings before the Court

5. In October 2009, the Applicant submitted first Referral to the Court, with the same arguments and facts, and the Court by Resolution KI57/09 of 17 August 2011, declared the Referral inadmissible due to the fact that it was premature, and held that the matter of the Referral was still pending before the regular courts.

6. On 22 November 2013, the Applicant filed the Referral with the Court.

7. On 3 December 2013, by Decision GJR. KI216/13, the President of the Court appointed Judge Kadri Kryeziu as Judge Rapporteur and the Review Panel composed of Judges: Robert Carolan (Presiding), Almiro Rodrigues and Ivan Čukalović.

8. On 11 December 2013, the Constitutional Court informed the Applicant, the Supreme Court and the Municipality of Gjakova of the registration of the Referral.

9. On26 December 2013,the Courthasreceiveda writtenresponsefrom the Municipality of Gjakova to whichwereattached theJudgmentof the District CourtinPejaAc. No.151/10and theJudgmentof the Supreme CourtonRevisionRev. 22/2011.

10. On8 January 2014,the Courtreceived from the Applicant, "written explanation" regarding his referral wherethe Applicant reiteratedthe argumentsalreadystated in the Referral, by adding copies of some Articles published in the newspaper “Koha ditore” in respect to the ConstitutionalCourt decisionsregarding the implementationoftheIOBK decisions.

11. On 23 January 2014, the Review Panel considered the report of the Judge Rapporteur and presented to the Court the recommendation on inadmissibility of the Referral.

Summary of facts

With regard to the contested procedure

12. The Applicant, Agron Vula, had a status of a civil servant in the Municipality of Gjakova at the position of the Head of Fire Prevention and Investigation of the Professional Firefighters Unit, which was a part of the Municipality.

13. On 19 August 2003, by Decision 12. No. 01-139, rendered by the Chief Executive of the Municipality, he was suspended with payment until the conclusion of the procedure for determining the responsibility, or disciplinary irresponsibility that was to be initiated against him.

14. Based on the case file, this disciplinary procedure was never conducted, thus the Applicant dissatisfied with this decision, initiated the contested procedure in regular courts, which went through two main phases.

15. The first phase of the contested procedure had commenced at the Municipal Court in Gjakova and was concluded by Judgment Rev. No. 10/2006, of 25 October 2006, and the Applicant never attached those court decisions to the Referral.

16. On 7 April 2009, the District Court in Peja rendered the Judgment C. No. 121/09, allowing the repetition of the proceedings effectively concluded on the basis of the Judgment of the District Court in Peja, Ac. No. 113/05, of 29 September 2005.

17. According to the reasoning of this decision, the key element in allowing the repetition of the procedure is the Decision of the Independent Oversight Board of Kosovo, which decided over the same legal matter and this new fact must be taken into consideration.

18. On 23 September 2009, the Municipal Court in Gjakova rendered the Judgment C. No. 555/07, by which it obliged the Municipality of Gjakova to pay to the Applicant ½ of personal income at the amount he used to receive while he was employed full time by the employing authority, for the period from 1 September 2003 to 30

October 2004, while the full amount of personal income of 242.66 €, as long as the legal conditions exist.

19. On 22 October 2010, the District Court in Peja rendered the Judgment Ac. No. 151/10, by which it modified the Judgment of the Municipal Court in Gjakova, C. No. 555/07, and decided on this legal matter by rejecting the Applicant's claim as ungrounded.

20. On 3 June 2013, the Supreme Court of Kosovo rendered the Judgment Rev. No. 22/2011, by which it rejected the Applicant's request for revision of the Judgment of the District Court, Ac. No. 151/2010, as ungrounded.

21. The Supreme Court of Kosovo, in its reasoning of the Judgment on the revision emphasized, among others, that "*the second instance court's Judgment was rendered by correct application of the material law, when it concluded that the claimant's statement of claim is not grounded, because pursuant to the Decision of the Independent Oversight Board of Kosovo A.02.158/2005 of 25.02.2008 there was no decision on merits in relation to the claimant's employment relationship, because the matter was remanded to the respondent for deciding in administrative procedure".*

With regard to the administrative and executive procedure

22. Concurrently with the procedure in the court, the Applicant initiated the administrative procedure by filing a complaint to the Independent Oversight Board of Kosovo (IOBK), as the body competent for reviewing complaints of civil servants.

23. On 25 February 2008, IOBK, in deciding on the Applicant's complaint, rendered Decision A02. 158/2005, partially approving the Applicant's complaint by holding that there had been violations of procedures, provided by legal acts governing the civil service and particularly of procedures of determining the responsibilities of the civil servant, and by this decision obliged the employing authority, namely the Municipality of Gjakova to conduct within 15 days the disciplinary procedure against the Applicant pursuant to the rules in force. (Clarification: the Decision of the IOBK in its introduction contains the suffix of the year 2005, while at the end of 2007, and is thus referred to in court decisions once with the year 2005, the other time with the year 2007, however, it is essentially the same decision).

24. On 30 July 2013, the Municipal Court in Gjakova allowed the execution of the Decision of the IOBK by the Clause of the Judgment E. No. 1268/09.

25. On 30 December 2009, the Municipal Court in Gjakova rendered the Judgment E. No. 1268/09, approving the objection requested by the Municipality of Gjakova against the Judgment E/No. 1268/09, of 30 July 2009, and annulled all the performed actions of the appealed decision.

26. In the reasoning of this Decision, the Municipal Court had emphasized that the Decision rendered by the IOBK had to do with a procedural obligation of the employing authority, namely the conduct of the disciplinary procedure and had nothing to do with any monetary obligation, thus pursuant to the Law on the Executive Procedure, it did not represent an executive title.

27. On 22 October 2010, the District Court in Peja rendered Resolution 139/10, by which it rejected as ungrounded the Applicant's appeal and upheld the Decision of the Municipal Court in Gjakova, E. No. 1268/09, of 30 December 2009.

28. In the reasoning of this Resolution, the District Court, among others, emphasized that *"The legal assessment of first instance court as fair and lawful is approved in entirety also by second instance court, since the appealed ruling does not constitute substantial violations of contested procedure provisions pursuant to Article 182 paragraph 2 item (b), (g), (j) and (m) of LCP"*.

Applicant's allegation for constitutional violations

29. The Applicant alleged that his human rights have been violated by Judgment of the Supreme Court, but also by the court decisions of the courts of lower instances: 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, Article 6 [The right to a fair trial] and Article 13 [The right to an effective remedy] of the ECHR, and [Protection of property] of Protocol 1 of the ECHR.

30. The Applicant further alleged that the Constitutional Court, in similar cases, had decided to declare Referrals admissible, emphasizing in particular the Judgment of this Court, KI55/11, the

Applicant F.P., and cases of Applicants E.K. (KI04/12) and V.M. (KI129/11) when it obliged the competent public authorities to execute the decisions of the IOBK.

31. The Applicant alleged that the Court should apply the Interim Measures of the Prohibition of Execution of the Judgment of the Supreme Court, Rev. 22/2013, because it is discriminatory and unconstitutional.

Admissibility of the Referral

32. In order to be able to adjudicate the Applicant's Referral, the Court has to first examine whether the Applicant has met the admissibility requirements provided by the Constitution, and further specified by the Law and Rules of Procedure of the Court.

33. Regarding this, it 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".*

34. In this respect, the Court concludes that the Referral KI216/13 has been filed with the Court by an individual, it was filed within the 4 month deadline foreseen by Article 49 of the Law on the Constitutional Court, and also after the exhaustion of available legal remedies, thus it meets the formal requirements for review by the Constitutional Court.

35. In assessing the Applicant's allegations, the Court notes that the Applicant is challenging the Judgment of the Supreme Court, Rev. no. 22/2011, by which his request for revision was rejected as unfounded for the reasons described in the reasoning of the Judgment on the request for revision.

36. In this respect, the Court concludes that in spite of Applicant's allegation that his rights guaranteed by the Constitution were violated by this Judgment, pursuant to Articles 21, 31, 32, 49 and 54, including human rights foreseen by the ECHR, pursuant to Article 6.13 and Protocol One, he has not presented facts that would lead the Court to a conclusion that the alleged violations have in fact occurred. The Applicant has not provided arguments on the nature of the violation, has not clarified the circumstances in which it has potentially occurred, has not specified the scope of

the violation or the constitutional consequences, and in fact, he has only attached to Referral the court decisions related to the case and has emphasized that the Decision of the IOBK, as it is, should have been implemented, even though he has also initiated a court dispute which was concluded as unfavorable for the Applicant.

37. The Court further concludes that regarding the contested procedure, the Applicant is in fact dissatisfied with the final outcome of his case at the courts and he has neither presented facts that would prove the irregularity of the court proceedings in the aspect of the human rights, nor he has presented facts that would prove the extremely arbitrary procedural irregularities that would have resulted in the violation of the rights, guaranteed by the Constitution. The Constitutional Court is not a fact finding court and hereby reiterates that the determination of the correct and complete factual situation is a full jurisdiction of regular courts and that its sole role is to ensure compliance with the rights guaranteed by the Constitution, therefore it cannot act as a "court of fourth instance" (see, *mutatis mutandis,* i.a., Akdivar vs. Turkey, 16 September 1996, R.J.D, 1996-IV, para. 65).

38. With regard to the Applicant's Referral, which refers to the earlier case law of the Constitutional Court and his allegations on the similarity of his case with cases KI55/11, KI04/12 and KI129/11, the Court emphasizes that these cases differ in some respects from each other.

39. While by the Judgment on case KI55/11, in paragraph 17, the Court had concluded that "on *25 June 2008, IOB approved the claim and ordered the employer to reinstate the employment of the Applicant*" (Decision No. 49/08) and thereby it had finally rendered the decision on the legal status of the civil servant at the employment authority (the court ascertained the same facts in case KI04/12, paragraph 10 of the Judgment, and case KI129/11 paragraph 18 of the Judgment), while in case KI216/13, the Board did not decide on the final status of the civil servant, but approved a part of his request and ordered a procedural action of the disciplinary procedure, which in conditions of its application would result with a final decision of the employing authority, a fact which was also determined by the regular courts in the contested procedure.

40. If the Board had approved the Applicant's claim in its entirety and it had obliged the employing authority to reinstate the Applicant to

his job, then the Constitutional Court would have acted upon its earlier case law, however in an uncompleted administrative procedure, with a final merit based decision, the Court cannot hold violation of Article 31 of the Constitution, or of Article 6 of the ECHR. The ECHR, in the case of Barbera, Meseque and Jibardo vs. Spain (Judgment A No. 146, dated 6 December 1988), held the same stance by concluding that "*potential procedural omissions and shortcomings that occur in one phase of the process may be corrected in later phases of the process, thus it is in principle impossible to ascertain whether the process is regular until it has been concluded*".

41. Furthermore, the issueofIOBKdecisioninthe case of the Applicant was the subject for review in regularcourts in the contested procedure while in the casesmentioned by theApplicant, the IOBK decision wasonlysubjectofexecutionin the executiveprocedurewithout going for review to regular courts.

42. In such circumstances, the Applicant has "failed to sufficiently substantiate his allegations for violation of the Constitution by an act of a public authority", therefore the Court, in accordance with Rule 36, paragraph 2, item d, finds that the Referral should be declared as manifestly ill-founded.

43. Since the Referral is inadmissible in entirety, the Court finds no reason to apply the interim measure, and as such it is rejected.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 20 of the Law and Rule 56 of the Rules of Procedure, on 23 January 2014, unanimously

DECIDES

I. TO DECLARE the Referral Inadmissible;

II. To notify this decision to the parties and to publish this Decision in the Official Gazette, in accordance with Article 20.4 of the Law;

III. This Decision is effective immediately.

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

KI53/14, N.P.T "Llabjani" Klina, Resolution of 13 May 2014 - Constitutional Review of Judgment Rev. No. 22/2013 of the Supreme Court of Kosovo, of 13 November 2013

CaseKI53/14, Decision of 13 May 2014.

Keywords: Individual Referral, primafacie, manifestly ill-founded

The Applicant claims that the challenged Judgment constitutes a violation of the Constitution, the ECHR and the Universal Declaration of Human Rights (as mentioned in paragraph 3 of this Resolution) and requests from the Court to annul the challenged Judgment of the Supreme Court.

The Court notes that the Applicant has not raised the alleged constitutional violation of its guaranteed rights to equality before the law and to a fair and impartial trial before the Supreme Court.

Moreover, the Applicant has not presented to the Court any facts showing as to how the alleged violation of the constitutional provisions occurred and at what stage of the judicial proceedings. Furthermore, it has not proven that the challenged judgments and decisions contained possible elements of arbitrariness or that during the procedures it received unequal treatment.

Therefore, the Court concludes that the Applicant has not substantiated its allegations nor has it provided any *prima facie* evidence showing a violation of its rights under the Constitution.

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 47 of the Law and Rules 36 and 56 (2) of the Rules of Procedure, on 13 May 2014, unanimously declares the Referral inadmissible as manifestly ill-founded.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI53/14
Applicant
N.P.T "Llabjani", Klina
Request for constitutional review of Judgment Rev. No. 22/2013 of the Supreme Court of Kosovo of 13 November 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 NPT "Llabjani" from Klina (hereinafter: the Applicant), represented by Mr. Sahit Bibaj, a practicing lawyer from Prishtina.

Challenged decision

2. The challenged decision is Judgment Rev. No. 22/2013 of the Supreme Court of Kosovo of 13 November 2013, served on the Applicant on 16 December 2013.

Subject matter

3. The subject matter is the constitutional review of the challenged Judgment, which allegedly violated the Applicant's rights as guaranteed by Articles 22 [Direct Applicability of International Agreements and Instruments], 24 [Equality Before the Law], paragraph 2, and 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution], Article 6 [Right to a fair trial] of the European Convention for the Protection of Human Rights and Fundamental

freedoms (ECHR) and Article 10 [Right to a public hearing] of the Universal Declaration of Human Rights.

Legal basis

4. Article 113.7 in conjunction with Article 21.4 of the Constitution, Article 47 of the Law on the Constitutional Court of the Republic of Kosovo, No. 03/L-121 (hereinafter: the Law) and Rule 56 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 23 March 2014 the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 2 April 2014 the President of the Court, by Decision No. GJR. KI53/14, appointed Judge Snezhana Botusharova as Judge Rapporteur. On the same day the President appointed the Review Panel composed of Judges: Robert Carolan (Presiding), Almiro Rodrigues and Enver Hasani.

7. On 23 April 2014 the Court notified the Applicant and sent a copy of the Referral to the Supreme Court.

8. On 13 May 2014 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. In 2006 the Applicant signedtwo contractsfor performing construction worksonbehalf of the Joint Stock Company Post and Telecommunication of Kosovo (PTK), whichwere tobe carried outunder the conditionsforeseen by the projectand the contract. Upon the completion of the works, the contracted company would be paid the amount specified in the contract.

10. According to the Applicantduring the execution of the ground worksadditional construction works were necessary. As it was notforeseen by the projector the originalcontracts, the company obtained the consentof the PTK supervisory body(committee) to

perform the additional work needed. Despite the submission of severalclaims, the Applicant wasnot compensated by PTK.

11. On 20 June 2008 the Applicant filed a claim with the Special Chamber of the Supreme Court of Kosovo (hereinafter: the Special Chamber) against the debtor, the Post and Telecommunication of Kosovo (PTK) J.S.C in Prishtina, for the payment of the additional works in the amount of € 87,504.90.

12. On 31 July 2008 the Special Chamber, by Decision SCC-08-200, referred the case to the District Commercial Court in Prishtina to decide on the claim.

13. On 13 October 2009 the District Commercial Court in Prishtina, by Judgment II.C.no.228/2009,rejected the claim as ungrounded.

14. In the reasoning of the Judgment, the District Commercial Court in Prishtina held:

> *"Article 630 LOR (Law on Obligations) provides that a construction contract should be in written form, otherwise the construction of a telephone cable sewage in Peja and in Deçan, not covered by the abovementioned contracts, has the effect that the performance of non-contracted works is made at the claimant's own risk, and, therefore, the contract which is not in written form does not produce legal effects and no judicial protection can be requested for the investments made. In addition, Article 633 LOR provides that for any departure from the construction project, respectively from the contracted works, the performer of the works shall need the written approval from the party ordering the works".*

15. On 18 March2010 the Applicant filed an appeal with the Special Chamber claiming a "*serious violation of civil procedure provisions and erroneous application of substantive law".*

16. On 14 May 2013the Appellate Panel of the Special rendered Decision AC-II-12-0163, declaring itself incompetentto review theApplicant's appeal andreferred the casetotheCourt of Appeals inPrishtina.

17. On 18 June 2013 the Court of Appeals rejected as ungrounded the appeal (Judgment Ae. No. 508/2012), and upheld the Judgment of the District Commercial Court in Prishtina, II. C. no. 228/2009, of 13 October 2009.

18. The Court of Appeals held:

> "*Based on this state of the matter, the Court of Appeals of Kosovo assesses that the first instance court in administering the necessary evidence determined the factual situation in a correct and complete manner and based on such determined situation, it correctly applied the contested procedure provisions and the substantive law when it found that the claimant's statement of claim is ungrounded*".

19. On 23 July 2013 the Applicant submitted to the Supreme Court a request for revision against the Judgment of the Court of Appeals.

20. On 13 November 2013 the Supreme Court, by Judgment Rev. No. 22/2013, rejected as ungrounded the revision submitted by the Applicant.

21. The Supreme Court held:

> "*Based on this state of the matter, the Supreme Court of Kosovo assesses that on the determined factual situation, the first and second instance court have correctly applied the substantive law when they found that the claimant's statement of claim is ungrounded*".

Applicant's allegations

22. The Applicant claims that the challenged Judgment constitutes a violation of the Constitution, the ECHR and the Universal Declaration of Human Rights (as mentioned in Paragraph 3 of this Resolution) and requests from the Court to annul the challenged Judgment of the Supreme Court.

Admissibility of the Referral

23. Before adjudicating the Referral the Court needs first to determine whether the Applicant's Referral has met the admissibility requirements, laid down in 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 stipulates:

"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".

25. The Court notes that the Applicant's Referral was filed with the Court by a legal person within the time limit of 4 months as provided by the Law, and the Applicant has exhausted the legal remedies.

26. The Court also refers to Rule 36 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: [...]

(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.

27. The Court notes that the Applicant challenges the constitutionality of Judgment Rev. No. 22/2013 of the Supreme Court of 13 November 2013, due to erroneous and incomplete determination of the factual situation and unequal treatment of the parties by the courts during the proceedings. The Applicant states that, as a result, the challenged Judgment violated its *"guaranteed rights to equality before the law and to a fair trial".*

28. As to the Applicant's complaint, the Court recalls that in accordance with the principle of subsidiarity it is the task of the Applicant to raise any alleged constitutional violation before the regular courts in order for them to primarily ensure observance of the fundamental rights enshrined in the Constitution.

29. In this respect the Court notes that the Applicant has not raised the alleged constitutional violation of its *guaranteed rights to equality before the law and to a fair and impartial trial* before the Supreme Court.

30. Moreover, the Applicant has not presented to the Court any facts showing as to how the alleged violation of the constitutional provisions occurred and at what stage of the judicial proceedings. Furthermore, it has not proven that the challenged judgments and decisions contained possible elements of arbitrariness or that during the procedures it received unequal treatment.

31. The Court recalls that the Supreme Court rejected the Applicant's revision, stating that "*[...] based on the factual situation, as determined, the first and second instance courts have correctly applied the substantive law, when they found that the statement of claim of the claimant is ungrounded".* However, the Applicant does not substantiate why and how the decision that "*a contract which is not in written form does not produce legal effects and that judicial protection cannot be requested for the investments made". V*iolated its rights to equality before the law and to a fair and impartial trial or constituted any kind of discrimination.

32. Moreover, the Court considers that Judgment Rev. 22/2013 of the Supreme Court as well as the judgments of the lower instance courts provided extensive and comprehensive description of the facts of the case and gave ample reasons for their legal findings when answering the allegations made by the Applicant. Thus, the Court finds that the proceedings before the lower instance courts have been fair and that their findings have been well reasoned (see, *mutatis mutandis, Shub v. Lithuania*, No. 17064/06, ECtHR Decision of 30 June 2009).

33. In this respect, the Court reiterates that it is not its task under the Constitution to act as a court of fourth instance in respect of 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 as well as Case No. KI 70/11, Applicants *Faik Hima, Magbule Hima and Bestar Hima*, Resolution on Inadmissibility of 16 December 2011).

34. The Court can only consider whether the evidence has been presented in such a manner that the proceedings, 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*,No. 13071/87, Report of the European Commission of Human Rights of 10 July 1991).

35. In sum, the Court cannot find arguments and evidence that Judgment Rev. No. 22/2013 of the Supreme Court of Kosovo of 13 November 2013 was rendered in a manifestly unfair and arbitrary manner.

36. Therefore, the Court concludes that the Applicant has not substantiated its allegations nor has it provided any *prima facie* evidence showing a violation of its rights under the Constitution, the ECHR and its protocols or the Universal Declaration of Human Rights.

It follows that the Referral must be rejected as manifestly ill-founded .

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 47 of the Law and Rules 36 and 56 (2) of the Rules of Procedure, on 13 May 2014, unanimously

DECIDES

I. TO DECLARE the Referral 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	**President of the Constitutional Court**
Snezhana Botusharova	Prof. Dr. Enver Hasani

KI57/14, Besianw Gashi, Resolution of 7 July 2014 - Constitutional Review of the Decision of the Kosovo Judicial Council, No. 03/1586, of 20 September 2013..

Case KI57/14, Decision of 7 July 2014.

Keywords: individual referral, right to work and exercise profession

The applicant, Besianë Gashi, filed a Referral pursuant to Article 113.7 of the Constitution of Kosovo challenging the Decision of the Kosovo Judicial Council, No. 03/1586, dated 20 September 2013 as being taken in violation of Article 49 [Right to Work and Exercise Profession] of the Constitution. The Applicant alleges that the Kosovo Judicial Council, by applying the law for the employment of civil servants, violated her right to work. She specifically alleges that the Kosovo Judicial Council by violating the competition announcement procedures and the dismissing her without grounds violated Article 49 [Right to Work and Exercise Profession] of the Constitution.

On the issue of the admissibility of the Referral, the Court held, that the Referral was inadmissible for non-exhaustion because the Applicant could have appealed to the Commission for Solving Contests and Appeals within a 30 day time limit. However, the Applicant never appealed against this decision. In any case, the Referral of the Applicant is out of time because the challenged the Decision of the Kosovo Judicial Council, No. 03/1586, of 20 September 2013 was served on the Applicant on 1 October 2013, whereas the Applicant submitted her Referral to the Court on 28 March 2014, i.e. beyond the four month period allowed by Article 49 of the Law.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI57/14
Applicant
Besianë Gashi
Constitutional Review of the Decision No. 03/1586 of the Kosovo Judicial Council, dated 20 September 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. Besianë Gashi, residing in Obiliq.

Challenged decision

2. The Applicant challenges the Decision No. 03/1586 of the Kosovo Judicial Council, of 20 September 2013, which was served on the Applicant on 1 October 2013.

Subject matter

3. The subject matter of the Referral is the constitutional review of the Decision of the Kosovo Judicial Council which the Applicant alleges violated her right guaranteed by Article 49 [Right to Work and Exercise Profession] 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, No. 03/L-121, on the Constitutional Court of the Republic of Kosovo, (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 28 March 2014 the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the "Court").

6. On 3 April 2014 the President of the Court, by Decision No. GJR. KI57/14, appointed Judge Robert Carolan as Judge Rapporteur. On the same date the President of the Court, by Decision, No. KSH. KI57/14, appointed the Review Panel consisting of Judges Snezhana Botusharova (Presiding), Kadri Kryeziu and Arta Rama-Hajrizi.

7. On 22 April 2014 the Court notified the Applicant of the registration of the Referral and sent a copy of the Referral to the Basic Court in Mitrovica and the Secretariat of the Kosovo Judicial Council.

8. On 19 May 2014 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 30 January 2013 the Kosovo Judicial Council announced that there was a vacant position of Information Officer at the Basic Court in Mitrovica.

10. On 17 April 2013 the Kosovo Judicial Council notified the Applicant that she had been selected for the vacant position.

11. On 25 April 2013 the Applicant signed the appointment document which was for an indefinite period of time. She was supposed to start work on 2 May 2013.

12. On 1 October 2013 the Secretariat of the Kosovo Judicial Council notified the Applicant that her contract would be terminated on 1 October 2013 because the Independent Oversight Board of Kosovo on 10 September 2013 rendered a decision annulling the competition for the position of Information Officer at the Basic

Court in Mitrovica pursuant to an appeal of another candidate that applied for the same position.

Applicant's allegations

13. The Applicant alleges that the Kosovo Judicial Council, by applying the law for the employment of civil servants, violated her right to work. She specifically alleges that the Kosovo Judicial Council by violating the competition announcement procedures and the dismissing her without grounds violated Article 49 [Right to Work and Exercise Profession] of the Constitution.

14. Furthermore, the Applicant claim that *"[…] the KJC [Kosovo Judicial Council] has violated my right to work because it appointed me prematurely in this position for an* indefinite *period, and as a third party in the dispute between the Independent Oversight Board and KJC I was injured as a result of my employer's negligence. If it was not for the multiple negligence of the KJC, starting with the erroneous announcement of the competition, followed by my premature appointment, I would not be waiting and would have no legal ground to seek to continue working at the mentioned position. Upon the signing of the indefinite appointment act, when I resigned from my previous position, my right to work in this position is guaranteed by the KJC. My dismissal from this position could only be done if I would fail in performing my duties, or other violations as provided by law. Therefore, the lack of any of these legal grounds, confirms the lack of legal ground to dismiss me from this position. Therefore, due to these two aggravating actions of the KJC, due to continuous violations of the applicable law, my right to work guaranteed pursuant to Article 49 of the Constitution has been violated."*

15. The Applicant also states that she has not exhausted all available legal remedies because, allegedly, *"[…] these remedies would not be efficient in this case, for two main reasons: grounded suspicion that regular courts cannot be independent to decide objectively in a case against their employer; and the possible delay of the procedures and execution of a possible decision against the KJC as a result of the lack of this independence."*

16. It is argued by the Applicant that *"[…] considering that the responding party in this dispute is the KJC – the only employer and supervisor of all Judges and courts in the Republic of Kosovo, makes it impossible that I am provided a fair and impartial trial*

by any of regular *courts in Kosovo except the Constitutional Court."* The Applicant alleges that *"[…] firstly all the Judges in the Republic of Kosovo, except the Judges of the Court, are selected and proposed to be appointed only by the KJC – in this case the respondent. Secondly, although the Judges have lifetime tenure, their performance is supervised by the KJC and various measures may be exerted against them, which could lead to their dismissal. And finally, in case of undertaking any punishing measure against a Judge by the KJC, the same Judge has no efficient and effective manner of challenging his employer, due to the same reasons mentioned above."*

17. In addition, the Applicant alleges that *"The regular courts in Kosovo are known for the extreme delays of procedures in any of civil matters. Considering the direct dependability from the KJC, the tendency to delay this procedure will be even greater in this case."*

Admissibility of the Referral

18. The Court observes that, in order to be able to adjudicate the Applicant's complaint, it is necessary to 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. As to the present Referral, the Court notes that, on 1 October 2013, the Secretariat of the Kosovo Judicial Council notified the Applicant that her contract would be terminated immediately. Pursuant to this decision, the Applicant could have appealed to the Commission for Solving Contests and Appeals within a 30 day time limit. However, the Applicant never appealed against this decision.

20. 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."*

21. The Court also refers to 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".

22. Furthermore, the Court also refers to Rule 36 (1) a) of the Rules of Procedures which 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…"

23. 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: *AAB-RIINVEST University L.L.C., Prishtina vs. the Government of the Republic of Kosovo*, KI41/09, of 21 January 2010, and see *mutatis mutandis*, ECHR, *Selmouni vs. France*, no. 25803/94, Decision of 28 July 1999).

24. The Court also recalls that in accordance with the principle of subsidiarity, the Applicant is under the obligation to exhaust all legal remedies provided by law, as stipulated by Article 113(7) and the other legal provisions, as mentioned above. Therefore, the Applicant could have filed an appeal in accordance with the legal remedy provided in the decision of the Secretariat of the Kosovo Judicial Council.

25. Because the Applicant failed to appeal from the adverse decision of the Kosovo Judicial Council she has not exhausted all of her effective legal remedies as required by Article 113.7 of the Constitution as one of several preconditions which she must satisfy before her referral can be considered admissible.

26. The Court also considers that a mere suspicion of a party that a court or courts cannot be fair, impartial or independent in their personal cases is is not sufficient to exclude the applicant from her obligations to appeal before the competent bodies in due time (See *Whiteside v the United Kingdom*, decision of 7 March 1994, Application no. 20357/92, DR 76, p. 80 and Case KI16/12, Applicant *Gazmend Tahiraj*, Constitutional Court, Resolution on Inadmissibility of 22 May 2012). Indeed, if those courts are given an opportunity to hear the case and fail to act fairly, impartially

and in an independent manner, the Applicant would then have the opportunity to refer such a violation to the Constitutional Court.

27. In the present case, the Court finds that the Applicant has not exhausted all effective remedies under Kosovo law, in order for the Court to proceed with her allegation about the constitutionality of the decision of the Secretariat of the Kosovo Judicial Council.

28. It follows that the Referral is inadmissible pursuant to Article 113.7 of the Constitution.

29. Even if the Applicant had exhausted all of her effective legal remedies and if the decision of the Kosovo Judicial Council she is complaining about was her final available legal remedy for exhausting her legal rights, then her referral would be inadmissible because it was filed with this Court beyond the four month period allowed by Article 49 of the Law on the Constitutional Court. Because the Applicant has not exhausted all her effective legal remedies, the Court cannot conclude that this referral was not timely filed.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 47 and 49 of the Law and Rule 56 (2) of the Rules of Procedure, on 7 July 2014, 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**
Robert Carolan	Prof. Dr. Enver Hasani

KI05/14, Bejtullah Sogojeva, Resolution of 19 May 2014 - Constitutional Review of the Judgment Rev. No. 396/2012, of the Supreme Court, of 11 September 2013

Case KI05/14, Decision of 19 May 2014.

Key words: Individual referral, manifestly ill-founded

The Applicant alleged that his rights guaranteed by Article 31 [Right to Fair and Impartial Trial] and Article 49 [Right to Work and Exercise Profession] of the Constitution of the Republic of Kosovo.

The Applicant was employed at the Medical Institute in Obiliq as a Medical Coordinator until 15 August 2006. On that date, his employment was terminated since he allegedly reached the full retirement age.

According to the Applicant, his working booklet wrongly stated that he was born on 15 March 1941 when in fact he was born on 15 August 1942. Thus, his employer wrongly calculated his retirement age and as a consequence he had to retire one year before he reached the full retirement age.

It is clear from the Applicant's allegations summarized above that the Applicant merely disputes whether the regular courts correctly applied the applicable law. The Applicant further disagrees with the Supreme Courts' factual findings with respect to his case.

The Constitutional Court pursuant to Article 113 .7 of the Constitution, Article 48 of the Law and Rule 36 (1) c) of the Rules of the Procedure, in its session held on 19 May 2014, unanimously declares that the Referral is manifestly ill-founded.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI05/14
Applicant
Bejtullah Sogojeva
Constitutional Review of the Judgment Rev. No. 396/2012 of the Supreme Court, dated 11 September 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. Bejtullah Sogojeva residing in Prishtina.

Challenged decision

2. The Applicant challenges the Judgment of the Supreme Court, Rev. No. 396/2012, of 11 September 2013, which was served on the Applicant on 18 December 2013.

Subject matter

3. The subject matter of the Referral is the constitutional review of the Judgment of the Supreme Court by which the Applicant alleges that his rights guaranteed by Article 31 [Right to Fair and Impartial Trial] and Article 49 [Right to Work and Exercise Profession] of the Constitution of the Republic of Kosovo (hereinafter: the "Constitution") have been violated.

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"), 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 17 January 2014 the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the "Court").

6. On 31 January 2014 the President of the Court, by Decision No. GJR. KI05/14, appointed Judge Ivan Čukalović as Judge Rapporteur. On the same date the President of the Court, by Decision, No. KSH. KI05/14, appointed the Review Panel consisting of Judges Altay Suroy (Presiding), Snezhana Botusharova and Arta Rama-Hajrizi.

7. On 12 February 2014 the Court notified the Applicant of the registration of the Referral and sent a copy of the Referral to the Supreme Court.

8. On 19 May 2014 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. The Applicant was employed at the Medical Institute in Obiliq as a Medical Coordinator until 15 August 2006. On that date, his employment was terminated since he allegedly reached the full retirement age.

10. According to the Applicant, his working booklet wrongly stated that he was born on 15 March 1941 when in fact he was born on 15 August 1942. Thus, his employer wrongly calculated his retirement age and as a consequence he had to retire one year before he reached the full retirement age.

11. On 15 August 2006 the Applicant initiated civil court proceedings before the Municipal Court in Prishtina. Following that, on 8

December 2008, the Municipal Court issued a Judgment (Cl. No. 161/2007) and approved the Applicant's petition. The Applicant's employeras the respondent in the proceedings was obliged to compensate to the Applicant his annual personal income and the costs of the proceedings.

12. The Respondent submitted a timely appeal against the Judgment of the Municipal Court in Prishtina of 8 December 2008 to the District Court in Prishtina.

13. On 15 September 2009 the District Court in Prishtina issued Judgment (Ac. No. 569/2009) and quashed the above - mentioned Municipal Court Judgment. Thus, the case was remanded to the Municipal Court in Prishtina.

14. On 22 April 2011 the Municipal Court in Prishtina issued Judgment (C. No. 2360/09) and rejected the Applicant's petition. The Applicant appealed against that Judgment.

15. That Judgment of the Municipal Court in Prishtina was confirmed by the Judgment of the District Court in Prishtina of 24 January 2012 (Ac. No. 1356. 2011).

16. Against the Judgment of the District Court in Prishtina of 24 January 2012, the Applicant submitted a revision to the Supreme Court of Kosovo. He argued the challenged judgment was issued in violation of the Law on the Contested Procedure.

17. On 11 September 2013 the Supreme Court issued Judgment (Rev. No. 396/2013) and rejected the Applicant's revision as ungrounded.

18. In the reasoning of the Judgment the Supreme Court sated, *inter alia, "[F]rom the case files, and this is not contested even by the claimant, it comes out that in the work file at the respondent where the claimant used to work there was his work booklet and birth certificate, from which it is confirmed that the claimant is born on 15 March 1941 based on these evidence ... is terminated the employment relationship... since he fulfilled the requirements for retirement. The Decision of Appeal Review Permanent Committee in Department of Civil Status, according to request of the claimant for correction of birth date was made on 9 February 2007, respectively 1 year after making the decision for retirement."*

19. Consequently, the Supreme Court found that in the Applicant's civil case the facts of the case were established correctly and completely and that there was no violation of the substantive law.

Applicant's allegations

20. The Applicant alleges that "*in the conducted procedures was not guaranteed a fair and impartial trail and that the right to work..., since none of the courts... based on documentation... confirmed that the Applicant was born on 15 August 1942 and... in 1941.*"

Assessment of admissibility of the Referral

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

22. It is clear from the Applicant's allegations summarized above that the Applicant merely disputes whether the regular courts correctly applied the applicable law. The Applicant further disagrees with the Supreme Courts' factual findings with respect to his case.

23. In this regard, the Court notes that the Applicant has used all the available legal remedies prescribed by the Law on Contentious Procedure and that the Supreme Court has taken into account and answered his appeals on the points of law.

24. The Court recalls that it 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. KI70/11, 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).

25. The Court further notes that the mere fact that the Applicant is dissatisfied with the outcome of the case cannot of itself raise an arguable claim of a breach of Article 31 of the Constitution (see

mutatis mutandis Judgment ECHR Appl. No. 5503/02, *Mezotur Tiszazugi Tarsulat v. Hungary*, Judgment of 26 July 2005).

26. It follows that the Referralis manifestly ill-founded 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, Article 48 of the Law and Rule 36 1. c) of the Rules of the Procedure, in its session held on 19 May 2014, 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**
Prof. Dr. Ivan Čukalović	Prof. Dr. Enver Hasani

KI43/14, Rexhep Kuqi and Milazim Kuqi, Resolution of 26 June 2014 -Constitutional Review of the Decision of the Supreme Court of Kosovo Rev. 203/2013, of 24 December 2013

Case KI43/14, Decision of 26 June 2014

Key words: individual referral, direct applicability of international agreements and instruments, protection of property, expropriation, manifestly ill-founded.

The Applicant submitted Referral pursuant to Article 113.7 of the Constitution of Kosovo, challenging the Decision Rev 203/2013, of the Supreme Court of Kosovo, of 24 December 2013, by which was solved the property-legal dispute, created by the request of the Applicant that the Municipality of Suhareka compensates the monetary counter value for the expropriated property.

The Applicant considers that by this were violated his constitutional rights under Article 46 [Protection of Property] and 54 [Judicial Protection of Rights] of the Constitution, because he did not receive compensation for expropriated property so by claim he requested to oblige the Municipality of Suhareka to pay them the compensation for the expropriated immovable property by Decision no. 03-3/1039/64 of 19 February 1964.

Deciding on the referral of the Applicants Rexhep Kuqi and Milazim Kuqi, the Constitutional Court found that the Judgment AC. no. 3435/2012, of the Court of Appeal in Prishtina, of 13 May 2013, and the Decision Rev. no. 2013/2013, of the Supreme Court in Prishtina, of 24 December 2013, in their reasoning explain in details the reasons for application of relevant rules of the procedural and substantive law, and respond to the Applicants' allegations, which the Applicant stated as basis for filing the Referral with the Constitutional Court.The Court accepted the reasoning of the Supreme Court of Kosovo that from the decision for setting and assessing expropriated property, no. 1039/64, of 21.02.1964, results that the predecessor of the proposing party, the former owner Bejtullah Kuqi from Suhareka was already awarded compensation for the expropriated property at the amount of 155.358 Dinars, a decision rendered in the presence of parties, who had no remark on the findings of the assessing commission, and from the date of rendering, such ruling was final and executable.

Therefore, the Court concluded that presented facts by the Applicant do not in any way justify the allegation of a violation of the constitutional rights, therefore his referral is manifestly ill-founded.

RESOLUTION ON INADMISSIBILITY
in
Case no. KI43/14
Applicants
Rexhep Kuqi and Milazim Kuqi
Constitutional review of the Decision of the Supreme Court of Kosovo
Rev. 203/2013 of 24 December 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
Arta Rama-Hajrizi, Judge

Applicant

1. The Referral was submitted by Mr. Rexhep Kuqi and Mr. Milazim Kuqi(hereinafter: the Applicants), with residence in the Municipality of Suhareka, who before the Constitutional Court are represented by lawyer Mr.Zef Delhysa fromPrizren.

Challenged decision

2. The Applicants challenge the Decision of the Supreme Court of Kosovo Rev. 203/2013 of 24 December 2013, which was served on the Applicants' representative on 29 January 2014.

Challenged decision

3. The challenged decision is the constitutional review of the Decision of the Supreme Court of Kosovo Rev. no. 203/2013, of 24 December 2013, which according to the Applicant's allegations violated Articles 46 [Protection of Property] and 54 [Judicial Protection of Rights] of the Constitution of the Republic of Kosovo.

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 on the Constitutional Court of the Republic of Kosovo No. 03/L-121 (hereinafter: the Law), and Rule 56 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 10 March 2014, the Applicants submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 1 April 2014, the President by Decision no. GJR. KI43/14, appointed Judge Robert Carolanas Judge Rapporteur. On the same date, the President by Decision no. KSH. KI43/14, appointed the Review Panel composed of Judges: Snezhana Botusharova (Presiding), Kadri Kryeziu and Arta Rama-Hajrizi.

7. On 22 April 2014, the Court notified the Applicants and the Supreme Court of Kosovo of the registration of Referral.

8. On 26 June 2014, the Judge Kadri Kryeziu notified in writing the Court of the request for his recusal from the session for the period June-July 2014, until the Court decides on the allegations raised against him.

9. On 26 June 2014, the President of the Court, by Decision no. KSH. KI43/14, replaced Judge Kadri Kryeziu as a member of the Review Panel, with Judge Enver Hasani.

10. On 26 June 2014, having considered the report of the Judge Rapporteur Robert Carolan, the Review Panel, composed of Judges:Snezhana Botusharova (Presiding), Enver Hasani and Arta Rama-Hajrizi, recommended to the full Court the decision on the inadmissibility of Referral.

Summary of facts

11. On 19 February 1964, the Municipal Assembly of Suhareka, by Decision no. 03-3/1039/64expropriated a part of cadastral parcel no. 24, a culture orchard of first class, with surface area of 0.10.15

ha, in the place called "Varoshica", as per possession list 161 CZ Suhareka.

12. On 22 May 2003, the Applicants filed a claim to the Municipal Court in Suhareka, by which they requested that the respondent, the Municipality of Suhareka, is obliged to pay compensation for the expropriated immovable property, by Decision no. 03-3/1039/64 of19 February 1964.

13. On 26 October 2005, the Municipal Court in Suhareka, by Judgment C. no. 77/03,approved the Applicants' statement of claim as grounded and obliged the respondent, the Municipality of Suhareka to pay to the Applicants for the expropriated immovable property a compensation, in the amount of €396.950,00, or to reinstate the ownership to the Applicants, after the removal of the existing building (Fire-Rescue Building) and that this immovable property be registered in the name of the claimants as the owners.

14. On 3 March 2006, the District Court in Prizren, decided upon the appeal of the respondent, the Municipality of Suhareka, by Ruling Ac. no. 504/05, and annulled the first instance judgment and remanded the case for retrial.

15. On 16 May 2006, in the repeated procedure, the Municipal Court in Suhareka, complemented the presentation of evidence by examining two witnesses, and by Judgment C. no. 59/06 of 16 May 2006, approved the Applicants' statement of claim as grounded and obliged the respondent, the Municipality of Suhareka, to pay them the amount of €396,950.00, or to reinstate the same expropriated immovable property or, if it is impossible, to compensate it in another appropriate place.

16. On 19 March 2007, the District Court in Prizren, deciding upon the appeal of the respondent, the Municipality of Suhareka, by Decision Ac. no. 299/06 of 19 March 2007, quashed the Judgment of the Municipal Court in Suhareka, C. no. 59/06 of 16 May 2006, and remanded the case to the same court for re-trial, with an order that the matter be reviewed by a different panel of the Municipal Court.

17. On 14 January 2010, the Municipal Court in Suhareka, with another individual judge, rendered Decision C. no. 79/2007, of14.01.2010, by which the Applicants' claim was rejected as inadmissible with the reasoning that *„this claim is not under the*

jurisdiction of contested procedure, and that the procedure must continue in the out of contentious procedure".

18. On 12 April 2012, in out of contentious procedure, the Municipal Court in Suhareka, by DecisionND. no. 70/11 approved as grounded the Applicants' proposal and ordered the following;

> *"... II. ORDERING the user of the expropriated real property, the Municipality of Suhareka, to compensate the heirs of the former owner, Rexhep Kuqi and Milazim Kuqi from Suhareka, with one ideal half each, for compensation for the property taken by expropriation, with properties mentioned above, and transfer the possession and use, and allow for their registration as owners in the Cadastral Office in Suhareka, all within a deadline of 15 days upon the final form of the decision..."*

19. Against the Decision of the Municipal Court in Suhareka Nd. No. 70/11 of 12 April 2012, the Municipality of Suhareka filed an appeal in a timely manner.

20. On 13 May 2013, the Court of Appeal in Prishtina, by Judgment Ac. no. 3435/2012 modified the Decision of the Municipal Court in Suhareka Nd. no. 70/2011, of 12 April 2012 and stated the following:

> *"REJECTING the claim of claimants Rexhep and Milazim Kuqi from Suhareka, by which they have requested from the court to order the respondent Municipality of Suhareka, to vacate the existing building (Fire-Rescue Building), to restore the possession and ownership of the expropriated property in 1964, as a part of the cadastral parcel no. 2026 (earlier no. 24), surface area of 0.10,15 ha, recorded as per possession list 161 CZ Suhareka, Municipality of Suhareka, or otherwise compensate the former owners with the amount of 369.975,00 €, as the counter value of the expropriated property, or to compensate* the same property with another *equivalent property, AS UNGROUNDED".*

21. Against the Judgment of the Court of Appeal in Prishtina, Ac. no. 3435/2012 of 13 May 2013, the Applicants timely filed revision due to erroneous application of the substantive law, with a proposal to modify the Judgment of the Court of Appeal in Prishtina Ac. no. 3435/2012 of 13 May 2013, as unlawful, and uphold the Decision of the Municipal Court in Suhareka, Nd. no. 70/2011 of 12 April

2012.

22. On 24 December 2013, the Supreme Court of Kosovo, by Decision Rev. no. 203/2013, rejected as ungrounded the Applicants' revision, filed against Judgment of the Court of Appeal of Kosovo, Ac. no. 3435/2012of13 May 2013,with following reasoning;

> *"... Setting from such a factual situation, the Supreme Court of Kosovo found that the second instance court had fairly applied contested procedure provisions and material law, when modifying the first instance court decision, and rejecting the proposal of proposing party to set compensation for the expropriated property. The second instance decision provides sufficient reasons on relevant facts, which are decisive for a fair adjudication of the case, and which are acceptable as such also by this court, because from the decision of the Commission for Setting and Assessing Expropriated Property, no. 1039/64, of 21.02.1964, results that the predecessor of the proposing party, the former owner Bejtullah Kuqi from Suhareka was already awarded compensation for the expropriated property at the amount of 155.358 Dinars, a decision rendered in the presence of parties, who had no remark on the findings of the assessing commission, and from the date of rendering, such ruling was final and executable...."*

Applicant's allegations

23. The Applicants allege that *"...in this legal matter, the three courts, the former District Court in Prizren, the Court of Appeal of Kosovo, and the Supreme Court of Kosovo in Prishtina, have all interpreted differently, but the two latter have only erroneously applied material law to the detriment of the proposing party, thereby infringing their rights to judicial protection, as a right guaranteed by the Constitution and the Law on the Constitutional Court of Kosovo, respectively by violating their rights to fair and effective trial, in contradiction to Article 46, paragraph 3, and Article 54 of the Constitution of the Republic of Kosovo, in conjunction with Article 190, paragraph 3 of the LCP, by disabling the proposing party's rights, here the claimants, to be part of the direct judicial review as party to the procedure".*

24. Based on what was stated in this Referral, the Applicants request from the Constitutional Court of the Republic of Kosovo:

"1. Approving the Applicants' Referral as admissible."

"2. Annulling the Judgment of the Court of Appeal in Prishtina AC. no. 3435/2012 of 13.05.2013 and the Decision of the Supreme Court of Kosovo Rev. no. 2013/2013 of 24.12.2013."

"3. Remand the Judgment of the Court of Appeal in Prishtina AC. no. 3435/2012 of 13.05.2013 for retrial in compliance with the decision of this Court."

Admissibility of Referral

25. The Court observes that, in order 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 further specified in the Law and the Rules of Procedure.

26. 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".

27. 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."

28. Moreover, the Court refers to Rule 36 (2) b) of the Rules of Procedure, which provides:

„(2) 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 ".

29. Reviewing the Applicants' allegations for violations regarding the

erroneous application of the substantive law, the Constitutional Court notes that it is not a court of appeal, when reviewing 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*, *Garcia Ruiz v. Spain* [GC), no. 30544/96, § 28, European Court on Human Rights [ECHR 1999-1).

30. The Judgment of the Court of Appeal in Prishtina AC. no. 3435/2012 of 13 May 2013, and the Decision of the Supreme Court in Prishtina Rev. no. 2013/2013 of 24 December 2013, in their reasoning explain in details the reasons for application of relevant rules of the procedural and substantive law, and respond to the Applicants' allegations.

31. The Constitutional Court notes that the Applicants have not provided any *prima facie* evidence which would point out to a violation of their constitutional rights (see *Vanek vs. Slovak Republic*, ECHR Court on admissibility, Application no. 53363/99 of 31 May 2005).

32. In the present case, the Applicants were provided numerous opportunities to present their case and challenge the interpretation of the law, which they consider as being incorrect, before the Municipal Court in Suhareka, District Court in Prizren, Court of Appeal in Prishtina and the Supreme Court of Kosovo. After having examined the proceedings in their entirety, the Constitutional Court has not found 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).

33. Finally, the admissibility requirements have not been met in this Referral. The Applicants have failed to point out and substantiate the allegations that their constitutional rights and freedoms have been violated by the challenged decision.

34. It follows that the Referral is manifestly ill-founded and must be declared inadmissible, in accordance with Rule 36 (2) b) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113, paragraph 7 of the Constitution, Articles 20 and 48 of the Law and Rule 36 (2) b) of the Rules of Procedure, on 26 June 2014, unanimously

DECIDES

I. TO DECLARE the Referral 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	**President of the Constitutional Court**
Robert Carolan	Prof. Dr. Enver Hasani

KI71/14, Asllan Bahtiri, Resolution of 26 June 2014 - Constitutional Review of the Judgment AA. no. 404/2013, of the Court of Appeal of Kosovo in Prishtina, of 4 March 2014

Case KI71/14, decision of 26 June 2014

Key words; individual referral, manifestly ill-founded, number of points, list of the beneficiaries of the apartments

The Applicant submitted the referral in compliance with Article 113.7 of the Constitution of Kosovo, requesting the constitutional review of Judgment AA. no. 404/2013, of the Court of Appeal of Kosovo in Prishtina of 4 March 2014. The Applicant considers that by this Judgment were violated his constitutional rights under Article 54 [Judicial Protection of Rights] of the Constitution of the Republic of Kosovo.

On 4 February 2012, the Applicant applied in the competition, which was announced for the allocation of the apartments by the Municipality of Prishtina, which the Municipality rents to the families of martyrs, invalids and veterans of Kosovo Liberation Army. The Committee for allocation of apartments of the Municipality of Prishtina to the families of martyrs, invalids and veterans of the KLA, published on the notice board the list of beneficiaries of the apartments, where the Applicant was not included. All decisions of lower courts were upheld by Judgment AA. no. 404/2013, of the Court of Appeal of Kosovo in Prishtina of 4 March 2014.

Deciding on the referral of the Applicant Asllan Bahtiri, the Constitutional Court, having reviewed the proceedings in entirety, from the case file concluded that the Judgment A. no. 1332/2012, of the Basic Court in Prishtina, Department of the Administrative Matters, of 1 October 2013 and the Judgment AA. no. 404/2013, of the Court of Appeal of Kosovo in Prishtina, of 4 March 2014, in their reasoning explain in details the reasons for application of relevant rules of the procedural and substantive law as well as the manner of assessment according to the Regulation in the process of allocation of the apartments and provide responses to the these Applicant's allegations.

From the above, the Constitutional Court has not found that the pertinent proceedings were in any way unfair or arbitrary. Therefore, the Court concluded that the Referral is manifestly ill-founded, because the presented facts do not in any way justify the allegation of a violation of the constitutional rights.

RESOLUTION ON INADMISSIBILITY
in
Case no. KI71/14
Applicant
AsllanBahtiri
Constitutional review of the Judgment AA. no. 404/2013 of the Court of Appeal of Kosovo in Prishtina, of 4 March 2014

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 and
Arta Rama-Hajrizi, Judge

Applicant

1. The Referral was submitted by Mr. Asllan Bahtiri (hereinafter: the Applicant), with residence in Prishtina.

Challenged decision

2. The Applicant challenges the Judgment AA. no. 404/2013 of the Court of Appeal of Kosovo in Prishtina, of 4 March 2014, which was served on the Applicant on 14 April 2014.

Subject matter

3. The subject matter is the constitutional review of the Judgment AA. no. 404/2013 of the Court of Appeal of Kosovo in Prishtina, of 4 March 2014, which according to the Applicant's allegations violated Article 54 [Judicial Protection of Rights] of the Constitution of the Republic of Kosovo.

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 on the Constitutional Court of the Republic of Kosovo no.

03/L-121 (hereinafter: the Law), and Rule 56 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 14 April 2014, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 6 May 2014, the President by Decision no. GJR. KI71/14, appointed Judge Robert Carolan as Judge Rapporteur. On the same date, the President by Decision no. KSH. KI71/14, appointed the Review Panel composed of Judges: Snezhana Botusharova (Presiding), Kadri Kryeziu and Arta Rama-Hajrizi.

7. On 23 May 2014, the Court notified the Applicant and the Court of Appeal of Kosovo in Prishtina of the registration of Referral.

8. On 26 June 2014, Judge Kadri Kryeziu notified in writing the Court of the request for his recusal from the session for the period June-July 2014, until the Court decides on the allegations raised against him.

9. On 26 June 2014, the President of the Court, by Decision no. KSH. KI71/14, replaced Judge Snezhana Botusharova as Presiding Judge of the Review Panel and appointed Judge Altay Suroy as Presiding Judge. By same Decision, the President of the Court, replaced Judge Kadri Kryeziu as member of the Review Panel with Judge Snezhana Botusharova.

10. On 26 June 2014, having considered the report of the Judge Rapporteur Robert Carolan, the Review Panel, composed of Judges:Altay Suroy (Presiding),Snezhana Botusharova and Arta Rama-Hajrizi, recommended to the full Court the decision on the inadmissibility of Referral.

Summary of facts

11. On 4 February 2012, the Applicant applied in the competition, which was announced for the allocation of the apartments by the Municipality of Prishtina, which the Municipality rents to the families of martyrs, invalids and veterans of Kosovo Liberation Army (hereinafter: the KLA).

12. On 18 May 2012, the Committee for allocation of apartments of the Municipality of Prishtina to the families of martyrs, invalids and veterans of the KLA, published on the notice board the list of beneficiaries of the apartments, where the Applicant was not included.

13. On 21 May 2012, the Applicant filed appeal number 02.360-4965/1 against the *"Priority List",* published in the notice board.

14. On 2 July 2012, by the second instance Decision of the Committee for review of complaints no. 02-360-4965/2012 of 2 July 2012, the Applicant's complaint was rejected and the first instance decision of the Committee for assessment and selection of the beneficiary families of the apartments, dedicated to the families of martyrs and invalids was upheld.

15. On 12 November 2012, the Applicant filed a claim for annulment of the second instance Administrative decision with the Committee for review of complaints no. 02-360-4965/2012 of 2 July 2012.

16. On 1 October 2013, deciding on the Applicant's claim, the Basic Court in Prishtina, Department of Administrative Matters, by Judgment A. no. 1332/2012 of 1 October 2013, rejected as ungrounded the Applicant's statement of claim, by which he requested the annulment of the Decision of the respondent, the Municipality of Prishtina, the Committee for Allocation of Apartments, no. 02-360-4965/2012 of 2 July 2012, with the following reasoning:

> *"... From the evidence, taken by the Committee during the visit to the claimant and the evidence submitted in the application, they found that the latter did not meet the criteria for the allocation of the apartment as he did not gain sufficient number of points since he is single and did not gain sufficient points to be ranked in the list of the beneficiaries of the apartments..."*

17. Against the Judgment of the Basic Court in Prishtina, Department of the Administrative Matters, A. no. 1332/2012 of 1 October 2013, the Applicant timely filed appeal with the Court of Appeal of Kosovo in Prishtina.

18. On 4 March 2014, the Court of Appeal of Kosovo in Prishtina, by Judgment AA. no. 404/2013 rejected the Applicant's appeal as

ungrounded and upheld the Judgment of the Basic Court in Prishtina, Department of the Administrative Matters A. no. 1332/2012 of 1 October 2013, with the following reasoning:

> *"... This court approves in entirety as correct and legally grounded the legal stance of the first instance court, because the challenged Judgment does not contain substantial violation of the provisions of the Law on Administrative Conflict, which the second instance court investigates ex officio pursuant to Article 49 of the LAC. In relation to the claimant's appealed allegations that the first instance court has violated the provisions of the LAC, they are not grounded because the court has reviewed the claim, it initially sent the claim to the respondent's representative for a response to the claim, then it scheduled the main hearing session, it administered sufficient evidence, which means that during its assessment the first instance court did not violate the provisions of the LAC..."*

Applicant's allegations

19. The Applicant alleges that *"his right to judicial protection of rights under Article 54 of the Constitution has been violated, because the courts have not correctly assessed the Applicant's request"*.

20. Based on what was submitted in the Referral, the Applicant requests from the Constitutional Court of the Republic of Kosovo to:

> *"Assess that my right of allocation of the apartment has been violated both by Prishtina Municipality and the courts"***.**
>
> *"The Regulation was not respected and the legality was not assessed by the courts"*.

Admissibility of Referral

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

22. 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".

23. 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."

24. Moreover, the Court refers to Rule 36 (2) b) of the Rules of Procedure, which provides:

„(2) 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 ".

25. Having reviewed the Applicant's allegations for violation regarding the erroneous application of the material law and Regulation of the Municipality, regarding the manner of assessment, the Constitutional Court emphasizes that it is not a court of appeal, when reviewing 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*, *Garcia Ruiz v. Spain* [GC), no. 30544/96, § 28, European Court on Human Rights [ECHR 1999-1).

26. The Judgment of the Basic Court in Prishtina, Department of the Administrative Matters, A. no. 1332/2012 of 1 October 2013 and the Judgment of the Court of Appeal of Kosovo in Prishtina, AA. no. 404/2013 of 4 March 2014, in their reasoning explain in details the reasons for application of relevant rules of the procedural and substantive law as well as the manner of assessment according to the Regulation in the process of allocation of the apartments and provide responses to the these Applicant's allegations.

27. The Constitutional Court notes that the Applicant has not provided any *prima facie* evidence which would point to a violation of his constitutional rights (see *Vanek vs. Slovak Republic*, ECHR

Decision on admissibility, Application no. 53363/99 of 31 May 2005).

28. In the present case, the Applicant has been provided numerous opportunities to present his case and challenges the interpretation of the law, which he considers as being incorrect, before the Committee of the Municipality of Prishtina for allocation of the apartments, the Committee for Review of Complaints, the Basic Court in Prishtina and the Court of Appeal in Prishtina. After having examined the proceedings in their entirety, the Constitutional Court has not found that the pertinent proceedings 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).

29. Finally, the admissibility requirements have not been met in this Referral. The Applicant has failed to point out and substantiate the allegations that his constitutional rights and freedoms have been violated by the challenged Judgment.

30. It follows that the Referral is manifestly ill-founded and must be declared inadmissible, in accordance with Rule 36 (2) b) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113, paragraph 7 of the Constitution, Articles 20 and 48 of the Law and Rule 36 (2) b) of the Rules of Procedure, on 26 June 2014, unanimously

DECIDES

I. TO DECLARE the Referral 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	**President of the Constitutional Court**
Robert Carolan	Prof. Dr. Enver Hasani

KI184/13, KI12/14, KI16/14, KI17/14, KI24/14, KI25/14, Kosovo Energy Corporation, Resolution of 8 May 2014 - Constitutional Review of the Judgments of the Supreme Court of the Republic of Kosovo, Rev. nr. 379/11, dated 2 May 2013, Rev. nr. 192/13, dated 3 October 2013, Rev. nr. 244/13, of 8 October 2013, Rev. nr. 192/13, dated 3 October 2013, Rev. nr. 246/13, dated 1October 2013, Rev. nr. 271/13, of 31 November 2013

Joined cases KI184/13, KI12/14, KI16/14, KI17/14, KI24/14, KI25/14, Decision of 8 May 2014.

Key words: individual referral, denial of rights guaranteed by Articles 31 and 102.3 of the Constitution of Kosovo, the referral is manifestly ill-founded.

The Applicant challenges the following decisions of the Supreme Court: Rev. nr. 379/11, dated 2 May 2013; Rev. nr. 192/13, dated 3 October 2013; Rev. nr. 244/13, dated 8 October 2013, Rev. nr. 192/13, dated 3 October 2013; Rev. nr. 246/13, dated 1 October 2013, Rev. nr. 271/13, dated 31 November 2013.

The Applicant filed its Referral based on Articles 113.7 and 21.4 of the Constitution of Kosovo, claiming that its constitutional rights have been violated, more precisely Articles 31 and 102.3. In addition, the Applicant emphasizes that pursuant to the provisions of Articles 113.7 and 21.4 of the Constitution of the Republic of Kosovo, it has legal right to request the assessment of legality of a decision of public authorities, since all legal remedies are exhausted, thus requires from the Constitutional Court of Kosovo that following the review of the same, approves as grounded by annulling Judgments of Supreme Court of Kosovo as mentioned above.

The Court notes that the Applicant alleges mainly: (a) the violation of the principle of legal certainty, (b) the violation of Articles 31 and 102.3 of the Constitution, and (c) the violation of the legal provisions.

As a result, the Court finds that the Applicant's Referrals do not meet the admissibility requirements, since the Applicant has failed to substantiate his allegation and submit supporting evidence on the alleged constitutional violation by the Challenged Decisions.

Therefore, pursuant to Rule 36 (2) b) of the Rules of Procedure, the Referral of the Applicant must be rejected as *manifestly ill-founded*.

In sum, the Court reasons its decision by considering that the Applicant does not substantiate and prove that the Supreme Court, by allegedly adjudicating "based on laws that were not in force", violated his constitutional rights. Based on the abovementioned reasons, the Court decided to reject the Referral of the Applicant as inadmissible.

RESOLUTION ON INADMISSIBILITY
in
Cases Nos.
KI184/13, KI12/14, KI16/14, KI17/14, KI24/14, KI25/14
Applicant
Kosovo Energy Corporation
Constitutional Review of the Judgments of the Supreme Court of the Republic of Kosovo, Rev. nr. 379/11, dated 2 May 2013, Rev. nr. 192/13, dated 3 October 2013, Rev. nr. 244/13, dated 8 October 2013, Rev. nr. 192/13, dated 3 October 2013, Rev. nr. 246/13, dated 1 October 2013, Rev. nr. 271/13, dated 31 November 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 Referral was submitted by the Kosovo Energy Corporation (hereinafter, the Applicant), with the principal place of business in Prishtina.

Challenged decision

2. The Applicant challenges the following decisions of the Supreme Court of Kosovo:

KI184/13, Rev. nr. 379/11, dated 2 May 2013
KI12/14, Rev. nr. 192/13, dated 3 October 2013
KI16/14, Rev. nr. 244/13, dated 8 October 2013
KI17/14, Rev. nr. 192/13, dated 3 October 2013
KI24/14, Rev. nr. 246/13, dated 1 October 2013
KI25/14, Rev. nr. 271/13, dated 31 November 2013

Subject matter

3. The subject matter is the constitutional review of the Challenged Decisions, which allegedly violated the Applicant's right to a fair and impartial trial as guaranteed by Article 31 of the Constitution.

4. The present case is identical to the following cases already decided by the Constitutional Court:
   a) Case No. KI185/13, Resolution on Inadmissibly of 10 February 2014;
   b) Case No. KI186/09, Resolution on Inadmissibly of 18 February 2014.

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), Article 22 of the Law, No. 03/L-131, on the Constitutional Court of the Republic of Kosovo (hereinafter, the Law), and Rule 29 of the Rules of Procedure of the Constitutional Court on the Republic of Kosovo (hereinafter, the Rules of Procedure).

Proceedings before the Constitutional Court

6. Between 28 October 2013 and 10 February 2014, the Applicant individually submitted the Referrals to the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).

7. On 31 October 2013, the President of the Court appointed Judge Altay Suroy as Judge Rapporteur and the Review Panel composed of Judges Robert Carolan (Presiding), Ivan Čukalović and Enver Hasani.

8. On 2 December 2013, the Court notified the Applicant of the registration of the Referral KI184/13 and requested the power of attorney. On the same date, the Supreme Court the third party R. GJ. where informed of the registration of the Referral with a copy of the Referral.

9. On 13 December 2013, the Applicant further submitted additional documents in relation to referral KI184/13.

10. On 10 February 2014, the President ordered the joinder of the Referrals (KI184/13, KI12/14, KI16/14, KI17/14, KI24/14 and KI25/14).

11. On 19 March 2014, the Court notified the Applicant of the registration of the Referrals KI12/14, KI16/14, KI17/14, KI24/14 and KI25/14 and requested the power of attorney, which the Applicant has not yet submitted. On the same date, the Supreme Court was informed of the registration of the Referral.

12. On the same date, in compliance with Rule 37 of the Rules of Procedure, the Court informed the Applicant on the joinder of referrals.

13. The Applicant has not filed any objection against the decision on the joinder of referrals.

14. On 25 April 2014, the third parties H. M., E. Q., A. M., N. H. and M. N. were informed of the registration of the Referral.

15. On 8 May 2014, 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

16. On an unspecified dates, R. GJ., H. M., E. Q., A. M., N. H. and M. N. (hereinafter, the Employees) initiated judicial proceedings on a labor dispute against the Applicant as an employer.

17. The Employees were employed by the Applicant for an indefinite *period* (e.g. in the case of the first Employee R. GJ., Employment Contract No. 11642/0 of 1 November 2008)until either party terminated the contact.

18. The Applicant issued a final written warning (e.g. in the case of the first Employee R. GJ. Minutes No. 531 dated 25 March 2010) to the Employees *"due to non-fulfillment of performance"* for a certain period of time.

19. The Applicant notified the Employees (e.g. in the case of the first Employee R.GJ Decision No. 971 dated 16 June 2010) (that the employment contract was to be terminated *"due to unsatisfactory performance of work duties, provided by Article 11.1 (11.1 ç), 11.4(b) of Regulation 2001/28 on Essential Labor Law,*

unsatisfactory performance of work under Article 8.1, 8.2, 8.3 (c), 8.4 (a) of Regulation for October 2010".

20. The Director of the Supply Division (e.g. in the case of the first Employee R. GJ., Decision No. 972 of 15 June 2010 and Decision No. 167 of 28 June 2010) rejected the request of the employees to review the termination of their employment contract.

21. The Employees filed a claim with the respective Municipal Court, arguing that the decisions were unlawful and requesting its annulment.

22. The Municipal Court (e.g. in the case of the first Employee R. GJ., Decision C. nr. 334/10 dated 18 May 2011) rejected as ungrounded the Employees' claim.

23. The Employees filed an appeal with the District Court, *"due to substantial violations of the contested procedure provisions, erroneous and incomplete determination of factual situation and erroneous application of the substantive law".*

24. The District Court in Peja (e. g. in the case of the first Employee R.GJ., Ac. No. 255/2011) upheld the Municipal Court decisions and rejected the Employees' appeals. The District Court reasoned that:

> *"[T]he challenged judgment does not contain substantial violations of the contested procedure provisions under Article 182.2 of the LCP, with ex-officio due regard of the second instance court and pursuant to Article 194 of LCP, due to which it would be impossible to assess its legality, which enacting clause of the judgment is clear, comprehensible, the enacting clause is not in contradiction with itself, or with the reasons stated in the judgment, as well as it contains sufficient convincing and legal reasons on decisive facts to decide on this legal matter. Due to correct and complete determination of factual situation, which is not put into question, by the appealed allegations and that the decisive facts were determined by reliable evidence, the first instance court has correctly applied the substantive law".*

25. The Employees filed a revision with the Supreme Court *"due to essential violations of the contested procedure and erroneous application of the substantive law, with a proposal that the judgments are modified and the [Employee's] claim is approved*

or that they are quashed and the matter is remanded to the first instance court".

26. The Supreme Court of Kosovo (e.g. in the case of the first Employee R.GJ, Rev. No. 379/2011 dated 2 May 2013) approved as grounded the Employees' revision requests, and modified the first and second instance courts' judgments. The Supreme Court reasoned as follows:

> *"The Supreme Court of Kosovo after reviewing the challenged judgment, pursuant to Article 215 of the Law on Contested Procedure (LCP), found that: The revision is grounded.*
> . . .
> *The Supreme Court of Kosovo, setting from such factual situation, found that such a legal stance of lower court cannot be accepted as fair and lawful, since according to the assessment of this court on such determined factual situation was erroneously applied the substantive law, when both courts found that the claimant's [Employee's] claim is ungrounded and as such was rejected, for which reason the claimant's [Employee's] revision has to be approved as grounded, as it was described in the enacting clause of this judgment.*
>
> *The Supreme Court of Kosovo found that the courts of lower instances have erroneously determined the factual situation when found that the respondent's [Applicant's] decision on termination of the employment contract is lawful, since from the evidence in the case filed, and that is Notification on employment contract, (e.g. in the case of the first Employee R.GJ, Rev. No. 379/2011 dated 2 May 2013), does not result that the respondent [Applicant] prior to challenged decision acted in accordance with Article 8.4 a), b) of Regulation no.3 on KEK District Operations, according to which provision, it was provided that the District Manager will arrange a meeting with the abovementioned employee with an aim of filing in writing the notification on dismissal of the employee and to offer oral explanations on the reasons of dismissal. If the employee is notified of the meeting and does not participate, the District Manager may place the notification in the public notice table of the district office, while such an action will be deemed as notification with a purpose of termination of the employment contract, pursuant to item b) of the same Article, it was provided that if the employee is the member of the Trade Union, he is entitled to have present the trade union representative in the meeting. Following the receipt of*

notification on termination of employment relationship, the respondent [Applicant] has not acted pursuant to Article 11.5 b) of Regulation 2001/27 on Essential Labor Law.

The lower instance courts have erroneously applied the substantive law when they based their judgments on the fact determined by minutes on the meeting of the district manager with employee(e.g. in the case of the first Employee R.GJ, Minutes no. 531 dated 25 March 2010), since from this minutes results that this meeting has to do with presenting the last written warning of 25.03.2010, pursuant to Article 8.3 and does not have to do with the respondent's [Applicant's] obligations, provided by Article 8.4 a) and b) of the abovementioned Regulation of the respondent [Applicant], Since in the present case, the employment contract was terminated to the claimant [Employee] due to unsatisfactory work results for October 2010, he should have respected Article 8.4 a) and b) of the Regulation above.

The Supreme Court of Kosovo assesses as grounded the applicant's [Employee's] allegations, filed in the revision that the lower instance courts have erroneously applied the substantive law on termination of employment contract, since for these violations, the respondent [Applicant] has not conducted disciplinary proceedings, because pursuant to Article 112 of the Law on Employment Regulation of Kosovo no. 12/1989, which Law was applicable, based on UNMIK Regulation no. 1999/24, until the entrance in force of the Labor Law of the Republic of Kosovo, No. 03/L-212 in December 2010, which law by provision of Article 99.1 abrogates UNMIK Regulation no. 200/27 on Essential Labor Law in Kosovo, Law on Employment Relationship of SAPK of Kosovo of 1989 and the Labor Law of 1977, with respective amendment, it was provided that the authorized bodies are obliged to submit the request for initiation of disciplinary proceedings within eight days, after becoming aware of such violation of work duties, or of any other violation of work discipline and the offender, while pursuant to provision of Article 113 paragraph 2, it was provided that before imposing disciplinary measure, dismissal from work, the managing authority, respectively the employee assigned with special powers and responsibilities, is entitled to question the employee.

From Article 11 of the employment contract, concluded between the claimant [Employee] as employee and the respondent [Applicant] as employer, it was established that the employment contract is terminated pursuant to Articles 67, 68, 69, and 70 of Labor Law in Kosovo, Collective Agreement and KEK Rules of Procedure.

Pursuant to Article 24 of general collective contract, it was provided that the disciplinary commission is appointed by the employer, respectively competent body by employer's general act, while the respondent [Applicant] by Regulation on disciplinary and material responsibility, issued on 10.10.2006. In part II of this Regulation are provided in details the provisions for implementation of disciplinary proceedings, which Regulation was not left out of force by Regulation no. 3 of 30.11.2009. Likewise, by any provision of Regulation no. 2001/27 on Essential Labor Law in Kosovo, was not left outside of power the Law on Employment Relationship no. 12/1989 of SAPK.

From the abovementioned reasons and from data in the case file, the Supreme Court of Kosovo found that the claimant's [Employee's] statement of claim is entirely grounded also because the lower instances courts have erroneously applied the material law, both judgments of those courts had to be modified and the claimant's claim to be approved as such as per enacting clause of this judgment".

Applicant's allegations

27. The Applicant claims that *"[t]he court adjudicated based on laws that were not in force, thus its judgment is unlawful and unfair and as such should be quashed. KEK J.S.C. is aware that the Constitutional Court of Kosovo does not act as instance IV, but it has constitutional jurisdiction to quash-annul any legal act of any authority if it finds that there are violations of legal provisions and constitutional ones, and which for the present case is not at all disputable that the legal provisions were violated by applying other acts that were not in force".*

28. Thus, the Applicant alleges that the Challenged Decision violates its constitutional rights guaranteed by Articles 31 and 102.3 of the Constitution, as a result of the violation of Article 214 (2) of the Law on Contested Procedure.

29. In addition, the Applicant states that *"pursuant to Article 113.7 and 21.4 of the Constitution of the Republic of Kosovo, it has legal right to request the assessment of legality of a decision of public authorities, since all legal remedies are exhausted, thus requires from the Constitutional Court of Kosovo that following the review of the same, approves as grounded by annulling Judgments of Supreme Court of Kosovo Rev. nr. 379/11, dated 2 May 2013, Rev. nr. 192/13, dated 3 October 2013, Rev. nr. 244/13, dated 8 October 2013, Rev. nr. 192/13, dated 3 October 2013, Rev. nr. 246/13, dated 1 October 2013, Rev. nr. 271/13, dated 31 November 2013"*.

30. Furthermore, based on the submitted documents, the Applicant claims that *"A court decision cannot be lawful, impartial and fair when the provisions of the law which was not in force are applied. If the principle of trial based on more favorable laws for the party was constitutional without respecting the aspect of time, then in the legal and constitutional system of the country would be created confusion and legal uncertainty"*.

31. Thus, the Applicant alleges that *"The erroneous application of substantive law by the court, results in a violation of the employer's rights, guaranteed by the Constitution to be equal before the law, a principle guaranteed by the provisions of Article 24 of the Constitution, and violations of Fundamental Human Rights and Freedoms, sanctioned with the provisions of Article 21.4 of the Constitution, imposing on the employer by Judgment, with whom will stay in contractual relationship in the free market economy, sanctioned with the provisions of Article 10 of the Constitution"*.

32. Moreover, the Applicant claims that *"The Supreme Court on issues that have been identical with the termination of employment contract has diametrically opposite stances, where sometimes applies the provisions of Article 112 of the Law on employment relations of Kosovo, OG of SAP Kosovo, No. 12/89 and some other time of the Essential Labor Law in Kosovo, UNMIK Regulation no. 2001/27"*.

33. To support its claim the Applicant refers to the Supreme Court Judgment Rev. no. 379/11 of 2 May 2013 in the case of the first employee R.GJ where the Supreme Court applied the provisions of Article 112 and 113.2 of the Law on employment relations of Kosovo (Socialist Autonomous Province of Kosovo, No. 12/89)

whereas in another case, Judgment Rev. no. 310/12 of 22 April 2013, the Supreme Court held that the provisions of Article 11.1 and 11.4 of of UNMlK Regulation no. 2001/27 were correctly applied.

34. The Applicant further states that *"Which provisions are applied after the entrance into force of the Labor Law in Kosovo, UNMIK Regulation no. 2001/27 concerning the employment relationship with its legal stance was clarified by all district courts and the one in Peja by all Judgments, pertaining to this field, but also by Judgment Ac. no. 176/09, the Supreme Court of Kosovo, by Judgment Rev. no. 106/2010, the Special Chamber of Supreme Court of Kosovo by Judgment ASC-09-0014 of 26 May 2011 [...]".*

35. Therefore, the Applicant concludes questioning:

a. *"Why the Supreme Court of Kosovo for 12 consecutive years has applied the provisions of the Essential Labor Law in Kosovo, UNMIK Regulation no. 2001/27, while in 2013 has changed its stance and decided to apply the legal provisions of the Law on Employment Relationship of SAP Kosovo, Official Gazette no. 12/89 [...]";*

b. *"[...] whether the constitutional rights of all those parties were violated until 2013, that their cases were decided according to the provisions of UNMIK Regulation 2001/27?";*

c. *"Whether legal uncertainty is created, by contradictory court decisions on identical matters?";*

d. *"Is legal uncertainty created?";*

e. *"Is inequality before the law created and are the constitutional principles violated, Equality before the law, provided by the provisions of Article 24 of the Constitution of the Republic of Kosovo, since the Judgment of the Supreme Court on identical issues (the same matter) for someone decides positively and for someone negatively".*

Admissibility of the Referrals

36. The Court first examines whether the Applicant has met all admissibility criteria as provided by the Constitution, and further specified by the Law and the Rules of Procedure.

37. In that respect, the Court refers to Articles 113 and 21 of the Constitution.

Article 113 [Jurisdiction and Authorized Parties]

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.

Article 21 [General Principles]

(...)

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

38. 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.

39. In addition, the Court also take into account Rule 36 (1) c) and Rule 36 (2) of the Rules of Procedure, which provide:

"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 justified, or

(b) the presented facts do not in any way justify the allegation of a violation of the constitutional rights, or

(c) the Court is satisfied that the Applicant is not a victim of a violation of rights guaranteed by the Constitution, or

(d) the Applicant does not sufficiently substantiate his claim."

40. The Court notes that the Applicant allegesmainly: (a) the violation of the principle of legal certainty, (b) the violation of Articles 31 and 102.3 of the Constitution, and (c) the violation of the legal provisions.

41. The Court, before entering into the Applicant's allegation, reiterates that it has decided several cases on labour disputes, namely KI26/09, KI39/09, KI70/10 and KI25/10.

42. In case KI26/09 (See case KI26/09, Applicant *Ekrem Gashi*, Resolution on Inadmissibility of 14 December 2010), the Applicant alleged that the Judgment of the Supreme Court of 24 January 2006, violated his constitutional rights because it granted the request of the employer and amended the decisions of the Municipal Court of Pristina and the District Court of Pristina, to the effect that the claim of the Applicant was rejected as unfounded. The legal reasoning of the Supreme Court was based on the fact that a notification stating the reason for termination of the employment contract to the employee was enough and in accordance with UNMIK Regulation (2001/27), which overruled all legislation that was not in accordance with it. The Constitutional Court held that the Applicant's Referral was inadmissible, because incompatible *ratione temporis* with the Constitution.

43. In case KI39/09 (See case KI39/09, Applicant *Avni Kumnova*, Judgment of 3 November 2011), the Applicant alleged that the Judgment of the Supreme Court of 27 May 2009, violated his constitutional rights because the Supreme Court found that the lower instance courts had erroneously applied the substantive law, since, in case of application of Article 11.2 of UNMIK Regulation 2001/27, the employer should only notify the employee in writing of his intentions to terminate the labour contract and that such notice should include the reasons for such termination. The Supreme Court considered that, *"according to the provisions of UNMIK Regulation 2001/27 on Essential Labour Law in Kosovo"*, it was provided that the termination of the labour contract might occur without the obligation of initiating a disciplinary procedure,

and that the employer was only under the obligation to notify the employee on his intention of terminating the labour contract in serious cases of misconduct, or unsatisfactory performance of job duties by the employee, and that such notice should include the reasons for such termination, as had been done by Iber-Lepenc. The Constitutional Court found that the Applicant's constitutional right had not been violated.

44. In case KI70/10 (See case KI70/10, Applicant *Fatime Kabashi*, Resolution on Inadmissibility of 3 November 2011), the Applicant alleged that the Judgment of the Supreme Court of 27 May 2009, violated her constitutional rights because on 30 June 2010, the Supreme Court quashed the judgments of the District and Municipal Court and rejected the claim of the Applicant as unfounded, stating that the lower instances had wrongly judged the factual situation as well as wrongly applied the substantive law (Rev. l. no. 28/2010). In the Supreme Court's opinion, the Applicant had been absent from work without authorization, even though she had been informed the day before that her request for unpaid leave had been rejected. The Supreme Court reiterated that UNMIK Regulation 2001/36 and Administrative Instruction 44/2004 were applicable instead of UNMIK Regulation 2001/27. The Constitutional Court declared the Referral as inadmissible, because the Applicant neither has substantiated her complaint regarding the alleged violations nor has she exhausted all legal remedies available to her under applicable law.

45. In relation to the Applicant's allegations on the violation of the principle of legal certainty, because the Supreme Court on identical issues for someone decides positively and for someone negatively, the Court reiterates that, in Case KI25/10 (See case KI25/10, Applicant *Privatization Agency of Kosovo*, Judgment of 31 March 2011), the Court held that:

> *"...*
> *57. Moreover, the Comprehensive Proposal for the Kosovo Status Settlement, the provisions of which shall take precedence over all legal provisions in Kosovo, provides, in its Annex IV [Justice System], Article 1.1, (...) that "The Supreme Court shall ensure the uniform application of the law by deciding on appeals brought in accordance with the law". The Special Chamber, as part of the Supreme Court, is, therefore, obliged to abide by this provision.*

58. Finally, Article 145 [Continuity of International Agreements and Applicable Law] stipulates, that "Legislation applicable on the date of the entry into force of the 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". As the final interpreter of the Constitution, the Court holds that the legislation applicable on the date of the entry into force of this Constitution includes UNMIK Regulations and Administrative Decisions issued by the SRSG before 15 June 2008. In accordance with Article 145, such Regulations and Administrative Instructions as well as other legislation will only continue to apply to the extent they are in conformity with the Constitution until repealed, superseded or amended in accordance with the Constitution".

...

46. However, the Court notes that, in accordance with the principle of subsidiarity, it is up the Applicant to raise the alleged constitutional violation before the regular courts for them primarily to ensure observance of the fundamental rights enshrined in the Constitution. -

47. In this respect, the Court notes that the Applicant has not raised with Supreme Court the alleged constitutional violation of the non-harmonized principled stances on identical issues and the Supreme Court's application in respect to identical issues for someone deciding positively and for someone negatively which according to the Applicant would have created legal uncertainty.

48. The Court further notes that, on 28 August 2013, the Applicant sent a letter to the President of the Supreme Court requesting harmonization of principled stances on identical issues. The Applicant namely requested the President of the Supreme Court to *"suggest us which action should KEK take to repair the consequences caused by the abovementioned judgment"*. However, this request should have been raised by the Applicant during the proceedings of review of the case and not after the Judgment of the Supreme Court was taken, i.e. 2 May 2013.

49. In relation to the Applicant's allegations on the violation of Article 31 of the Constitution [Right to a Fair and Impartial Trial], the Court notes that the Applicant has not clarified how and why the challenged decision, *"by applying other acts that were not in force",* violated this specific constitutional right.

50. The Court recalls that the right to fair and impartial trial encompasses a number of elements, and represents key components in protecting basic individual rights from violations potentially committed by courts or public authorities by their rulings.

51. In this regard, the Court refers to Article 31 [Right to a Fair and Impartial Trial] of the Constitution, which establishes that:

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

52. Article 6 of the European Convention on Human Rights (ECHR) also provides that:

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

53. In this context, the Court observes that the Applicant does not accurately explain how and why the allegation "*applying other acts that were not in force"* substantiates a constitutional violation of his fundamental right to a fair and impartial trial. In fact, the Applicant only concludes that *"for the present case is not at all disputable that the legal provisions were violated by applying other acts that were not in force".*

54. Moreover, the above quotation of the Judgments of the Supreme Court shows that the challenged decision provided extensive and comprehensive reasoning of the facts of the case and of its findings.

55. Furthermore, the dissatisfaction with the Judgment or merely mentioning articles or provisions of the Constitution is not sufficient for the Applicant to build an allegation on a constitutional violation. When alleging violations of the constitution, the Applicant must provide a compelling and well-reasoned argument in order for the Referral to be grounded.

56. In sum, the Court considers that the Applicant does not substantiate and prove that the Supreme Court, allegedly adjudicating *"based on laws that were not in force*", violated his constitutional rights.

57. The Applicant also alleges a violation of Article 102 (3) of the Constitution, which establishes that *"courts shall adjudicate based on the Constitution and the law"*. The Court considers that the Applicant has not brought any argument or presented any evidence that the Supreme Court disrespected the provision in question. Therefore, the Court finds that the Applicant has yet again failed to argue the violation of such rights as provided by the Constitution in the aforementioned Article 102 (3) of the Constitution.

58. In addition, the Applicant alleges "*violations of legal provisions"*. The Court summarily considers that such allegation is of a legal nature. Thus, the Court finds that it does not represent any constitutional ground of violation of fundamental rights guaranteed by the Constitution.

59. In fact, the Court does not review decisions of the regular courts on matter of legality, nor does it review the accuracy of matter of facts, unless there is clear and convincing evidence that such decisions are rendered in a manifestly unfair and arbitrary manner.

60. Moreover, it is not the duty of the Court to decide whether the Supreme Court has appropriately reviewed arguments of applicants in resolving legal matters. This remains solely the jurisdiction of the regular courts. It is the duty of the regular courts to interpret and apply pertinent rules of procedural and material law. (See, *mutatis mutandis*, *Garcia Ruiz v. Spain* [GC], no. 30544/96, para. 28, European Court for Human Rights [ECtHR] 1999-I).

61. The duty of the Constitutional Court is to assess whether, during the proceedings of the regular courts, the courts have violated any fundamental rights as guaranteed by the Constitution.

62. In sum, the Court cannot observe arguments and evidence that the challenged Judgments of Supreme Court of Kosovo Rev. nr. 379/11, dated 2 May 2013, Rev. nr. 192/13, dated 3 October 2013, Rev. nr. 244/13, dated 8 October 2013, Rev. nr. 192/13, dated 3 October 2013, Rev. nr. 246/13, dated 1 October 2013, Rev. nr. 271/13, dated 31 November 2013, were rendered in a manifestly unfair and arbitrary manner. (See Resolutions on inadmissibly of the Constitutional Court of Kosovo Case KI185/13 dated 10 February 2014 and in Case KI186/13 dated 18 February 2014)

63. As a result, the Court finds that the Applicant's Referrals do not meet the admissibility requirements, since the Applicant has failed to substantiate his allegation and submit supporting evidence on the alleged constitutional violation by the Challenged Decisions.

64. Therefore, pursuant to Rule 36 (2) b) of the Rules of Procedure, the Referral of the Applicant must be rejected as manifestly ill-founded.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113 (7) of the Constitution, Article 48 of the Law and Rule 36 (2) b) and Rule 56 (2) of the Rules of Procedure, on 8 May 2014, unanimously

DECIDES

I. TO REJECT the Referral as Inadmissible;

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

III. This Decision is effective immediately.

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

KI30/14, Zymrije Haxhimusa, Ekrem Abazi, Ferinaze Isufi, Avdullah Hoxha and Hyzri Delolli, Resolution of 26 June 2014 - Constitutional Review of the Notification No. 4278, of the Ministry of Public Administration of the Republic of Kosovo, of 29 August 2013

Joined Cases KI30/14, decision of 26 June 2014

Key words: individual referral, administrative dispute, right to work and exercise profession, impossibility to compete, non-exhaustion of legal remedies

In this case, the Applicants request from the MPA to be introduced into the payroll system, as servants, since, as they allege that they have been unjustly removed from the payroll since January 2014. The Applicants allege that by this action, the right to work and salary, as well as the right to elect and be elected, have been violated.

However, the Court finds that the Applicants have failed to show that they have exhausted all legal remedies available under applicable law.

In this respect, before submitting their Referral to the Constitutional Court, the Applicants should have exhausted all possibilities in the administrative procedure, namely to look for the solution of their case within the MPA and then to the competent court, namely the Department of Administrative Affairs.

For the reasons above, the Court concludes that the Applicants' Referral did not meet procedural requirements for admissibility, since the Applicants have not exhausted all effective legal remedies provided by law.

RESOLUTION ON INADMISSIBILITY
in
Case no. KI30/14
Applicant
Zymrije Haxhimusa, Ekrem Abazi, Ferinaze Isufi, Avdullah Hoxha and
Hyzri Delolli
Request for constitutional review of the Notification of the Ministry of Public Administration of the Republic of Kosovo, No. 4278, of 29 August 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
Arta Rama-Hajrizi, Judge

Applicant

1. The Referral was submitted by Ms. Zymrije Haxhimusa, with residence in village Doganaj, Municipality of Ferizaj; Mr. Ekrem Abazi, with residence in Viti; Ms. Ferinaze Isufi, with residence in Prishtina; Mr. Avdullah Hoxha, with residence in Pleshina, Municipality of Ferizaj; and Mr. Hyzri Delolli, with residence in village Zaskok, Municipality of Ferizaj (hereinafter: the Applicants).

Challenged decision

2. The Applicants challenge the Notification of the Ministry of Public Administration, no. 4278, of 29 August 2013 (hereinafter: the MPA).

Subject matter

3. The subject matter of the Referral is the constitutional review of Notification of MPA, no. 4278, of 29 August 2013, regarding the

Applicants' allegations for violation of Article 45. 1 [Freedom of Election and Participation]; Article 49 [Right to Work and Exercise Profession]; and Article 73 [Ineligibility] of the Constitution, and substantial violations of the provisions of the procedural law, erroneous and incomplete determination of factual situation and violation of the material law.

Legal basis

4. Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution); Articles 20 and 47 of the Law on the Constitutional Court of the Republic of Kosovo, no. 03/L-121 (hereinafter: the Law).

Proceedings before the Constitutional Court

5. On 12 February 2014, the Applicants submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 6 March 2014 the President of the Court, by Decision no. GJR. KI30/14, appointed Judge Altay Suroy as Judge Rapporteur, and by Decision no. KSH. KI30/14, appointed the Review Panel, composed of Judges: Robert Carolan (Presiding), Ivan Čukalović and Prof. Dr. Enver Hasani.

7. On 4 March 2014, the Applicants submitted the additional documents.

8. On 8 April 2014, the Court notified the Applicants of the registration of Referral and requested from them to complete it with relevant documents.

9. On 22 April 2014, the Applicants submitted the filled Form of Referral, but did not attach any relevant documents.

10. On 23 April 2014 the Court notified the MPA, namely the permanent secretary, of the registration of Referral and requested additional documents.

11. On 28 April 2014, the MPA submitted additional documents related to the case.

12. On 26 June 2014 Judge Kadri Kryeziu notified in writing the Court for his exclusion from the deliberations for the period June-July

2014 until the Court decides regarding the allegations raised against him.

13. On 26 June 2014, the Review Panel considered the report of the Judge Rapporteur and recommended to the Court the inadmissibility of Referral.

Summary of facts

14. The Applicants of this Referral, in the last local elections, organized by the Central Election Commission (CEC), were elected members of the municipal assemblies, in different municipalities of the Republic of Kosovo. The Applicants, at the same time, work as civil servants in different institutions of the Republic of Kosovo.

15. On 29 August 2013, the MPA, by Notification no. 4278, of 29 August 2013, informed all civil servants, regarding the rights and obligations under the Law on Civil Service of the Republic of Kosovo, who would conditionally like to run in the municipal elections of 2013, organized by the Central Election Commission of the Republic of Kosovo.

16. On 2 December 2013 the Applicants, after the elections ended, returned to their working places and received the monthly salary for December. Later, as they claim, the MPA removed them from the payroll for January 2014, due to their election as the members of the municipal assemblies in different municipalities of the Republic of Kosovo.

Applicants' allegations

17. The Applicants request from the MPA to be introduced into the payroll system, as servants, since, as they allege that they have been unjustly removed from the payroll since January 2014. The Applicants allege that by this action, the right to work and salary, as well as the right to elect and be elected, have been violated.

18. The Applicants allege that their removal from the payroll for 2014 is unlawful. They claim: *"we, the appellants, have participated in the last local elections, which were organized by the Central Election Commission (CEC) of the Republic of Kosovo and we were elected as members of municipal assemblies. We belong to different political entities, but in our working places, where we work, we were verbally notified that the MAP has removed us*

from the payroll for January, since we have been elected as members of the municipal assemblies, with a justification that we have to resign from the working place, where we have worked until now and where we have been employed".

19. Furthermore, they allege that *"the substantial violations of the procedural provisions consist in the fact that the last local elections were held according to the Law No. 03/L-072, which law applies only for civil servants in the municipalities and we have been certified by CEC. Therefore, according to the provisions of this Law, only the civil servants, who are employed in the Municipal Assemblies, should resign from their working places, because there is the conflict of interest. The Administrative Direction No. 01/2010 MAP-No. 01/2010 MLGA, Article 2, para. 1, paragraphs from 1.1, 1.2, 1.3, 1.4 including 1.5, when to this is added also the Law No. 03/L-149 on Civil Servants of the Republic Kosovo, Article 17, para. 4, which Article explicitly states, we quote "Civil Servants elected in municipal and central elections have a right to apply and compete with other candidates for any vacant position in civil service."*

20. The Applicants claim that even before these local elections they were elected as members of the municipal assembly for several consecutive mandates, so that they request to be allowed to exercise this function, and also continue to work as civil servants in the central administration.

Admissibility of the Referral

21. The court examines beforehand whether the Applicants have fulfilled the admissibility requirements laid down in the Constitution and further specified in the Law and the Rules of Procedure.

22. In the present case, the Applicants are natural persons, who base their referral on Article 113.7 of the Constitution.

23. 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".*

24. From the case file the Court notes that the Applicants appeal the decision of the MPA, by which they allege that they were unjustly removed from the payroll for January 2014. The Applicants were elected as members of the municipal assembly in different municipalities of the Republic of Kosovo and are certified by the CEC. They allege that their removal from the payroll in the places where they work is contrary to the law and does not apply for them, but only for civil servants who are in a conflict of interest under the law.

25. However, the Court finds that the Applicants have failed to show that they have exhausted all legal remedies available under applicable law.

26. In this respect, before submitting their Referral to the Constitutional Court, the Applicants should have exhausted all possibilities in the administrative procedure, namely to look for the solution of their case within the MPA and then to the competent court, namely the Department of Administrative Affairs.

27. The Court wishes to reiterate that 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/her 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 shall provide effective legal remedies for the violation of constitutional rights (see, Resolution on Inadmissibility, Case KI142/13, of 22 October 2013, *Fadil Maloku v. Decision of the President of the Republic of Kosovo* No. 686-2013, of 6 September 2013).

28. For the reasons above, the Court concludes that the Applicants' Referral does not meet procedural requirements for admissibility, since the Applicants have not exhausted all effective legal remedies provided by law.

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 26 June 2014, unanimously

DECIDES

I. TO DECLARE the Referral 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	**President of the Constitutional Court**
Altay Suroy	Prof. Dr. Enver Hasani

KI88/14, Medija Smailji, Resolution of 2 July 2014 - Constitutional Review of Decision Ca. no. 3875/2012, of the Court of Appeal of Kosovo in Prishtina, of 31 January 2014

Case KI88/14, Decision of 02 July 2014.

Key words: individual referral, proposal for repetition of procedure, right to work, professional advancement, manifestly ill-founded.

The Applicant submitted Referral pursuant to Article 113.7 of the Constitution of Kosovo, by challenging the constitutionality of Decision Ca. no. 3875/2012, of the Court of Appeal of Kosovo in Prishtina, of 31 January 2014 by which according to the Applicant's allegations, "*was denied the Applicant's right to work*".In addition, the Applicant requests from the Court not to disclose her identity.

The Applicant, as a doctor specialist of physical medicine and rehabilitation in 2001, with an aim of professional advancement, in the Faculty of Medicine in Belgrade, enrolled the sub specialty. The Applicant requested from her Employer, the Health Centre in Prizren to approve the absence from work for the period of the professional advancement, but this Applicant's request was rejected. The Applicant tried to exercise her right through court.

The Applicant alleges that the Court of Appeal of Kosovo has erroneously calculated the time limits regarding the date when she submitted the request for repetition of procedure. The Applicant considers that the date when she filed the request with the Office of EULEX Judges in Prishtina should have been taken as the applicable date, and states as it follows: *"...I was convinced that the proposal for repetition of procedure, according to the law, would be forwarded to the Municipal Court in Prizren, which was not done, and which constituted a breach of the Constitution and the Law".*

Deciding on the Applicant's Referral of Ms. Medija Smailji, the Constitutional Court found that the Decision Ca. no. 3875/2012, of the Court of Appeal of Kosovo in Prishtina of 31 January 2014, of 2 April 2014, in its reasoning explains in details the reasons for rejection of the request for repetition of the procedure and provides response to all Applicant's allegations with regards to legal deadlines.

Therefore, the Constitutional Court concluded that presented facts by the Applicant do not in any way justify the allegation of a violation of the constitutional rights, therefore, his referral is manifestly ill-founded. At

the same time, the Constitutional Court rejected the Applicant's request for not having her identity disclosed, as ungrounded, because no supporting documentation and information was provided to support the reasons for the Applicant not to have her identity disclosed.

RESOLUTION ON INADMISSIBILITY
in
Case no. KI88/14
Applicant
Medija Smailji
Constitutional review of the Decision of the Court of Appeal of Kosovo in Prishtina, Ca. no. 3875/2012, of 31 January 2014

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 and
Arta Rama-Hajrizi, Judge

Applicant

1. The Referral was submitted by Ms. Medija Smailji (hereinafter: the Applicant), with permanent residence in the Municipality of Prizren.

Challenged decision

2. The Applicant challenges the Decision of the Court of Appeal of Kosovo in Prishtina Ca. no. 3875/2012, of 31 January 2014, which was served on the Applicant on 7 February 2014.

Subject matter

3. The subject matter is the constitutional review of the Decision Ca. no. 3875/2012, of the Court of Appeal of Kosovo in Prishtina of 31 January 2014, by which according to the Applicant's allegations, *"was denied the Applicant's right to work"*.

4. In addition, the Applicant requests from the Court not to disclose her identity.

Legal basis

5. The Referral is based on Article 113. 7 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), Article 47 of the Law on the Constitutional Court of the Republic of Kosovo no. 03/L-121 (hereinafter: the Law), and Rule 56 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

6. On 16 May 2014, the Applicant submitted a Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court.

7. On 10 June 2014, the President of the Court, by Decision no. GJR. KI88/14, appointed Judge Snezhana Botusharova as Judge Rapporteur. On the same date, the President of the Court, by Decision no. KSH. KI88/14, appointed the Review Panel composed of Judges: Robert Carolan(Presiding), Almiro Rodrigues and Enver Hasani.

8. On 11 June 2014, the Court notified the Applicant and the Court of Appeal of Kosovo in Prishtina on registration of the Referral.

9. On 26 June 2014, Judge Kadri Kryeziu notified in writing the Court of the request for his recusal from the session for the period June-July 2014, until the Court decides on the allegations raised against him.

10. On 2 July 2014, after having considered the report of the Judge Rapporteur, Snezhana Botusharova, the Review Panel, composed of Judges: Robert Carolan (Presiding), Almiro Rodriguez and Enver Hasani, recommended to the full Court the inadmissibility of the Referral.

Summary of facts

11. The Applicant, as a doctor specialist of physical medicine and rehabilitation in 2001, with an aim of professional advancement, in the Faculty of Medicine in Belgrade, enrolled the sub specialty.

12. The Applicant requested from her Employer, the Health Centre in Prizren to approve the absence from work for the period of the professional advancement, but this Applicant's request was rejected.

13. The Health Centre in Prizren, by Decision of the Disciplinary Commission no. 13/15 of 23 January 2001, dismissed the Applicant from work, whereas by Director's Decision no. 3/61 of 27 November 2001, was rejected the Applicant's request for recognition of the right to unpaid leave.

14. The Applicant, by a claim filed with the Municipal Court in Prizren requested to be quashed as unlawful the Decisions of the Disciplinary Commission of the Health Centre in Prizren no. 13/15 of 23 January 2001, and the Director's Decision no. 3/61 of 27 November 2001.

15. On 24 May 2005, the Municipal Court in Prizren, by Judgment, P. no. 64/2005, rejected the Applicant's statement of claim, by which she requested her reinstatement to the work position of the Specialist of Physical Therapy, the payment of unpaid personal income and the recognition and approval of the unpaid leave.

16. On 11 November 2005, the District Court in Prishtina, by Judgment Gž. no. 340/2005, rejected the Applicant's appeal and approved the Judgment of the Municipal Court in Prizren P. no. 64/2005 of 24 May 2005.

17. On 21 June 2006, the Supreme Court of Kosovo, by Judgment Rev. no. 15/2006 rejected the Applicant's revision, filed against the Judgment of the District Court in Prishtina, Gž. no. 340/2005 of 11 November 2005.

18. On 5 June 2009, the Applicant submitted the proposal for repetition of procedure to the EULEX Office in Prizren.

19. On 22 February 2010, the EULEX Judge, in the Reply, Ref. JC/EJU/PrzDC/061/vk/09, notified the Applicant the following:

> *"... we wish to emphasise that EULEX Judges are competent for cases which have not been yet adjudicated by the Kosovo courts. Unfortunately, your matter is not under this jurisdiction, since it was finalized on 21.06.2006. Therefore, the EULEX Judges of the District Court in Prizren shall take no further action".*

20. On 6 March 2012, the Applicant submitted the proposal for repetition of procedure to the Municipal Court in Prizren.

21. On 3 July 2012, the Municipal Court in Prizren, by Decision P. no. 64/2005 rejected the proposal for repetition of the contested procedure, finalized by final Judgment P. no. 64/2005.

22. On 16 July 2012, the Applicant filed an appeal, by requesting that the Decision of the Municipal Court in Prizren P. no. 64/2005 of 3 July 2012 be quashed and the matter to be remanded to the first instance court for repetition of the procedure.

23. On 31 January 2014, the Court of Appeal of Kosovo in Prishtina, by Decision Ca. br. 3875/2012, rejected the Applicant's proposal for repetition of procedure, finalized in the Municipal Court in Prizren, by Judgment P. no. 64/2005 of 24 May 2005, which became final on 11 November 2005, with the following reasoning:

> *"From the EULEX Information (Report of 22.02.2010), it results that EULEX judges have informed the claimant that the matter raised by her upon her proposal for repetition of procedure is not under the EULEX jurisdiction, and therefore, it shall undertake no action".*
> *"Article 234.3 of the LCP provides:"After a five year deadline passed from the day when the verdict became absolute, the proposal for repeating the procedure cannot be submitted"... in the present case, the proposal for repeating the procedure refers to finding new facts (hearing of a witness) which constitutes grounds for repeating the procedure pursuant to Article 232 g) of the LCP. The Panel finds that the proposal for repetition of procedure filed by the claimant is out of time, since from 11.11.2005, when the judgment of the Municipal Court in Prizren, C.no.64/2005 became final until 06.03.2012, when the claimant filed her proposal with the Municipal Court in Prizren, more than 5 years have passed".*

Applicant's allegations

24. The Applicant alleges that the Court of Appeal of Kosovo has erroneously calculated the time limits regarding the date when she submitted the request for repetition of procedure. The Applicant considers that the date when she filed the request with the Office of EULEX Judges in Prishtina should have been taken as the applicable date, and states as it follows:

> *"... I was convinced that the proposal for repetition of procedure, according to the law, would be forwarded to the*

Municipal Court in *Prizren, which was not done, and which constituted a breach of the Constitution and the Law".*

"Therefore, the stance of the Court of Appeal is ungrounded, when finding that the proposal for repeating the procedure is filed after the expiry of the deadline of 5 years from the day the judgment became final, by mentioning the date 06.03.2012, because it is an indisputable fact that on 19.02.2009, I filed a proposal for repetition of procedure, after I learned that other doctors were allowed by the Health Centre in Prizren both paid and unpaid leave, and in these terms, in this present case, the deadline of 5 years has not expired".

25. Based on what was presented in the Referral, the Applicant requests from the Constitutional Court of Kosovo, the following:

"I was deprived the right to work, which is guaranteed by the Constitution, and in all these years, I have been wondering how is it possible that I have been deprived of my right to work because of professional advancement, and therefore, I have filed this referral with you, to hold that this proposal for repetition of procedure was timely filed, and that the decision of the Court of Appeal of Kosovo is in contradiction with the provisions of the Constitution of the Republic of Kosovo, laws and international conventions"...

Admissibility of the Referral

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

27. 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".

28. The Court refers also 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."

29. Moreover, the Court refers to Rule 36 (2) b) of the Rules of Procedure, which provides:

„(2) 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".

30. Reviewing the Applicants' allegations for violations regarding the erroneous calculation of the time limits by the Court of Appeal of Kosovo, the Constitutional Court notes that it is not a court of appeal, when reviewing 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*, *Garcia Ruiz v. Spain* [GC), no. 30544/96, § 28, European Court on Human Rights [ECHR 1999-1).

31. The Decision of the Court of Appeal of Kosovo in Prishtina Ca. no. 3875/2012, of 31 January 2014, of 2 April 2014, in its reasoning explains in details the reasons for rejection of the request for repetition of the procedure and provides response to all Applicant's allegations with regards to legal deadlines.

32. The Constitutional Court notes that the Applicant has not provided any *prima facie* evidence which would point out to a violation of her constitutional rights (see *Vanek vs. Slovak Republic*, ECHR Decision on admissibility, Application no. 53363/99 of 31 May 2005).

33. In the present case, the Applicant was provided numerous opportunities to present her case and to challenge the interpretation of the law, which she considers as being incorrect, before the Municipal Court in Prizren, the District Court in Prizren and the Supreme Court of Kosovo, as well as before the Basic Court in Prizren and the Court of Appeal of Kosovo. After having examined the proceedings in their entirety, the Constitutional Court did not find that the pertinent proceedings were in any way unfair or arbitrary (see *mutatis mutandis, Shub v. Lithuania*,

ECHR Decision as to the Admissibility of Application no. 17064/06 of 30 June 2009).

34. Finally, the admissibility requirements have not been met in this Referral. The Applicant has failed to point out and substantiate the allegations that her constitutional rights and freedoms have been violated by the challenged decision.

35. Accordingly, the Referral is manifestly ill-founded and must be declared inadmissible, in accordance with Rule 36 (2) b) of the Rules of Procedure.

36. As to the Applicant's request for not having her identity disclosed, the Court rejects it as ungrounded, because no supporting documentation and information was provided to support the reasons for the Applicant not to have her identity disclosed.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113, paragraph 7 of the Constitution, Articles 20 and 48 of the Law and Rule 36 (2) b) of the Rules of Procedure, in the session held on 2 July 2014, unanimously

DECIDES

I. TO DECLARE the Referral Inadmissible;

II. TO REJECT the Applicant's request not to have her 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. This Decision is effective immediately.

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

KO119/14, Xhavit Haliti and 29 other Deputies of the Assembly of the Republic of Kosovo, Decision on interim measure of 23 July 2014 - Constitutional Review of Decision No. 05-V-001 voted by 83 Deputies of the Assembly of the Republic of Kosovo on the election of the President of the Assembly of the Republic of Kosovo, of 17 July 2014.

Case KO103/14, Decision of 23 July 2014.

Keywords: deputies of assembly, constitutional interpretation, procedure, election of the president of the parliament, political party, coalition, interim measure

The Referral was filed by 30 Deputies of the Assembly of the Republic of Kosovo, who challenged the Decision No. 05-V-001 voted by 83 Deputies of the Assembly of the Republic of Kosovo on the election of the President of the Assembly of the Republic of Kosovo (the Assembly) as regards its substance and as well the procedure followed during the Constitutive Session of the Assembly on 17 July 2014.

The Applicants requested the Court to impose an interim measure, namely to suspend the constitutive process of the Assembly pending the final decision of the Court. The Applicants alleged that *"The Interim Measure is in the public interest because irrecoverable damage can be caused to the functioning of the institutions of the Republic of Kosovo as well to the Republic of Kosovo as a democracy."*

As to the request for Interim Measures, the Court noted that the Referral was prima facie admissible as it was submitted by more than 10 Deputies of the Assembly of Kosovo, within eight days from the date of the decision being adopted by the Assembly as regards its substance and the procedure followed. Thus, the requirements of Article 113, paragraph 5 of the Constitution were met.

Therefore, the Court, pursuant to Article 116 [Legal Effect of Decisions], paragraph 2 of the Constitution, Article 27 of the Law and Rule 55 (4) of the Rules of Procedure, found that the Applicants had put forward enough convincing arguments to grant the request for Interim Measure.

Thus, the Court without prejudging the case on the merits granted the Applicants' request for Interim Measure.

DECISION ON INTERIM MEASURE
in
Case No. KO119/14
Applicants
Xhavit Haliti and 29 other deputies of the Assembly of the Republic of Kosovo
Constitutional review of Decision No. 05-V-001 voted by 83 Deputies of the Assembly of the Republic of Kosovo on the election of the President of the Assembly of the Republic of Kosovo, dated 17 July 2014.

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
Arta Rama-Hajrizi, Judge

Applicant

1. The Referral was lodged by 30 Deputies of the Assembly of the Republic of Kosovo, Hashim Thaçi, Xhavit Haliti, Hajredin Kuçi, Enver Hoxhaj, Arsim Bajrami, Memli Krasniqi, Margarita Kadriu-Ukelli, Zenun Pajaziti, Elmi Reçica, Rafet Rama, Ganimete Musliu, Selvije Halimi, Safete Hadërgjonaj, Bekim Haxhiu, Flora Brovina, Fadil Beka, Xhevahire Izmaku, Agim Aliu, Sala Berisha-Shala, Agim Çeku, Besim Beqaj, Raif Qela, Naim Fetahu, Blerta Deliu-Kodra, Mexhide Mjaku-Topalli, Adem Grabovci, Azem Syla, Nuredin Lushtaku, Nezir Çoçaj and Kadri Veseli (hereinafter: the "Applicants"). Before the Constitutional Court of the Republic of Kosovo (hereinafter: the "Court"), the Applicants have authorized Mr. Xhavit Haliti to represent them.

Challenged decision

2. The Applicants challenge Decision No. 05-V-001 voted by 83 Deputies of the Assembly of the Republic of Kosovo (hereinafter: the "Assembly") on the election of the President of the Assembly of

the Republic of Kosovo as regards its substance and as well the procedure followed in respect to the process of the Assembly being constituted on 17 July 2014.

Subject matter

3. The subject matter of the Referral is the assessment by the Court of the Constitutionality of the decision voted by 83 Deputies of the Assembly, by which, Mr. Isa Mustafa, was elected the President of the Assembly of the Republic of Kosovo.

4. The Applicants contest the constitutionality of the procedure for the election of the President of the Assembly of the Republic of Kosovo as applied during the constitutive session of the Assembly held on 17 July 2014, alleging a violation of Articles 67 [Election of the President and Deputy Presidents] of the Constitution of the Republic of Kosovo (hereinafter: the "Constitution") and the Rules of Procedure of the Assembly of the Republic of Kosovo (hereinafter: the "Rules of Procedure of the Assembly").

5. The Applicants also claim that the procedure to constitute the Assembly was not done in accordance with Article 67 [Election of the President and Deputy Presidents], paragraphs 2 and 3, of the Constitution and Chapter III [Inauguration of the Assembly] of the Rules of Procedure of the Assembly which determines the procedure to be followed for the constitution of the Assembly.

6. Furthermore, the Applicants request the Court to impose an interim measure, namely to suspend the constitutive process of the Assembly pending the final decision of the Court. The Applicants allege that *"The Interim Measure is in the public interest because irrecoverable damage can be caused to the functioning of the institutions of the Republic of Kosovo as well to the Republic of Kosovo as a democracy."*

Legal basis

7. The Applicants base the Referral on Article 113.5 of the Constitution, Articles 27, 42 and 43 of the Law, No. 03/L-121, on the Constitutional Court of the Republic of Kosovo (hereinafter: the "Law"), and Rules 54, 55 and 56.3 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the "Rules of Procedure").

Proceedings before the Court

8. On 18 July 2014 the Applicants submitted the Referral to the Court.

9. On 21 July 2014, pursuant to Rule 33 of the Rules of Procedure, the President of the Constitutional Court, by Decision No. GJR. KO119/14, appointed Judge Robert Carolan as Judge Rapporteur. On the same date, the President of the Constitutional Court, by Decision No. KSH. KO119/14, appointed the Review Panel composed of Judges Altay Suroy (Presiding), Almiro Rodrigues and Ivan Čukalović.

10. The Court also refers to the written notification of Judge Kadri Kryeziu dated 26 June 2014 excluding himself from the deliberations for the period June-July 2014, until the Court will have decided regarding certain allegations raised against him.

11. On 21 July 2014 the Court notified the Applicants of the registration of the Referral.

12. On the same date the Court sent a copy of the Referral to the President of the Republic of Kosovo, the Caretaker Government of the Republic of Kosovo (hereinafter: the "Caretaker Government"), the Deputies of the Assembly of the Republic of Kosovo and the Secretary General of the Assembly of the Republic of Kosovo (hereinafter: the "Secretary General of the Assembly"). The latter was requested to submit to the Court a copy of the transcript of the constitutive session held on 17 July 2014.

13. On 23 July 2014, after having heard the Judge Rapporteur and having discussed the request for an interim measure submitted by the Applicants, the Court decided to grant the Request for Interim Measures pending the final decision of the Court.

Brief summary of facts

14. On 7 May 2014 the Assembly, in its extraordinary plenary session, decided for the dissolution of the fourth legislature of the Assembly of the Republic of Kosovo.

15. On 8 May 2014 the President of the Republic of Kosovo decreed the early election to take place on 8 June 2014.

16. On 8 June 2014 the elections took place in the Republic of Kosovo.

17. On 27 June 2014 the Central Election Commission (hereinafter: the CEC) published the election results.

18. On 4 July 2014 the CEC certified the election results.

19. On 7 July 2014 the President of the Republic of Kosovo decided to hold the constitutive meeting of the Assembly on 17 July 2014.

20. On 12 July 2014 the Presidency of the Assembly from the previous legislature held its meeting with the aim to prepare the agenda for the constitutive meeting.

21. On 17 July 2014 the Assembly held its constitutive session chaired by the oldest member of the Assembly, Mrs. Flora Brovina, (hereinafter: the "Chairperson") and assisted by the youngest member of the Assembly, Ms. Teuta Rugova. The Chairperson followed the following procedure:

    a. the Chairperson requested from the representatives of the political parties to nominate their respective representative for the *ad hoc* Committee for the verification of quorum and mandates of Deputies;

    b. the *ad hoc* Committee reported to the Assembly confirming that there are 120 Deputies present in the hall and verified, based on the list of the certified results of the election, the mandates of the Deputies;

    c. the Chairperson requested from the Deputies to vote on the report of the *ad hoc* Committee, which was adopted by 117 deputies voting in favour and no one vote against;

    d. the Chairperson requested the Deputies to take the oath, which they did;

    e. the Chairperson requested, based on the report of the *ad hoc* Committee,a representative from the political party PDK to propose the candidate for the President of the Assembly of the Republic of Kosovo and the three largest political parties to propose their candidates for Deputy Presidents of the Assembly of the Republic of Kosovo;

f. the Chairperson put the candidate of the political party PDK to the vote, whereupon the representatives of the political parties LDK, VV, AAK, Nisma and Srpska Lista left the hall; and

g. the Chairperson declared the session closed until further notice, because there was no quorum, i.e. only 47 Deputies were present.

22. Thereafter, although the constitutive session of the Assembly was officially closed by the Chairperson, the political parties LDK, AAK, NISMA, VV and the deputies from the Serb minority (83 Deputies in total) returned to the hall of the Assembly where the youngest member of the Assembly, Deputy Ms. Teuta Rugova, chaired a meeting of the 83 Deputies present to vote the motion submitted by LDK, AAK, Nisma and VV replacing the Chairperson Deputy Flora Brovina. The motion was adopted with 82 votes in favour. Thereupon, Deputy Mrs. Milka Vuliq, the second oldest member of the Assembly and member of Srpska Lista continued to chair the meeting, which lead to Decision No. 05-V-001 by which Isa Mustafa was elected as President of the Assembly with 65 votes in favour out of the 83 Deputies present.

Arguments presented by the Applicants

23. The Applicants claims that *"The constituency of the Assembly of the Republic of Kosovo, in accordance with the Constitution, through the elected representatives after the held elections on 8 June 2014, represents a great importance for the deputies of the Democratic Party of Kosovo, and also directly affects the formation of other democratic institutions including the government."*

24. However, the Applicants consider that *"During the preparation for the inaugural session of the Assembly there was a violation of the Constitution and the Rules of Procedure of the Assembly. During the meeting, dated 12.07.2014, the chairperson of the meeting, the President of the previous legislature Mr. Krasniqi, exceeded his powers set out in the Constitution, namely his interpretation on the largest parliamentary group, i.e. according to the former President the "Parliamentary group" established with 47 deputies during the registration process the fifth legislature has to sit in the center and consequently this Parliamentary Group has to propose the President of the Assembly. However, taking into consideration*

that the "Parliamentary Group LDK-AAK-NISMA" are not certified as the largest parliamentary group by the Central Election Commission, as determined by Article 15 and 18 of Law no. 03/L-073 on General Elections in the Republic of Kosovo (Official Gazette of the Republic of Kosovo/Pristina: Year III/no. 31/ 15 June 2008), the action of the President of the Assembly of the fourth legislature authorizing the merger of one Parliamentary Group consisted of the deputies of LDK, AAK and NISMA, without being certified as the largest parliamentary group, before the constituency of the fifth legislature of the Assembly of the Republic of Kosovo constitutes a violation of the Constitution of the Republic of Kosovo, respectively Article 64 (1) and Article 67 and Article 15 and 18 of Law no. 03/L-073 on General Elections in the Republic of Kosovo (Official Gazette of the Republic of Kosovo/Pristina: Year III / no. 31/15 June 2008). Also, the action of the President of the Assembly of the fourth legislature is also in conflict with the practices that have been confirmed so far by the Transcript of Meetings of the Presidency with representatives of parliamentary parties, held on 10.02.2011."

25. Furthermore, the Applicants allege that the *"Decision of the Assembly of the Republic of Kosovo, dated 17 July 2014 (No. 05-V-001), on the election of the President of the Assembly of the Republic of Kosovo, including the preparatory procedure followed in connection with the constituency process of the Assembly are not in accordance with the provisions of Article 67 of the Constitution of the Republic of Kosovo. Based on Article 67.2 of the Constitution and the Constitutional Court Judgment in Case no. KO103/14 filed by the President of the Republic of Kosovo, regarding the assessment of compatibility of Article 84 (14) (Competencies of the President) with Article 95 (Election of the Government) of the Constitution of the Republic of Kosovo (Ref No.: AG 671114, 1 July 2014), the President of the Assembly is proposed by the largest parliamentary group which won the majority of seats in the Assembly and is elected by a majority vote of all deputies of the Assembly."*

26. Thus, based on the abovementioned articles, Articles 64 and 67 of the Constitution, the Judgment of the Constitutional Court in Case KO103/14, the alleged violation, which allegedly occurred during the preparatory procedure for the constitutive session of the Assembly and during the constitutive session held on 17 July 2014, the Applicants request the Constitutional Court to answer the following questions:

a. *To assess the constitutionality of the Decision of the Assembly of the Republic of Kosovo, dated 17.07.2014 (no. 05-V-001) if the President of the Assembly has been proposed by the largest parliamentary group according to Article 67.2 of the Constitution of the Republic of Kosovo.*

b. *To clarify who is the largest parliamentary group, as defined in Article 67 (paragraph 2) of the Constitution of the Republic of Kosovo and Article 12 of the Rules of Procedure of the Assembly of the Republic of Kosovo (29 April 2010), respectively is it the Parliamentary group that has won in the election for the Assembly of 8 June 2014 or the grouping that has been formed during the registration of the deputies and, therefore,: Who has the right to propose the candidate for President of the Assembly during the constitutive session of the Assembly?*

c. *To clarify whether there was a violation of the Constitution by the President of the Assembly from the previous legislature according to Article 67.7. What are the competences of the President of the Assembly from the previous legislature during the preparatory meeting dated 07.12.2014?*

d. *After the official closing of the constitutive session, was there a right to discharge the Chairperson and to continue with the constitutive session without inviting the members and taking into account this and the steps that have followed with the election of President and Deputy Presidents of the Assembly, has there during the constitutive session of the Assembly of the Republic of Kosovo been a violation of the Constitution and the Rules of Procedure of the Assembly?*

Request for Interim Measure

27. The Applicants request the Court to impose interim measure suspending the constitutive process of the Assembly pending the final decision of the Court. The Applicants allege that *"The Interim Measure is in the public interest because irrecoverable damage can be caused to the functioning of the institutions of the Republic of Kosovo as well to the Republic of Kosovo as a democracy."*

28. In this respect, the Court refers to Article 116 [Legal Effect of Decisions], paragraph 2 of the Constitution, which establishes that *"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."*

29. Furthermore, the Court refers to Rule 55 (4) of the Rules of Procedure, which provides 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."*

30. In this respect, the Court notes that the Referral is prima facie admissible as it is submitted by more than 10 Deputies of the Assembly of Kosovo, within eight days from the date of the decision being adopted by the Assembly as regards its substance and the procedure followed. Thus, the requirements of Article 113, paragraph 5 of the Constitution are met.

31. Therefore, the Court, pursuant to Article 116 [Legal Effect of Decisions], paragraph 2 of the Constitution, Article 27 of the Law and Rule 55 (4) of the Rules of Procedure, finds that the Applicants have put forward enough convincing arguments to grant the request for Interim Measure.

32. Thus, the Court without prejudging the case on the merits grants the Applicants' request for Interim Measure.

FOR THESE REASONS

The Court, pursuant to Article 116, paragraph 2 of the Constitution, Article 27 of the Law and Rules 55 (4) and 56 (3) of the Rules of Procedure, unanimously

DECIDES

I. TO GRANT the interim measure;

II. TO GRANT the interim measure until the final decision is published and no later than 18 September 2014 from adoption of this Decision;

III. TO IMMEDIATLY SUSPEND the Decision on the election of the President of the Assembly of the Republic of Kosovo, No. 05-V-001, voted by 83 deputies of the Assembly of the Republic of Kosovo on 17 July 2014;

IV. TO IMPOSE upon the Assembly to refrain from any action until the final decision of the Court;

V. TO NOTIFY this Decision to the Parties;

VI. TO PUBLISH this Decision in accordance with Article 20 (4) of the Law; and

VII. TO DECLARE this Decision effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Robert Carolan	Prof. Dr. Enver Hasani

KI38/14, Gani Balaj, Resolution of 26 June 2014 - Constitutional Review of Judgment AC-II-12-0165 of the Special Chamber of the Supreme Court of the Republic of Kosovo, of 10 October 2013

CaseKI38/14, Decision of 26 June 2014.

Key words:Individual Referral, *out of time*

The Applicant alleges that "Agricultural Cooperative "Perparimi *" [...] has arbitrarily held this property and as such violated Article 9 and 10 of the Laws of SFRY No. 6/1980, applicable laws pursuant to UNMIK Regulation No. 1999/24 of 12 December 1999."*

The Applicant further claims that *"[...] based on Law No.6/1980 of SFRY on Basic Property Relations, Article 37 provides "* The right for lodging an appeal for protection of the right to property doesn't become obsolete". Based on this the Applicant considers that the property is occupied arbitrarily by the Municipality and that this law is violated without any legal grounds.

Therefore, the Court concludes that the Referral is out of time and, pursuant to Article 49 of the Law and Rule 36 (1) b), it must be rejected as inadmissible.

The Constitutional Court, pursuant to Article 49 of the Law and Rule 36 (1) b) and Rule 56 (2) of the Rules of Procedure, on 26 June 2014, unanimously declares the Referral inadmissible

RESOLUTION ON INADMISSIBILITY
in
Case No. KI38/14
Applicant
Gani Balaj
Constitutional review of Judgment AC-II-12-0165 of the Special Chamber of the Supreme Court of the Republic of Kosovo, dated 10 October 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, and
Arta Rama-Hajrizi, Judge

Applicant

1. The Referral was submitted by Mr. Gani Balaj, residing in the village Irzniq, Municipality of Deçan (hereinafter, the Applicant) and represented by Mr. Hasan Shala, a practicing lawyer from Gjakova.

Challenged decision

2. The Applicant challenges Judgment AC-II-12-0165 of the Special Chamber of the Supreme Court of the Republic of Kosovo (hereinafter, the "Special Chamber") of 10 October 2013, which was served on him on an unspecified date.

Subject matter

3. The subject matter is the constitutional review of the challenged Judgment which allegedly *"[...] has violated the fundamental rights guaranteed with the Constitution and with the European Convention on Human Rights (Article 3 of the Convention)."*

Legal basis

4. The Referral is based on Article 113.7 of the Constitution and Article 22 of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter, the Law).

Proceedings before the Constitutional Court

5. On 3 March 2014, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).

6. On 1 April 2014, 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 7 May 2014, the Court notified the Applicant of the registration of the Referral and requested the Applicant to submit the following documents:

   a. Power of attorney for Mr. Hasan Shala;

   b. The receipt letter for the date of service for Judgment AC-II-12-0165 of the Special Chamber;

   c. Judgment SCC-07-0425 of Special Chamber of 10 December 2007.

8. On 7 May 2014, the Court sent a copy of the Referral to the Special Chamber and the Privatization Agency of Kosovo (hereinafter, PAK).

9. On 22 May 2014, the Applicant replied to the Court and submitted the power of attorney and Judgment SCC-07-0425 of Special Chamber of 20 November 2007. However, the Applicant did not provide the Court with the letter of receipt for the date of service of Judgment AC-II-12-0165 because this is with the Special Chamber.

10. On 26 June 2014, Judge Kadri Kryeziu notified in writing the Court for his exclusion from the deliberations for the period June-July

2014 until the Court decides regarding certain allegations raised against him.

11. On the same date, the President of the Court, by Decision No.KSH.KI38/14, replaced Judge Kadri Kryeziu with Judge Ivan Čukalović as a member of the Review Panel.

12. On 26 June 2014, the Review Panel considered the Report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

13. On an unspecified date, the Applicant had filed a claim with the Special Chamber to confirm his ownership to a property.

14. On 10 December 2007, the Special Chamber (Decision SCC-07-0425) referred the case to the Municipal Court in Deçan. This decision was not submitted by the Applicant.

15. On 23 March 2009, the Municipal Court in Deçan (Judgment C. no. 93/07) rejected as unfounded the Applicant's claim to confirm his ownership to a property. The Municipal Court held that *"Article 33 of the Law on Basic Property Relations provides that on the basis of legal work the property right over a real estate shall be acquired by registration into the cadastral books or in some other appropriate way that is prescribed by law […]".* It further states that *"[…] The real estate, the subject matter, is recorded in the respondent's name since 1956, while the claimant even after the air-recording, assuming property rights over the real estate that is subject of this matter, had sufficient time to challenge the air-recording, which he didn't do within the deadline."* The Municipal Court concluded that *"Based on the determined factual situation, […] the claimant's statement of claim is unfounded […]."* The Applicant complained against this judgment to the Special Chamber.

16. On 10 October 2013, the Special Chamber (Judgment AC-II-12-0165) rejected as unfounded the Applicant's appeal and upheld the judgment of the Municipal Court of Deçan. The Special Chamber held that:

> *"The Panel of Appeals [Special Chamber] considers that the Judgment of the Municipal Court in Deçan does not include*

any procedural violation, alleged by the claimant, therefore, as such it is fair and founded in law and the Panel of Appeals confirms it. The Court, by this Judgment, draw a complete conclusion of the factual situation, from what was provided by the claimant's statement of claim and other submissions, because the burden of proof falls on the claimant pursuant to Article 7 of LCP [Law on Contested Procedure].

The claimant, in his appeal, didn't offer any convincing evidence related to his objections, apart from paraphrasing what was said in the statement of claim.

The Court, by this Judgment, confirmed that the contested property is socially owned for a long period, meaning that the respondent is the owner of this property. If there was a violation of the right to property, as the claimant alleges, from the respondent, then the claimant could submit it before the judicial authorities even earlier, but he never did this, until he files the claim on October 18th 2007. This silence in regards to potential obstacles, results in the loss of possibility to claim a right, even if it exists. Pursuant to Article 268 of the Law on Joined Labor (Official Gazette SFRY [Socialist Federal Republic of Yugoslavia] 53/65), "if an immovable property became public property without legal grounds, a claim is admissible for its reinstatement within 5 years, from the date it was acknowledged, but not more than 10 years from that date"."

Applicant's Allegations

17. The Applicant alleges that *"Agricultural Cooperative "Perparimi" [...] has arbitrarily held this property and as such violated Article 9 and 10 of the Laws of SFRY No. 6/1980, applicable laws pursuant to UNMIK Regulation No. 1999/24 of 12 December 1999."*

18. The Applicant further claims that *"[...] based on Law No.6/1980 of SFRY on Basic Property Relations, Article 37 provides "The right for lodging an appeal for protection of the right to property doesn't become obsolete"*. Based on this the Applicant considers that the property is occupied arbitrarily by the Municipality and that this law is violated without any legal grounds.

19. Moreover, the Applicant alleges that *"The Second Instance Court, the Panel of the Special Chamber repeated the violation of Law*

just like the First Instance Court, because without holding a hearing and without requesting additional evidence from the claiming party, rendered a decision on this matter, by not giving the opportunity to the claimant to entirely argument his statement of claim before the Panel of the Special Chamber of the Supreme Court of Kosovo. The Judgment of the Special Chamber as a Second Instance Court is contradictory to its own reasoning when it legitimates and confirms the challenged Judgment by violating the same Law as the First Instance Court in Deçan."

Admissibility of the Referral

20. The Court first examines 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 49 of the Law, which 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. […]"*.

22. In addition, Rule 36 (1) b) of the Rules of Procedure foresees 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."*

23. The Court notes that the final judgment, AC-II-12-0165, of the Special Chamber was taken on 10 October 2013 and was served on the Applicant on an unspecified date, whereas the Applicant filed the Referral with the Court on 3 March 2014. The Applicant has failed to submit to this Court evidence showing when he was served with the judgment of the Special Chamber. Thus, this Court considers the date of 10 October 2013 of the publication of the decision as the date of service on the Applicant.

24. Therefore, the Court concludes that the Referral is out of time and, pursuant to Article 49 of the Law and Rule 36 (1) b), it must be rejected as inadmissible,.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 49 of the Law and Rule 36 (1) b) and Rule 56 (2) of the Rules of Procedure, on 26 June 2014, 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**
Almiro Rodrigues	Prof. Dr. Enver Hasani

KI42/14, PTK-JSC, Prishtina, Resolution of 19 May 2014 - Constitutional Review of the Judgment Rev. no. 238/2013 of the Supreme Court of Kosovo, of 7 November 2013, with the request for imposition of interim measure

Case KI42/14, Decision of 19 May 2014.

Key words: Individual Referral, manifestly ill-founded, request for interim measure

The Applicant alleged that the Judgment of the Supreme Court violated the rights guaranteed by the Constitution, under Article 31 (Right to Fair and Impartial Trial), Article 46 (Protection of Property) and the rights guaranteed by the Convention, Article 6 (Right to a fair trial) and Article 1 of the additional Protocol (Protection of Property).

The Applicant requested from the Court to impose interim measure, by which the Supreme Court of Kosovo would be bound to not review possible cases with the subject of review that may come in the future, until a decision on this referral would be rendered by the Constitutional Court, because otherwise the public interest would be severely violated.

The Court finds that the facts submitted by the Applicant do not in any way justify the allegation for violation of a constitutional right or of a right guaranteed by the ECHR, it cannot be concluded that there is a violation of human rights by the challenged decision and in compliance with Rule 36 paragraph (2) item b), the Court finds that the Referral must be declared inadmissible as manifestly ill-founded.

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 20 of the Constitutional Law, and Rule 56 of the Rules of Procedure, on 19 May 2014, unanimously declares the Referral inadmissible and rejects the request for interim measure.

RESOLUTION ON INADMISSIBILITY
in
Case no. KI42/14
Applicant
PTK-JSC, Prishtina
Constitutional review of the Judgment Rev. no. 238/2013 of the Supreme Court of Kosovo, of 7 November 2013, with the 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 the Joint Stock Company–Post-Telecom of Kosovo (hereinafter: PTK-JSC, Prishtina), which is represented by Mr. Lulzim Sokoli, the manager for legal affairs and administration in PTK.

Challenged decision

2. The challenged decision is the Judgment of the Supreme Court of Kosovo, Rev. no. 238/2013, of 7 November 2013, which was served on the Applicant on 3 January 2014.

Subject matter

3. The subject matter is the constitutional review of the challenged Judgment of the Supreme Court, for which the Applicant alleges that it has violated his rights, guaranteed by the Constitution of Kosovo, pursuant to Article 31 (Right to Fair and Impartial Trial) in conjunction with Article 6 of the European Convention of Human Rights (the Convention) Article 46 (Protection of

Property), as well as the property right under Article 1 of the Protocol 1 of the Convention.

Legal basis

4. Article 113.7, in conjunction with Article 21.4 of the Constitution, Article 47 of the Law on the Constitutional Court of the Republic of Kosovo, no. 03/L-121 (hereinafter: the Law) and Rule 56 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 7 March 2014, the Applicant submitted the Referral to the Constitutional Court (hereinafter: the Court).

6. On 1 April 2014, by Decision GJR. KI42/14, the President of the Court appointed Judge Arta Rama-Hajrizi as Judge Rapporteur, and on the same date, the Review Panel, composed of Judges: Altay Suroy (Presiding), Snezhana Botusharova and Kadri Kryeziu.

7. On 22 April 2014, the Court notified the Applicant and the Supreme Court on the registration of Referral.

8. On 19 May 2014, the Review Panel considered the report of the Judge Rapporteur and recommended to the Court the inadmissibility of the Referral.

Summary of facts

9. On 13 December 2011, the Applicant rendered the decision to reduce all operational expenses, including the expenses for its staff for 20%. In the work sectors, where the decision was implemented, it has influenced on the decrease of salaries of employees of the Applicant. This decision, according to the Applicant, was taken upon the request of the owner of all the shares of the enterprise-the Government of Kosovo, of 7 December 2011.

10. On 11 May 2012, M. Sh., employed with the Applicant PTK-JSC – Prishtina, affected by the Applicant' decision, filed a claim with the Municipal Court in Peja, by challenging the decision on change of the grade of the work categorization from grade 7 to grade 6 and the decrease of his salary, together with the benefits belonging to

him, with the salary, such as the bonuses and the payment to the pension savings fund.

11. On 19 March 2013, the Basic Court in Peja rendered the Judgment C. no. 364/12, by which approved the claim of the claimant M. SH. as grounded in entirety.

12. In the reasoning of the Judgment, among the other, the Basic Court in Peja, stated: *"Deciding on the legality of the challenged decision, by which the claimant's grade of personal income has decreased from grade 7 to grade 6, the court pursuant to provisions of Article 10.1, item 2, item 2.1, 10.3, 10.5, II, 55, 56 of the Law on Labor, no. 03/L–2012, in conjunction with Article 5 of the employment contract, concluded on 20.10.2011, the court concluded that the challenged decision is contrary to the legal provisions in force and contrary to Article 5 of the employment contract".*

13. The Basic Court further stated: "*The court concludes that the employment relationship is legal – contractual relationship, where the parties, with the conclusion of such contract must completely respect the contract requirements in which case the court concludes that the employment contract concluded between the claimant and the respondent has been compiled by respecting all general requirements for compiling a contract such as working ability of the contracting parties, consent, the will of the parties, object of the contract and grounds of the contract"* and in thisrespect, this court also found that "*the employment contract concluded between the claimant and the respondent could have been amended only by the will expressed by the both parties and that the respondent could not change the contract requirement, only by the unilateral expression of its will".*

14. Against this Judgment, the Applicant filed within legal time limit an appeal with the Court of Appeal in Prishtina, due to substantial violations of the contested procedure provisions, erroneous and incomplete determination of factual situation and erroneous application of the material law.

15. On 12 July 2013, the Court of Appeal of Kosovo rendered Judgment AC. no. 1447/13, by which approved the Applicant's appeal, modified Judgment of the Basic Court in Peja, C. no. 364/12, of 19 March 2013, so that the appeal of the claimant M. SH. is rejected as ungrounded.

16. By challenging the reasoning of the Basic Court in Peja, the Court of Appeal, stated among the other:"*Thiscourt assessed such a conclusion of the first instance court and found that a decision and such a legal stance cannot be accepted as correct and lawful, since, according to the assessment of this court, based on this factual situation the material law was erroneously applied, when the first instance court found that the claimant's statement of claim is grounded."*

17. The Court of Appeal, by reasoning its Judgment, further stated:

> "*This, among other is because of the fact that the respondent has acted in full compliance with the decision of the shareholder – the Government of Republic of Kosovo, namely the Ministry for Economic Development, which had recommended a reduce of personal expenses for the staff of the respondent (PTK), based on the internal policies, in compliance with it and with the business plan for 2012, as well as with the decision of the board of directors of 13.12.2011, with the purpose of decreasing the staff expenses to a maximum of 20% of general income, and all this by referring to the shareholders decision – Ministry for Economic Development dated 06.12.2011 etc".*

18. On 17 November 2013, the Supreme Court of Kosovo, deciding upon the revision, filed against the Judgment of the Court of Appeal by M. SH., rendered the Judgment Rev. no. 238/2013, by which approved the claimant's revision and modified Judgment of the Court of Appeal, AC. no. 1447/13, of 12 July 2013,bydeciding to uphold Judgment of the Basic Court in Peja, C. no. 364/12, of 19 March 2013.

19. In the reasoning of the Judgment, "*The Supreme Court assessed as grounded the claims in the revision that the challenged Judgment is in contradiction with Article 55 par. 1 of the Law on Labour (Official Gazette 03-L-212 -of RK), by which it was determined that the employee is entitled to salary, which is determined by the employment contract and in compliance with this Law, the collective contract, and internal act of the Employer. The claimant' salary, according to the employment contract was in 7th grade and lowering this grade is contrary to the provisions of the contract and the law".*

Applicant's allegations

20. The Applicant alleged that the Judgment of the Supreme Court violated the rights guaranteed by the Constitution, under Article 31 (Right to Fair and Impartial Trial), Article 46 (Protection of Property) and the rights guaranteed by the Convention, Article 6 (Right to a fair trial) and Article 1 of the additional Protocol (Protection of Property).

21. The Applicant bases his allegations for violation of the constitutional provisions and of the Convention on the following arguments:

Alleged violation of Article 31 of the Constitution in conjunction with Article 6 of the Convention

According to the Applicant, the right to fair and impartial trial was violated by the challenged Judgment, because the Supreme Court has rendered the reasoning, completely contradictory to the reasoning given in the Judgment of the Court of Appeal. This assessment, completely contradictory to the factual situation and the application of the substantive law by two courts have resulted in alleged violation of the Constitution and the Convention, because according to the Applicant, one of the guarantees of Article 6 of the Convention, the right to a reasoned decision, was violated.

The Applicant requested further from the Court to ask from the Government of Kosovo, as the shareholder of the PTK shares, for the official explanation whether its request for decrease of the operational expenses for 20% refers also to the decrease of expenses for the staff.

Alleged violation of Article 46 of the Constitution, in conjunction with Article 1 of Additional Protocol of theConvention

The right of property, guaranteed by the Constitution and the additional Protocol of the Convention, according to the Applicant's allegations has been violated because *"the reasoning given by the Supreme Court does not correspond with the real state of facts."* The challenged judgment deprived in unlawful and arbitrary manner the Applicant of its property.

22. The Applicant requested from the Court to impose interim measur, by which the Supreme Court of Kosovo would be bound to not review possible cases with the subject of review that may come in the future, until a decision on this referral would be rendered by

the Constitutional Court, because otherwise the public interest would be severely violated.

Admissibility of the Referral

23. In order to be able to adjudicate the Applicant's Referral, the Court needs to examine beforehand whether the Applicant has fulfilled the admissibility requirements laid down in 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:

> *"Individuals are authorized to refer violations by public authorities of their individual rights and freedoms guaranteed by the Constitution, but only after exhaustion of all legal remedies provided by law".*

25. The Court also takes into account Rule 36 of the Rules of Procedure, which provides:

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

26. In assessing the allegations raised by the Applicant, the Court notes that it challenges the Judgment of the Supreme Court, Rev. no. 238/2013, of 17 November 2013, by which the Court decided on the revision filed by M. SH., employee of the Applicant.

Relevant provisions of the Constitution and of the Convention regarding the case

27. The Court recalls that the Constitution of Kosovo and the Convention in the provisions, challenged by the Applicant, provide:

> *Article 31 of the Constitution [Right to Fair and Impartial Trial]*
>
> *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.

[...]

Article 46 [Protection of Property]

1. The right to own property is guaranteed.
2. Use of property is regulated by law in accordance with the public interest [...]

Article 6.1 of the Convention

Right to a fair trial

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.
[...]

Article 1 of the additional Protocol of the Convention, Protection of property

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.

28. In order to decide the merits of the Referral, the Court also takes into account the provisions of the Law on Courts, 2010/03-L-199, decreed on 9 August 2010, where it is provided:

> *Article 21, the Supreme Court*
>
> *1. The Supreme Court is the highest judicial authority in Kosovo and shall have territorial jurisdiction over the entirety of the Republic of Kosovo.*
>
> [...]
>
> *and*
>
> *Article 22, Competencies of the Supreme Court*
>
> *1.3. defines principled attitudes and legal remedies for issues that have importance for unique application of Laws by the courts in the territory of Kosovo;*
>
> [...]

29. By assessing the constitutionality of the challenged judgment in light of the allegations for constitutional violations and the facts that have supported these allegations and by comparing these facts with the content of the abovementioned provisions, the Court holds that it has not found the arguments that the constitutional provisions and of the Convention provisions have been violated, moreover when such allegations are based on *"the erroneous and incomplete determination of factual situation"* on the arguments of implementation of legality and not of the constitutionality and on evident dissatisfaction regarding the final outcome of the trial.

30. In this regard, the Court notes that the simple description of the provisions of the Constitution and the Convention, and the conclusion that they have been violated, without presenting evidence of the way they were violated, without specifying the circumstances, without specifying the actions of the public authority that are contrary to fair and impartial trial, do not constitute sufficient ground to convince the Court that there has been a violation of the Constitution or of the Convention regarding a fair and impartial trial.

31. The Court further holds that it is not a fact finding court, it does not adjudicate as a court of fourth instance, and it is not merely a higher instance court. The Court, in principle does not consider the fact whether the regular courts have correctly and completely determined factual situation. It is essential for the Court the issues on which existence depends the assessment of possible violations of the constitutional rights and not clearly legal issues, which were mainly the facts presented by the Applicant (See, *mutatis mutandis, i.a., Akdivar v. Turkey,* 16 September 1996, R.J.D, 1996-IV, para. 65).

32. Regarding the above, the Court notes that it is the task of the courts of regular jurisdiction to decide on the ranking of the importance of evidence and to appreciate what evidence pursuant to the correct application of the applicable law prevails, as in the present case it was undoubtedly up to the Supreme Court to decide how fair is the legal stance of the first instance court or of the Court of Appeal and to sanction this by its final court decision.

33. Moreover, when it is taken into account that the Constitution of Kosovo, in Article 103.2 has provided that the Supreme Court is the highest judicial authority, the Law on Courts has given the authority to the Supreme Court for "*unique application of Laws by the courts in the territory of Kosovo"* and consequently the unification of the case law of the regular courts.

34. In this regard, the Court has not found that different reasoning of the courts of two judicial instances have resulted in violation of Article 31 of the Constitution in conjunction with Article 6 of the Convention, because the final judgment of the Supreme Court has concluded the determination of the factual situation and of the application of legality, and in no way the Court could find the violation of *the right to a reasoned decision* as one of the guarantees of Article 6 of the Convention and of the right to a fair and impartial trial.

35. Moreover, the Court recalls that the Convention, in its case law, has assessed that the obligation of a domestic court to reason its decisions cannot be understood as requiring a detailed answer to every argument adduced by a litigant. Obligation to reason the decision depends on the nature of the decision at issue. When the Supreme Court rejects an appeal due to the lack of legal basis of the matter, the requirements of Article 6 of the Convention can be met with a very limited reasoning (See the decisions of the ECHR on

issues *Marini v. Albania*, 18 December 2007 § 105 and *Mishgjoni v. Albania*, 7 December 2010)

36. The Court, further, in response to alleged violations of the property right, considers that it cannot find evidence that the Applicant is deprived of property in an arbitrary manner, on the contrary, the challenged issue between the parties is resolved by a *"court established by law"* and in a judicial process provided by law, and therefore the court decision, rendered under such circumstances cannot be considered by this Court as arbitrary, so as to be an indicator of the alleged violation.

37. In these circumstances, the Court finds that the facts submitted by the Applicant do not in any way justify the allegation for violation of a constitutional right or of a right guaranteed by the Convention; therefore, it cannot be concluded that there is a violation of human rights by the challenged decision and in compliance with Rule 36 paragraph (2) item b), the Court finds that the Referral must be declared inadmissible as manifestly ill-founded.

Request for interim measure

38. Taking into account the fact that the Referral is declared inadmissible in its entirety as manifestly ill-founded, the Court found that this request must be rejected, because the imposition of this measure in the form requested by the Applicant would be moot and ungrounded in entirety.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 20 of the Law, and Rule 56 of the Rules of Procedure, on 19 May 2014, unanimously:

DECIDES

I. TO DECLARE the Referral Inadmissible;

II. To notify this Decision to the parties and to publish this Decision in the Official Gazette, in accordance with Article 20.4 of the Law;

III. This Decision is effective immediately.

Judge Rapporteur
Arta Rama-Hajrizi

President of the Constitutional Court
Prof. Dr. Enver Hasani

KI45/14, Faton Sefa, Resolution of 1 July 2014 - Constitutional Review of Decision Rev. no. 60/2013 of the Supreme Court, of 13 November 2013

Case KI45/14, Decision of 1 July 2014.

Key words: individual referral, violation of constitutional rights and freedoms, Articles 31, 46, 49, 53, and 102, inadmissible referral.

The Applicant- Mr. Faton Sefa, filed a Referral pursuant to Article 113.7 of the Constitution of Kosovo, challenging the Decision Rev. no. 60/2013 of the Supreme Court, of 13 November 2013, as being rendered in violation of his rights as guaranteed by Article 31 [Right to Fair and Impartial Trial], Article 46 [Protection of Property], Article 49 [Right to Work and Exercise Profession], Article 53 [Interpretation of Human Rights Provisions], Article 102 [General Principles of the Judicial System]. The Applicant alleges that the termination of the Applicant's employment contract was in contradiction with UNMIK Regulation 2001/27 because he never had a meeting with the company and the termination of employment relationship never specified what legal provisions were violated by him.

As regards the admissibility of the Referral, the Court noted that pursuant to the language used in Article 113.7, the Referral was inadmissible. The Court considers that the Supreme Court sufficiently reasoned its Decision (Rev. no. 60/2013) while rejecting the revision submitted by the Applicant. Therefore, the Court cannot conclude that the relevant proceedings were in any way unfair or tainted by arbitrariness. The Court also notes that the Applicants did not substantiate a new claim on constitutional grounds and did not provide new evidence that his fundamental rights and freedoms have been violated by the regular courts.

Due to the abovementioned reasons, the Court decided to reject the Referral of the Applicant as inadmissible.

RESOLUTION ON INADMISSIBILITY
Case No. KI45/14
Applicant
Faton Sefa
Constitutional Review of
Decision Rev. no. 60/2013 of the Supreme Court,
dated 13 November 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
Arta Rama-Hajrizi, Judge

Applicant

1. The Applicant is Mr. Faton Sefa, residing in Gjakova, represented by Mr. Teki Bokshi, a practicing lawyer from Gjakova.

Challenged decision

2. The Applicant challenges the Decision Rev. No. 60/2013 of the Supreme Court of the Republic of Kosovo, dated 13 November 2013, which was served on the Applicant on 13 December 2013.

Subject matter

3. The subject matter is the constitutional review of the challenged decision, which has allegedly violated the Applicant's rights as guaranteed by the Constitution of the Republic of Kosovo (hereinafter, the Constitution), namely Article 31 [Right to Fair and Impartial Trial], Article 46 [Protection of Property], Article 49 [Right to Work and Exercise Profession], Article 53 [Interpretation of Human Rights Provisions], Article 102 [General Principles of the Judicial System], and by the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter, ECHR), namely Article 6 (Right to a fair trial) and Article 1 (Protection of property) of Protocol 1.

Legal basis

4. The Referral is based on Article 113.7 of the Constitution and Article 47 of the Law on the Constitutional Court of the Republic of Kosovo (hereinafter, the Law).

Proceeding before the Constitutional Court

5. On 11 March 2014, the Applicant filed the Referral KI45/14 with the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).

6. On 1 April 2014, the President of the Court appointed Judge Almiro Rodrigues as Judge Rapporteur and the Review Panel composed of Judges Altay Suroy (Presiding), Kadri Kryeziu and Enver Hasani.

7. On 7 May 2014, the Court informed the Applicant of the registration of the Referral and requested him to submit the Power of Attorney and provide some clarification of the Referral, namely the relationship with other previous referrals KI75/12 and KI37/13. On the same date, the Court sent a copy of the Referral Supreme Court.

8. On 16 May 2013, the Applicant submitted the Power of Attorney, without providing any other additional clarification. On 26 June 2014 Judge Kadri Kryeziu notified in writing the Court for his exclusion from the deliberations for the period June-July 2014 until the Court decides regarding the allegations raised against him.

9. On 26 June 2014, Judge Kadri Kryeziu notified in writing the Court for his exclusion from the deliberations for the period June-July 2014 until the Court decides regarding certain allegations raised against him.

10. On 1 July 2014 the President of the Court, by Decision no. KSh. KI45/14, replaced Judge Kadri Kryeziu with Judge Arta Rama-Hajrizi as a member of the Review Panel.

11. On 1 July 2014, 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

12. The factual basis of the referral KI45/14 is the same as the one of the referrals KI75/12 and KI37/13 also filed with the Court by the Applicant.

13. The bulk of the facts has to do with the question of termination on 18 August 2006 of the employment contract between the company "Hidrosistemi Radoniqi" in Gjakova (hereinafter, the Company) and the Applicant.

14. That question was subject of discussion in administrative and judicial proceedings in the regular courts, namely until 2 May 2012.

15. On that date of 2 May 2012,the Supreme Court (Judgment Rev. no. 106/2010) rejected as ungrounded the Applicant's request for revision. The Supreme Court held that the *"[...] employment relationship of claimant is terminated in compliance with the procedure determined by applicable law, thus each claim in the revision based on this is inadmissible."*

16. However, on an unspecified date, the applicant submitted a request to reopen the procedure finalized by Judgment Ac. No. 176/2009 of the District Court in Peja dated 9 February 2010.

17. Meanwhile, on 13 August 2012, the Applicant filed the Referral KI75/12 challenging the Judgment of the Supreme Court, because it allegedly ignored the procedural violations before the disciplinary commission.

18. On 13 December 2012, the District Court in Peja (Decision KAC. no. 6/2012) rejected as ungrounded the request for the reopening of the procedure in the District Court in Peja finalized by Judgment Ac. No. 176/2009 of the District Court in Peja dated 9 February 2010. The applicant submitted a request for revision before the Supreme Court.

19. Meanwhile, on 15 January 2013, the Constitutional Court declared the referral KI75/12 inadmissible as manifestly ill founded (See Resolution on Inadmissibility in Case KI75/12, Constitutional

Review of Judgment of the Supreme Court, Rev. no. 106/2010, dated 2 May 2012).

20. On 13 March 2013, the Applicant filed the Referral KI37/13 requesting re-examination the Resolution on Inadmissibility of the Constitutional Court in Case KI75/12, claiming that the Court had not reviewed the additional evidence submitted by him.

21. On 31 May 2013, the Constitutional Court declared the referral KI37/13 inadmissible as the Court had already decided on the matter in the referral KI37/13 (See Resolution on Inadmissibility in Case KI37/13, Request for re-examination of the Resolution on Inadmissibility of the Constitutional Court of the Republic of Kosovo, KI75/12 dated 15 January 2013").

22. On 13 November 2013, the Supreme Court (Decision Rev. No. 60/2013) rejected as ungrounded the revision submitted by the Applicant against the decision of the District Court in Peja KAC. no. 6/2012 dated 13 December 2012. The Supreme Court held that *"the lower instance courts have duly applied the substantive law, when they found that the proposal for reopening of procedure is ungrounded due to the fact, respectively evidence on which the claimant based the proposal for reopening of procedure, does not present new evidence based on which could be rendered a more favorable decision on the party if it was used in previous procedures"*.

23. The reference to the above described facts and quoted decisions are taken from the previous referrals KI75/12 and KI37/13, as the additional clarifications were not provided by the Applicant.

Applicant's allegations

24. As in the previous referrals submitted to the Court, the Applicant alleges that the Judgments of the regular courts were taken in violation of his constitutional rights as guaranteed by the Constitution and ECHR because both the District Court in Peja and the Supreme Court, allegedly, ignored the procedural violations before the disciplinary procedure.

25. Furthermore, the Applicant alleges that the termination of the Applicant's employment contract was in contradiction with UNMIK Regulation 2001/27 because he never had a meeting with

the company and the termination of employment relationship never specified what legal provisions were violated by him.

26. In addition, the Applicant requests the Court to *"to decide that by the examined evidence before the first instance court, that Court has acted correctly, applied the law and the Constitution of the Republic of Kosovo and that the proceedings before the first instance court in general, viewed in their entirety, were kept in such a way so that the Applicant of this referral in that stage of proceedings to have had fair trial despite violations of such principles from District Court in Peja and the Supreme Court of Kosovo in the proceeding of revision".*

Admissibility of the Referral

27. First of all, the Court examines whether the Applicant has fulfilled the admissibility requirements.

28. In this respect, 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".*

29. The Court also refers to Rule 36 (3) e) of the Rules of Procedure which foresees:

> *A Referral may also be deemed inadmissible in any of the following cases:*
>
> *(...)*
>
> *e) the Court has already issued a Decision on the matter concerned and the Referral does not provide sufficient grounds for a new Decision*

30. The Court notes that the termination of the contract is a subject matter common to the three referrals filed by the Applicant with the Court, even though having two judgments of the Supreme Court, one on revision of the proceedings (Judgment Rev. no. 106/2010) and the other on revision of repetition of the proceedings (Decision Rev. no. 60/2013).

31. The Court also notes that the Applicants did not substantiate a new claim on constitutional grounds and did not provide new evidence that his fundamental rights and freedoms have been violated by the regular courts.

32. The Court considers that the Supreme Court sufficiently reasoned its Decision (Rev. no. 60/2013) while rejecting the revision submitted by the Applicant. 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).

33. The Court further notes that the Applicant did not make in the Referral KI45/13 any reference to the previous submitted referrals KI75/12 and KI37/13, which have already been decided by the Constitutional Court. Such conduct is not in compliance with the right to individual petition according to the European legal standards. (See *mutatis mutandis, Hadrabova and others v Czech Republic*, ECHR Decision on Admissibility of Application No. 42165/02 and 466/03 of 25 September 2007).

34. Furthermore, the Court reiterates that it is up to the Applicant to inform the Court of all circumstances relevant to the referral and not to retain any information known to him. Otherwise, retaining information or misleading the Court, or insisting on the same subject matter might entail an abuse of the right to petition.

35. The Court further notes that, in connection with Referrals KI75/12 and KI37/13, the Applicant has had the opportunity to acquaint himself with the procedure of the Court. Furthermore, the Court's decisions on the inadmissibility of his previous referral's must have made the Applicant aware of that the Referral KI45/13 is substantially dealing with the same subject matter already examined by the Court in the Referrals KI75/12 and KI37/13 and no relevant and pertinent new information was presented.

36. In sum, the Court considers that a Decision on the concerned subject matter has already been issued and the Applicant has not provided sufficient grounds for a new Decision.

37. Therefore, pursuant to Rule 36 (3) (e) of the Rules of Procedure, the Referral is inadmissible (See Resolution on Inadmissibility in

case KI75/12 dated 2 May 2012 and Resolution on Inadmissibility in case KI37/13 dated 15 January 2013).

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Rules 36 (3) e) and 56 (2) of the Rules of Procedure, on 1 July 2014, unanimously

DECIDES

I. TO DECLARE 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	**President of the Constitutional Court**
Almiro Rodrigues	Prof. Dr. Enver Hasani

KI81/14, Avni Zogaj, Resolution of 2 July 2014 - Constitutional Review of Decision Pzd. no. 28/2014, of the Supreme Court of Kosovo, of 2 April 2014

Case KI81/14, Decision of 2 July 2014.

Key words; individual referral, extraordinary mitigation of sentence, criminal offence, punishment, manifestly ill-founded

The Applicant submitted the Referral in compliance with Article 113.7 of the Constitution of Kosovo, challenging the Decision Pzd. no. 28/2014, of the Supreme Court of Kosovo, of 2 April 2014, by which, according to the Applicant's allegations *"his right to a mitigation of sentence was deprived"*.

The Applicant filed a request for extraordinary mitigation of sentence, with a proposal that *"the request is approved, final Judgment AP. no. 212/2006, of the Supreme Court of Kosovo, of 27 September 2006, is modified, and a more lenient punishment is imposed on the convict"*. On 2 April 2014, the Supreme Court of Kosovo, by Decision Pzd. no. 28/2014 rejected as ungrounded the Applicant's request for extraordinary mitigation of sentence, imposed by the final Judgment AP. no. 212/2006, of the Supreme Court of Kosovo, of 27 September 2006.

Deciding on the referral of the Applicant Avni Zogaj, the Constitutional Court found that the Decision Pzd. no. 28/2014, of the Supreme Court of Kosovo of 2 April 2014, in its reasoning explains in details the reasons for rejection of the request for extraordinary mitigation of punishment and provides response to all Applicant's allegations.

Therefore, the Court concluded that presented facts by the Applicant do not in any way justify the allegation of a violation of the constitutional rights, therefore his referral is manifestly ill-founded.

RESOLUTION ON INADMISSIBILITY
in
Case no. KI81/14
Applicant
Avni Zogaj
Constitutional review of the Decision of the Supreme Court of Kosovo
Pzd. no. 28/2014, of 2 April 2014

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, and
Arta Rama-Hajrizi, Judge

Applicant

1. The Referral was submitted by Mr. Avni Zogaj (hereinafter: the Applicant), who is serving the imprisonment sentence in the Correctional Centre in Dubrava, the Municipality of Istog.

Challenged decision

2. The Applicant challenges the Decision of the Supreme Court of Kosovo Pzd. no. 28/2014, of 2 April 2014.

Subject matter

3. The subject matter is the constitutional review of the Decision of the Supreme Court of Kosovo Pzd. no. 28/2014, of 2 April 2014, by which, according to the Applicant's allegations "*his right to a mitigation of sentence was deprived referring to the law by judges and prosecutors "*.

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 on the Constitutional Court of the Republic of Kosovo no. 03/L-121 (hereinafter: the Law), and Rule 56 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 8 May 2014, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 10 June 2014, the President by Decision no. GJR. KI81/14, appointed Judge Snezhana Botusharova as Judge Rapporteur. On the same date, the President by Decision no. KSH. KI81/14, appointed the Review Panel composed of Judges: Robert Carolan(Presiding), Almiro Rodrigues and Enver Hasani.

7. On 11 June 2014, the Court notified the Applicant and the Supreme Court of Kosovo of the registration of Referral.

8. On 26 June 2014, Judge Kadri Kryeziu notified in writing the Court of the request for his recusal from the session for the period June-July 2014, until the Court decides on the allegations raised against him.

9. On 02 July 2014, after having considered the report of Judge Rapporteur, Snezhana Botusharova, the Review Panel composed of Judges: Robert Carolan(Presiding), Almiro Rodrigues and Enver Hasani made a recommendation to the full Court on the inadmissibility of the Referral.

Summary of facts

10. On 6 February 2006, the District Court in Prizren, by Judgment, P. no. 61/2004 found the Applicant guilty for the criminal offence of murder and unauthorized ownership, control, possession, or use of weapons, and imposed on him the aggregate punishment of 17 (seventeen) years of imprisonment.

11. On 27 September 2006, by Judgment of the Supreme Court of Kosovo, AP. no. 212/2006, the Applicant's appeal was partly approved and the Judgment of the District Court in Prizren P. no. 61/2004 of 6 February 2006 was modified in relation to the

decision on punishment, so that the aggregate punishment of 15 (fifteen) years of imprisonment was imposed on the Applicant.

12. The Applicant filed a request for extraordinary mitigation of sentence, with a proposal that "*the request is approved, final Judgment of the Supreme Court of Kosovo, AP. no. 212/2006 of 27 September 2006, is modified, and a more lenient sentence is imposed on the convict .*"

13. On 2 April 2014, the Supreme Court of Kosovo, by Decision Pzd. no. 28/2014 rejected as ungrounded the Applicant's request for extraordinary mitigation of sentence, imposed by the final Judgment of the Supreme Court of Kosovo, AP. no. 212/2006 of 27 September 2006, with the following reasoning:

> *"Some of the circumstances stated in the request for extraordinary mitigation of the punishment, such as the one that he is a family person, father of two children, one of children is with limited abilities, that the mother of the convict, who has health problems takes care of children, were known to the court. The new circumstance that is stated in the request, that the caregiver – the grandmother of the children is with serious health condition and also the referral for diagnostic examination, do not confirm the difficult health condition, nor her inability to continue being a caregiver for the children of her convicted son Avni Zogaj. The new circumstance in the request, the health condition of the caregiver of the children, Rahime Zogaj and her incapability to take care of children, is not of such a nature to be taken as a ground for extraordinary mitigation of sentence imposed by final judgment pursuant to provision of the Article 429 of CPCK, which means that the imposed sentence is fair and grounded".*

Applicant's allegation

14. The Applicant alleges that *"the request for extraordinary mitigation of sentence was rejected for the fourth time. It is more than true that there are really and precisely new circumstances for the mitigation of sentence, so it is called on judges and state prosecutors to protect the law, to which they swore before the state and God, and not to violate the law only because a citizen like me has breached the law and was convicted by judges and prosecutors based on the law, and to deprive me of the right to mitigation of sentence, by referring to the same law."*

15. Based on what was stated in this Referral, the Applicant requests from the Constitutional Court of the Republic of Kosovo to *"review the case, facts, complaints, proposals, objections and to determine whether there exists the sincere oath (referring to judges and prosecutors), or it was done only superficially."*

Admissibility of the Referral

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

17. 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".*

18. The Court refers also 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."*

19. Moreover, the Court refers to Rule 36 (2) b) of the Rules of Procedure, which provides:

> *„(2) 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".*

20. Reviewing the Applicant's allegations for violations in relations to "*deprived right for mitigation of sentence by judges and prosecutors based on the law",* the Constitutional Court notes that it is not a court of appeal, when reviewing 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*, *Garcia Ruiz v. Spain* [GC), no. 30544/96, § 28, European Court on Human Rights [ECHR 1999-1).

21. The Decision of the Supreme Court of Kosovo Pzd. no. 28/2014, of 2 April 2014, in its reasoning explains in details the reasons for rejection of the request for extraordinary mitigation of punishment and provides response to all Applicant's allegations.

22. The Constitutional Court notes that the Applicant has not provided any *prima facie* evidence which would point out to a violation of his constitutional rights (see *Vanek vs. Slovak Republic*, ECHR Decision on admissibility, Application no. 53363/99 of 31 May 2005).

23. In the present case, the Applicant was provided numerous opportunities to present his case and to challenge the interpretation of the law, which he considers as being incorrect, before the District Court in Prizren and the Supreme Court of Kosovo. After having examined the proceedings in their entirety, the Constitutional Court did not find that the pertinent proceedings were in any way unfair or arbitrary (see *mutatis mutandis, Shub v. Lithuania*, ECHR Decision as to the Admissibility of Application no. 17064/06 of 30 June 2009).

24. Finally, the admissibility requirements have not been met in this Referral. The Applicant has failed to point out and substantiate the allegations that his constitutional rights and freedoms have been violated by the challenged decision.

25. Accordingly, the Referral is manifestly ill-founded and must be declared inadmissible, in accordance with Rule 36 (2) b) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Articles 20 and 48 of the Law and Rule 36 (2) b) of the Rules of Procedure, in the session held on 2 July 2014, unanimously

DECIDES

I. TO DECLARE the Referral 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	**President of the Constitutional Court**
Snezhana Botusharova	Prof. Dr. Enver Hasani

KI90/14, Rrahim Preteni, Resolution of 2 July 2014 - Constitutional Review of the Decision Ac. no. 1067/13 of the Court of Appeal of the Republic of Kosovo, of 17 January 2013

Case KI90/14, Decision of 2 July 2014.

Key words: individual referral, civil contest, right to work, manifestly ill-founded referral

The Applicant alleged that the Court of Appeal, by its Decision, *Ac.* no. 1067/2013, rendered in the executive procedure, has violated his right to reinstatement to his working place. All this, due to the fact that the latter rejected the permission of the execution of Judgment C. no. 22/2001, of 25 June 2001, which was approved by Decision of the Municipal Court in Mitrovica, E. no. 273/2002, of 7 May 2002 and by Decision of the District Court in Mitrovica, Ac. no. 142/2001, of 26 April 2002. The Applicant alleged that the Court of Appeal, based its rejection of allowing the proposal for execution of the Judgment of the Supreme Court, Rev. no. 80/2002, by which the BPAK revision was approved and the Applicant's statement of claim was rejected. According to the Applicant, the Court of Appeal rejected the Applicant's proposal for execution, despite the fact that the first instance court decision became final.

After the Applicant's assessment, the Court considered that the Applicant's allegations for violation of the rights guaranteed by the Constitution and ECHR, do not present sufficient constitutional ground for the approval of his referral, as admissible. Moreover, the Court could not act as a fourth instance court, when reviewing the decision taken by the Court of Appeal. It is the role of the regular courts to interpret and apply the pertinent rules of both procedural and substantive law. In this respect, the Court mutatis mutandis referred to *case Garcia Ruiz v. Spain,* no. 30544/96, § 28, European Court on Human Rights [ECHR 1999-1). The Court also could not consider that the proceedings before the Court of Appeal were in any way unfair or arbitrary.

In sum, the Court concluded that the Applicant's Referral, pursuant to Article 48 of the Law and Rule 36 (1) c) of the Rules of Procedure, is manifestly ill-founded.

RESOLUTION ON INADMISSIBILITY
in
Case no. KI90/14
Applicant
Rrahim Preteni
Constitutional Review of the Decision Ac. no. 1067/13 of the Court of Appeal of the Republic of Kosovo of 17 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 and
Arta Rama-Hajrizi, Judge

Applicant

1. The Applicant is Mr. Rrahim Preteni, residing in village of Melenica, Municipality of Mitrovica.

Challenged decision

2. The Applicant challenges the Decision of the Court of Appeal of the Republic of Kosovo, Ac. no. 1067/13, of 17 January 2013 (hereinafter: the Court of Appeal), which was served on him on 3 February 2014.

Subject matter

3. The subject matter of the Referral is the constitutional review of theDecision of the Court of Appeal, Ac. no. 1067/13, of 17 January 2013, which allegedly violated Applicant's right to work.

Legal basis

4. Legal basis for this case is: Article 113.7 of the Constitution, Article 20 and 47 of the Law on the Constitutional Court of the Republic of Kosovo, No. 03/L-121 (hereinafter: the Law).

Proceedings before the Constitutional Court

5. On 5 May 2014, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 10 May 2014, the President of the Court, by Decision no. GJR. KI90/14, appointed Judge Kadri Kryeziu as Judge Rapporteur and by Decision no. KSH. KI90/14, appointed the Review Panel composed of judges: Robert Carolan (Presiding), Almiro Rodrigues and Ivan Čukalović.

7. On 10 June 2014, the Court notified the Applicant and the Court of Appeal of the registration of the Referral.

8. On 26 June 2014 Judge Kadri Kryeziu notified in writing the Court for his exclusion from the deliberations for the period June-July 2014 until the Court decides regarding the allegations raised against him.

9. On 26 June 2014 the President of the Court, by Decision no. GJR. KI90/14, replaced Judge Kadri Kryeziu as a Judge Raportuer, and in his place appointed Judge Arta Rama-Hajrizi.

10. On 2 July 2014, the Review Panel considered the report of the Judge Rapporteur and recommended to the Court the inadmissibility of the Referral.

Summary of facts

Facts in civil procedure

11. On 25 June 2001, the Municipal Court in Mitrovica (Judgment C. no. 22/2001) approved as grounded, the Applicant's statement of claim, filed against the Banking and Payment Authority Kosovo, branch in Mitrovica (hereinafter: BPAK). By this Judgment, the BPAK was forced to reinstate the Applicant to his working place and to compensate the unpaid salaries, from 31 August 2000 until his reinstatement to his working place.

12. Against the Judgment of the Municipal Court in Mitrovica, the BPAK filed an appeal within the legal time limit with the District Court in Mitrovica.

13. On 26 April 2002, the District Court in Mitrovica (Judgment AC. no. 142/2001) rejected as ungrounded the appeal filed by the BPAK and upheld in entirety the first instance court judgment.

14. The BPAK filed a revision with the Supreme Court against the judgments of the lower instance courts, due to substantial violation of the contested procedure provisions and erroneous application of the material law.

15. On 26 November 2002, the Supreme Court (Judgment Rev. no. 80/2002) approved the revision filed by the BPAK and modified the judgments of the lower instance courts, because the latter applied the material law in an erroneous way.

16. On 28 January 2003, the Applicant filed a request for a repetition of the procedure against the Judgment of the Supreme Court, with the same court, because the relevant facts of his statement of claim were not taken into account and because the case was decided without holding a hearing.

17. On 22 May 2007, the Supreme Court (Decision PPC. nr. 2/2006) rejected as ungrounded the Applicant's request for repetition of procedure. The abovementioned court justified the rejection of the request for repetition of procedure by basing on the fact that the same court has decided by revision, pursuant to Article 391 of the LCP, according to which Article, the Court decides on revision without a hearing.

Facts in executive procedure

18. On 23 May 2002, the Applicant, in capacity of the creditor, filed with the Municipal Court in Mitrovica, the proposal for execution of the Judgment C. no. 22/2001, of 25 June 2001.

19. On 7 June 2002, the Municipal Court in Mitrovica (Decision E. no. 273/2002) approved the Applicant's proposal for execution of the Judgment C. no. 22/2001, of 25 June 2001, whereby obliging the BPAK (debtor) to reinstate the Applicant to work and to compensate to him all unpaid salaries, from the day of dismissal up to his final reinstatement to his working place.

20. On 17 June 2002, the BPAK filed an objection against the Decision E. no. 273/2002, by which the Judgment C. no. 22/2001, of 25 June 2001, was allowed.

21. On 12 July 2002, the Municipal Court in Mitrovica (Decision E. no. 273/2002) rejected as ungrounded the objection filed by the BPAK.

22. Following this, the BPAK timely filed an appeal with the District Court in Mitrovica, against the Decision E. no. 273/2002, of 12 July 2002, by requesting suspension of the Judgment C. no. 22/2001, of 25 June 2001, of the first instance court.

23. On 17 June 2005, the District Court in Mitrovica (Judgment AC. no. 91/2002) rejected the BPAK appeal for suspension of the Judgment C. no. 22/2001, of 25 June 2001 and upheld the Decision E. no. 273/2001, by which the execution of the Judgment C. no. 22/2001, of the same court, was allowed.

24. On 24 January 2013, the Applicant, in the capacity of the creditor, filed a Request to expedite the case with the Basic Court in Mitrovica, by requesting forced execution of the Judgment of the Municipal Court in Mitrovica, E. no. 273/2002, of 7 May 2002 and of the Judgment of the District Court in Mitrovica, Ac. no. 142/2001, of 26 April 2002.

25. On 19 February 2013 the Basic Court in Mitrovica (Decision E. no. 594/2009), basing on the Decision of the Municipal Court in Mitrovica, E. no. 273/2002, of 7 May 2002, and on the Decision of the District Court in Mitrovica, Ac. nr. 142/2001, of 26 April 2002, allowed the execution of the Judgment C. nr. 22/2001, of 25 June 2001, by which the Applicant gained the right to reinstatement to work and to compensation of his unpaid salaries.

26. The BPAK filed an objection against the Decision E. no. 594/2009, of 19 February 2013, with the same court, by being based on the fact that the Supreme Court, by revision modified the judgments of the lower instance courts.

27. On 29 March 2013, the Basic Court in Mitrovica (Decision E. no. 594/2009) approved the objection, filed by the BPAK, with the reasoning that the legal act, allegedly as an executive title for execution, has not become final, due to the fact that the Supreme Court of Kosovo, by Judgment Rev. no. 80/2002, of 26 November 2002, modified the judgments of the lower instance courts and rejected the Applicant's statement of claim, for his reinstatement to work and for compensation of the unpaid salaries.

28. On 4 April 2013, the Applicant filed an appeal with the Court of Appeal in Mitrovica against the Decision of the Basic Court in Mitrovica E. no. 594/2009, of 29 March 2013.

29. On 17 January 2014, the Court of Appeal in Prishtina (Decision Ac. no. 1067/2013) rejected as ungrounded the Applicant's appeal and upheld the Decision of the Basic Court in Mitrovica, E. no. 594/2009, of 29 March 2013.

30. Furthermore, the Court of Appeal reasoned its decision as it follows:

> *"Setting from such a state of matter, the Court of Appeal of Kosovo assesses that the creditor's appealed allegations that there exist final judgments of the Municipal and District Court, by which was allowed the proposed execution, but he doesn't explain any other fact that would be important that this execution matter is quashed or modified in his favour, hence it rejected all of them as ungrounded. Since, in the present case there are judgments of the highest instance court in the country, i.e. of the Supreme Court of Kosovo, according to which to the claimant, in this case to the creditor, was modified the judgment of the first and second instance courts, where it was adjudicated in his favour, and also his proposal for repetition of procedure was rejected, consequently, in the present situation there is no executive title that requires execution, since the judgments of lower instance courts have been modified to the creditor's detriment, and that his reinstatement to working place in the execution procedure is not possible.*
>
> *However, the first instance court in such cases when the objection is approved, depending on the circumstances of the case, concludes partial or complete execution and annuls the committed actions, this is explicitly provided by the provision of Article 57 par. 1 in conjunction with par. 3 of LEP, however, in the given situation, even if the challenged decision is quashed, based on this provision, the panel concludes that the factual situation cannot be changed and that the creditor cannot realize his request.*
>
> *Hence the legal stance of the first instance court pertaining this matter is completely recognized by the Court of Appeal of Kosovo, as a correct and lawful stance, whereas the claims of*

the creditor are rejected as ungrounded on concrete evidence. Even though the creditor has not challenged the challenged decision due to any essential violation of procedure, however the second instance court assessed the challenged decision in this regard as well, and found that such a decision does not contain any substantial procedural violation under Article 182 par. 2 in conjunction with Article 194 of LCP, which the court reviews ex officio, and which violations might have influence on the fairness and legality of the challenged decision".

Applicant's allegations

31. The Applicant alleges that the Court of Appeal, by its Decision, Ac. no. 1067/2013, rendered in the executive procedure, has violated his right to reinstatement to his working place. All this, due to the fact that the latter rejected the permission of the execution of Judgment C. no. 22/2001, of 25 June 2001, which was approved by Decision of the Municipal Court in Mitrovica, E. no. 273/2002, of 7 May 2002 and by Decision of the District Court in Mitrovica, Ac. no. 142/2001, of 26 April 2002.

32. The Applicant alleges that the Court of Appeal, based its rejection of allowing the proposal for execution of the Judgment of the Supreme Court, Rev. no. 80/2002, by which the BPAK revision was approved and the Applicant's statement of claim was rejected. According to the Applicant, the Court of Appeal rejected the Applicant's proposal for execution, despite the fact that the first instance court decision became final.

Admissibility of the Referral

33. The Court first examines whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution and further specified in the Law and the Rules of Procedure of the Court.

34. In this respect, 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."

35. In addition, Rule 36 (1) c) of the Rules of Procedure, provides:

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

36. Moreover, Rule 36 (2) b) of the Rules of Procedure, provides:

„(2) 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;

[...]

d) when the Applicant does not sufficiently substantiate his claim".

37. In the present case, the Court notes that the Applicant alleges that the Court of Appeal violated his right to reinstatement to work, because it rejected the proposal for execution of Judgment C. no. 22/2001, of 25 June 2001, despite the fact that by Decision E. no. 273/2002 of the Municipal Court in Mitrovica, the execution was allowed and which became final after the rejection of the BPAK appeal by the District Court in Mitrovica.

38. As to the Applicant's allegation that the first instance court decision became final after its decision was upheld by the second instance court, in the executive procedure, the Court considers that the decisions of the lower instance courts, in the executive procedure, cannot be considered as adjudicated matter, as long as against the decisions of lower instance court in regular civil procedure the unsatisfied parties file appeal with the higher court instances, such as in the present case, by a revision filed with the Supreme Court, by BPAK.

39. However, the Decision of the Court of Appeal is clear, comprehensible and contains wide and comprehensive reasoning, and is based on a judgment rendered by the Supreme Court, which modified the decisions of the lower instance courts. It is understandable that the Supreme Court, as the highest instance of the regular judiciary, has the jurisdiction to assess the legality of

the decisions rendered by the lower instance courts, if their decisions are challenged by a party or parties, such as in the present case (see, the reasoning of the Decision of the Court of Appeal, in paragraph 29 of this document).

40. Therefore, the Court considers that the Applicant's allegations for violation of the rights, guaranteed by the Constitution and ECHR, do not present sufficient constitutional ground for the approval of his referral, as admissible.

41. Moreover, the Court cannot act as a fourth instance court, when reviewing the decision taken by the Court of Appeal. 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).

42. In the present case, the Court cannot consider that the proceedings conducted in the Court of Appeal 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).

43. In sum, the Court concludes that the Applicant's Referral, pursuant to Article 48 of the Law and Rule 36 (1) c) of the Rules of Procedure, is manifestly ill-founded.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Rule 36 (1) c), Rule 36 (2) b) and d), as well as Rule 56 (2) of the Rules of Procedure, on 2 July 2014, unanimously

DECIDES

I. TO DECLARE the Referral 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
Arta Rama-Hajrizi

President of the Constitutional Court
Prof. Dr. Enver Hasani

KO59/14, Hilmi Hoxha, Resolution of 26 June 2014 - Constitutional Review of Articles 29.2 and 38.2 of the Criminal Procedure Code and Articles 11.1 and 29.2 of the Law on Courts

Case KO59/14, Decision of 26 June 2014.

Key words: territorial jurisdiction conflict on criminal liability, Law on Courts, Criminal Procedure Code

The Referral is based on Article 113.8 of the Constitution of the Republic of Kosovo and Article 51 of the Law no. 03/L-121 on the Constitutional Court of the Republic of Kosovo no. 03/L-121. The Applicant is Mr. Hilmi Hoxha, who introduced himself as Presiding Judge of the Department for Serious Crimes of the Basic Court in Gjakova.

The subject matter is the constitutional review of Articles 29.2 and 38.2 of the CPC and Articles 11.1 and 39.2 of the Law no. 03/L-199 on Courts, due to an alleged collision in relation to territorial competence of courts on criminal liability.

The Applicant claimed that Articles 11.1 and 39.2 of the Law no. 03/L-199 on Courts "are in collision with the Code of Criminal Procedure", namely with Articles 29.2 and Article 38.2, which provide on territorial jurisdiction of courts. The Applicant alleged individual uncertainty on decisions on territorial jurisdiction. The Applicant is "still unsure of the constitutionality of Article 11, paragraph 1, and Article 39, paragraph 2 of the Law on Courts, for determining territorial jurisdiction on concrete cases". Finally, the Applicant requested from the Court "clarification of constitutionality of incidental jurisdiction in the present criminal case".

The Court found that the Applicant, Judge Hilmi Hoxha, informed that there is no judicial decision made by the President of the Basic Court in Gjakova or by the panel of serious crimes, requesting from the Constitutional Court the assessment of the constitutional compliance of the challenged legal provisions. The Court noted that the Constitution (Articles 102) and the Law on Courts (Article 3) make a distinction in between "courts" and "judges". On the other side, the comparative law, the Constitution (Article 113.8), the Law on Constitutional Court (Article 51) and the Rules of Procedure (Rule 75), when dealing with the incidental control, always refer to a "court". Thus, the Court considers that the Referral submitted by the Applicant cannot be taken as a referral submitted by a "court", as specified in the legislation mentioned above and, more precisely, in Article 113.8 of the Constitution.

Consequently, the Court concludes that the Applicant is not an authorized party to file that Referral and, therefore, the referral is inadmissible.

RESOLUTION ON INADMISSIBILITY
in
Case No. KO59/14
Applicant
Hilmi Hoxha
Constitutional review of
Articles 29.2 and 38.2 of the Criminal Procedure Code
and
Articles 11.1 and 39.2 of the Law on Courts

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 and
Arta Rama-Hajrizi, Judge.

Applicant

1. The Referral was filed and signed by Mr. Hilmi Hoxha, who introduced himself as Presiding Judge of the Department for Serious Crimes of the Basic Court in Gjakova (hereinafter, the Applicant).

2. The Applicant challenges the constitutionality of some legal provisions of the Criminal Procedure Code (hereinafter, the CPC) and of the Law on Courts.

Subject matter

3. The subject matter is the constitutional review of Articles 29.2 and 38.2 of the CPC and Articles 11.1 and 39.2 of the Law no. 03/L-199 on Courts, due to an alleged collision in relation to territorial competence of courts on criminal liability.

Legal basis

4. The Referral is based on Article 113.8 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) and Article 51 of the Law no. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter, the Law).

Proceedings before the Constitutional Court

5. On 31 March 2014, the Applicant filed the Referral with the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).

6. On 1 April 2014, the President of the Court appointed Judge Almiro Rodriguesas Judge Rapporteur and the Review Panel composed of judges Altay Suroy(Presiding), Kadri Kryeziu and Arta Rama-Hajrizi.

7. On 3 April 2014, the Court requested the Applicant to clarify and complete the Referral, answering the questions that follow.

   a). What is the question of compatibility of these legal provisions with the Constitution?
   b). What is the legal provision of the Constitution which is not compatible?

   c). What is the uncertainty as to the compatibility of the contested laws with the Constitution?

   d). How the court's decision on the pending case depends on the compatibility of the law at issue with the Constitution?

   e). Is there any decision of the President of Basic Court in Gjakova and/or of its serious crime panel, requesting the assessment of the constitutional compatibility of the relevant provisions of the Criminal Procedure Code and of the Law on Courts?

8. On 3 April 2014, the Court also requested the President of Basic Court in Gjakova to submit:

   a). the case file PKR No.317/2013 that is under consideration by the Basic court in Gjakova;

b). any decision of the Basic Court in Gjakova and/or its serious crimes panel, raising or requesting the assessment of constitutional compatibility of the abovementioned provisions of the Criminal Procedure Code and Law on Courts with the Constitution;

c). comments on the Referral, if any.

9. On 15 April 2014, the Applicant answered the questions put by the Court and submitted the case file PKR no. 317/2013.

10. On 7 May 2014, the Court further requested the Basic Court in Gjakova to inform whether the President and/or the Presiding Judge of the serious crimes panel took any decision, raising the requesting the assessment of constitutional compatibility of the challenged laws and, if any, to send a copy.

11. On 27 May 2014, the President of the Basic Court in Gjakova answered the questions put by the Court.

12. On 26 June 2014, the Judge Kadri Kryeziu notified in writing the Court of the request for his recusal from the session for the period June-July 2014, until the Court decides on the allegations raised against him.

13. On 26 June 2014, the President of the Court, by Decision no. KSH. KI59/14, replaced Judge Kadri Kryeziu with Judge Ivan Čukalović as a member of the Review Panel.

14. On 26 June 2014, the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of Referral.

Summary of facts

15. On 17 February 2004, the Public District Prosecutor in Peja charged (Indictment PP. no. 68/2004) a defendant with the criminal offences of the attempted murder and unauthorized possession of weapons and ammunition.

16. On 20 October 2011, the District Court in Peja (Judgment P. no. 154/10) found the accused guilty and sentenced him for the criminal offenses as per the indictment.

17. On 16 April 2013, the Court of Appeal (Decision PAKR. no. 899/2012) approved the appeal of defense counsel of the accused, annulled Judgment of the District Court in Peja (P. no. 154/2010, of 20.10.2011), and remanded the case for retrial to the Basic Court in Peja.

18. Meanwhile, on 22 July 2010, the Law No. 03/L-199 on Courts has been approved. Article 43 (Entry into Force) foresees that *"This Law shall enter into force on January 1, 2011 for Articles 29, 35, 36 38 and 40, while for other Articles it shall begin to be implemented from January 1, 2013.*

19. In accordance with that Law, the new Basic Court was established in Gjakova and, under Article 39.2, all cases which were not resolved by final decisions until 31 December 2012, should be treated as cases of the Basic Court holding respective territorial jurisdiction as of 1 January 2013.

20. On 22 October 2013, the Department for Serious Crimes of the Basic Court in Peja (Decision P. no. 270/13) "*declared itself territorially incompetent"* to adjudicate the criminal matter and forwarded the case to the Department for Serious Crimes of the Basic Court in Gjakova.

21. On 23 October 2013, the Presiding Judge of the Department for Serious Crimes of the Basic Court in Gjakova filed with the Court of Appeal a request to resolve the territorial jurisdiction conflict, proposing that the Basic Court in Peja be found to have territorial jurisdiction for adjudicating the criminal matter.

22. On 25 October 2013, the Court of Appeal decided (Decision PN. no. 670/2013):

> *"The Basic Court in Gjakova, Department for Serious Crimes is rendered competent to adjudicate the criminal matter upon the indictment of the District Public Prosecution in Peja (hereinafter: DPP) PP. no. 68/04 of 17.02.2004, against the accused, due to the grounded suspicion that he has perpetrated the criminal offense of attempted murder pursuant to Article 30, paragraph 1 of the Criminal Code of Kosovo (CCK) in conjunction with Article 19 of the CLY, and the criminal offense of unauthorized possession of weapon and ammunition pursuant to Article 8.3 punishable pursuant to Article 8.5 of*

UNMIK Regulation no.2001/7 on the Authorization of Possession of Weapons in Kosovo".

23. On 15 January 2014, the Presiding Judge of the Department for Serious Crimes of Basic Court in Gjakova filed with the Supreme Court a request for protection of legality.

24. On 28 January 2014, the Supreme Court of Kosovo decided (Decision PML. no. 16/2014) to reject as inadmissible the request for protection of legality, reasoning as follows:

"Moreover, the request for protection of legality was submitted by a Judge – Presiding Judge, who is not legally authorized to submit this legal remedy, because pursuant to the provision of Article 433, paragraph 1 of the CPCK, the request for protection of legality can be submitted by the Chief State Prosecutor, the defendant and his defense counsel, and upon death of the defendant the request can be submitted by the persons listed in the final sentence of Article 424, paragraph 1 of the present Code".

25. On 14 April 2014, the Applicant answered the questions put by the Court as follows:

a). "The provisions of Articleare legal provisions in compliance with the Constitution, while Article 39 of the Law on Courts is legal provision that is in contradiction to the abovementioned Articles of CPC";

b). "The legal provisions of the Constitution are not challenged, but perhaps I made a change, when I filed the Referral regarding the constitutionality of Articles 29 para. 2, Article 38 para.2 of the CPC, (...) it should have been stated the legality of the CPC articles mentioned above";

c). "Article 39 para.2 of the Law on Courts, in my opinion is not an article that determines the territorial jurisdiction of the criminal present cases, but determination of the territorial jurisdiction of each specific criminal case should be based on Article 29 para. 2 and Article 38 para. 2 of the CPC";

d). "The decision of the Court, pending the case depends a lot, since (...) all these cases are sent to the Basic Court in Gjakova, only by a simple letter, by referring to Article 39 para. 2 of the Law on Courts, without decision on declaration of territorial

> *incompetence and this is special burden for the Basic Court in Gjakova, which has only 3 judges of serious crimes or 12 Judges in total";*
>
> *e). "There is no decision of the Basic Court in Gjakova or of the panel of this Court of serious crimes that has requested the assessment of the constitutional compliance of the respective provisions of the Criminal Procedure Code and the Law on Courts".*

26. On 14 April 2014, the Applicant further attached the case file PKR. no. 317/2013, *"since this case was assigned to the Presiding Judge and not to the President of the Basic Court in Gjakova".*

27. On 27 May 2014, the President of the Basic Court in Gjakova informed that *"neither the President of the Basic Court in Gjakova, nor the Presiding Judge of the serious crimes panel have rendered any decision that sought the Constitutional review of Articles 29.2 and 38.2 of the Criminal Procedure Code, as well as Articles 11.1 and 39.2 of Law no.03/L-199 on the Courts".*

Applicant's allegations

28. The Applicant claims that Articles 11.1 and 39.2 of the Law no. 03/L-199 on Courts *"are in collision with the Code of Criminal Procedure"*, namely with Articles 29 (2) and Article 38 (2), which provide on territorial jurisdiction of courts.

29. The Applicant alleges *"individual uncertainty"* on decisions on territorial jurisdiction. He further says:

> *In every meeting, seminar or panel, I have objected the manner of forwarding criminal cases, (...) and I have tried to raise this matter, but my opinion only reached deaf ears (...).*

30. The Applicant is *"still unsure of the constitutionality of Article 11, paragraph 1, and Article 39, paragraph 2 of the Law on Courts, for determining territorial jurisdiction on concrete cases".*

31. Finally, the Applicant requests from the Court *"clarification of constitutionality of incidental jurisdiction in the present criminal case".*

Relevant provision of the Constitution on courts

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.

4. Judges shall be independent and impartial in exercising their functions.

(…)

Relevant provisions of the Law no. 03/L-199 on Courts

Article 3

1. The Courts established by this Law shall adjudicate in accordance with the Constitution and the Law.

2. Judges during exercising function and taking decisions shall be independent, impartial, uninfluenced in any way by no natural or legal person, including public bodies.

Article 11.1

1. The Basic Courts are competent to adjudicate in the first instance all cases, except otherwise foreseen by Law.

Article 12

1. The following Departments shall be established within the Basic Courts for the purpose of allocating cases according to subject matter:

…

1.3. a Department for Serious Crimes operating at the principal seat of each Basic Court;

2. Each Basic Court shall have a President Judge responsible for the management and operations of the Basic Court. Each branch of the Basic Courts shall have one (1) Supervising Judge responsible to the President Judge of the respective Basic Court for the operations of the branch.

Article 15

2. All cases before the Serious Crimes Department of the Basic Court shall be heard by a trial panel of three (3) professional judges, with one (1) judge designated to preside over the trial panel.

Article 39.2

2. All cases which, on 31 December 2012, are first instance cases of the Supreme Court, District Court, District Commercial Court, Municipal Court or the Municipal Courts for Minor Offences and have not been concluded with final decisions, shall on 1 January 2013, be treated as cases of the Basic Court which has the appropriate territorial jurisdiction.

Relevant provisions of the Criminal Procedure Code, No. 04/L-123

Article 29.2

2. If a criminal offence was committed or attempted or its consequence occurred in the territory of more than one court or on the border of those territories, the court which first announced proceedings in response to the petition of an authorized state prosecutor shall be competent, but if proceedings have not been initiated, the court at which the petition for initiation of proceedings is first filed shall have jurisdiction.

Article 38.2

2. After the indictment becomes final, the court may not declare that it does not have territorial jurisdiction, nor may the parties raise the objection of lack of territorial jurisdiction.

Comparative law background

32. Before entering the assessment of the admissibility of the Referral, the Court considers it is useful to bring into consideration some background on comparative law and jurisprudence.

33. The Court notes that the large number of the European states has foreseen the so-called "preliminary ruling procedure": a regular court brings a preliminary question before the Constitutional Court when it has doubts on whether a law is compatible with the Constitution.

34. The preliminary ruling procedure is also known as judicial referral, indirect individual access, concrete control, indirect control or incidental control of constitutionality. It appears that the Kosovo legal community is more familiar with the term incidental control of constitutionality.

35. Thus, the regular courts of the majority of states are authorized to submit the request for constitutionality of legislation. It exists in Albania, Armenia, Belgium, Bosnia and Herzegovina, Croatia, Czech Republic, Hungary, Italy, Macedonia, Romania, Slovenia, Spain, Turkey, etc. However, in some states such as Bulgaria, Greece and Latvia, only the highest courts are authorized to initiate the incidental control before the constitutional courts.

36. On the other side, in Germany, all competent panels of all courts in all instances are entitled to make use of judicial referral, in accordance with Article 100 (1) of the Basic Law. The Federal Constitutional Court also performs the review *ex officio*.

37. Pursuant to Article 100.1 of the Basic Law, all entitledpanels may use the judicial referral. Then, a majority of the panel members must vote to refer the question. The petition must be signed by the judges who voted in favor of the referral and must be accompanied by a statement of the legal provision at issue, the provision of the Basic Law implicated, and the extent to which a constitutional ruling is necessary to decide the dispute.

38. The Federal Constitutional Court will dismiss the case if the referring judges demonstrate less than a genuine conviction that a law or provision of law is unconstitutional or if the case can be decided without settling the constitutional question.

39. In Hungary, in accordance with Article 24.2 b) of the Constitution, the Constitutional Court "*reviews immediately but not later than thirty days any piece of legislation applied in a particular case for conformity with the Fundamental Law at the proposal of any judge*".

40. According to the Law of the Hungarian Constitutional Court, regular courts shall initiate proceedings with the Constitutional Court if, in a case pending before them, they should apply legal rules or other legal instruments of public administration which they deem unconstitutional.

41. Similar procedure also exists in Turkey. In fact, Article 152 of the Constitution of Turkey reads:

> *If a court which is trying a case, finds that the law or the decree having the force of law to be applied is unconstitutional, or if it is convinced of the seriousness of a claim of unconstitutionality submitted by one of the parties, it shall postpone the consideration of the case until the Constitutional Court decides on the issue.*
>
> *If the court is not convinced of the seriousness of the claim of unconstitutionality, such a claim together with the main judgment shall be decided upon by the competent authority of appeal.*
>
> *The Constitutional Court shall decide on the matter and make public its judgment within five months of receiving the contention. If no decision is reached within this period, the trial court shall conclude the case under existing legal provisions. However, if the decision on the merits of the case becomes final, the trial court is obliged to comply with it.*
> *No allegation of unconstitutionality shall be made with regard to the same legal provision until ten years elapse after publication in the Official Gazette of the decision of the Constitutional Court dismissing the application on its merits.*

42. In addition, Article 156 of the Slovenian Constitution provides:

> *If a court deciding some matter deems a law which it should apply to be unconstitutional, it must stay the proceedings and initiate proceedings before the Constitutional Court. The*

proceedings in the court may be continued after the Constitutional Court has issued its decision.

43. More precisely, the Special Act (of 6 January 1989) on the Belgian Constitutional Court provides:

Art. 27.

§ 1. Preliminary questions shall be referred to the Constitutional Court by communication of a certified true copy of the referral decision signed by the president and registrar of the court of law.

§ 2. The referral decision shall state the provisions of the statute, decree or rule referred to in Article 134 of the Constitution in respect of which the question is referred; where appropriate, it shall also specify which articles of the Constitution or of the special laws are relevant in that respect. The Constitutional Court, however, may reformulate the preliminary question referred.

Art. 28.

The court of law which posed the preliminary question and any other court of law passing judgment in the same case shall comply with the ruling given by the Constitutional Court in the settlement of the dispute in connection with which the questions referred to in Article 26 were posed.

Art. 29.

§ 1. No legal remedy shall lie against a decision of a court of law insofar as it refers a question to the Constitutional Court for a preliminary ruling.

§ 2. Any decision whereby a court of law refuses to refer a question for a preliminary ruling shall state the reason for the refusal. No separate legal remedy shall lie against the decision of a court of law that refuses to refer such a question.

Art. 30.

A decision to refer a question to the Constitutional Court for a preliminary ruling shall have the effect of suspending the proceedings and the time limits for proceedings and limitation

periods from the date of that decision until the date on which the ruling of the Constitutional Court is notified to the court of law that posed the preliminary question. A copy of the ruling shall be sent to the parties.

44. The Court considers that it is a fair summary of the comparative view saying that, in the majority of the European states,the regular courtsmay use the judicial referral. Then, a decision needs to be made, voted and signed, on referring the constitutional question. The referral must be signed by the judges who voted in favor and must be accompanied by a statement of the legal provision at issue, the provision of the Constitution implicated, and the extent to which a constitutional ruling is necessary to decide the dispute. In addition, that decision duly signed by the Judge or the Judges is addressed to the Constitutional Court by the President of the Court or by the Registrar.

Admissibility of the Referral

45. The Court now assesses whether the Applicant has met the admissibility requirements, as established by the Constitution and further specified by the Law and the Rules of Procedure, namely if the Applicant is an authorized party.

46. The Court recalls that the Applicant filed and signed the Referral *"pursuant to Article 113, item 8 of the Constitution of Kosovo",* willing to *"refer the matter of constitutional review of these articles – laws mentioned above, and we request clarification of constitutionality of incidental jurisdiction in the concrete criminal case"*.

47. In this regard, the Court refers to Article 113 [Jurisdiction and Authorized Parties] of the Constitution which establishes:

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

(...)

8. The courts have the right to refer questions of constitutional compatibility of a law to the Constitutional Court when it is raised in a judicial proceeding and the referring court is uncertain as to the compatibility of the contested law with the

Constitution and provided that the referring court's decision on that case depends on the compatibility of the law at issue.

48. The Court also refers to Article 51 (Accuracy of referral) of the Law, which provides:

1. A referral pursuant to Article 113, Paragraph 8 of the Constitution shall be filed by a court only if the contested law is to be directly applied by the court with regard to the pending case and if the lawfulness of the contested law is a precondition for the decision regarding the case pending with the court.

2. A referral shall specify which provisions of the law are considered incompatible with the Constitution.

49. In addition, the Court refers to Rule 75 of the Rules of Procedure (Filing of Referral), which foresees:

(1) Any Court of the Republic of Kosovo may submit a Referral to the Court pursuant to Article 113.8 of the Constitution, ex officio, or upon the request of one of the parties to the case.
(2) The referral shall state why a decision of the court depends on the question of the compatibility of the law to the Constitution. The file under consideration by the court shall be attached to the referral.

(3) Any Court of the Republic of Kosovo may file a referral to initiate the procedure pursuant to Article 113. 8 of the Constitution regardless of whether a party in the case has disputed the constitutionality of the respective legal provision.

50. The Court observes that the Applicant refers to Article 113.8 of the Constitution as being the legal basis for filing the Referral.

51. The Court recalls that it had so far only one case submitted in accordance with Article 113.8 of the Constitution. (See Constitutional Court case KO04/11, Judgment dated 6 March 2012).

52. In that case, the general session of the Supreme Court deliberated to submit a request for the assessment of the constitutionality, in conformity with Article 113.8 of the Constitution.

53. The Referral was submitted to the Court on behalf of the Supreme Court by its President, Mr. Fejzullah Hasani.

54. At the outset, the Court recalls that the Applicant, Judge Hilmi Hoxha, informed that there is no judicial decision made by the President of the Basic Court in Gjakova or by the panel of serious crimes, requesting to the Constitutional Court the assessment of the constitutional compliance of the challenged legal provisions.

55. The Court notes that the Constitution (Articles 102) and the Law on Courts (Article 3) make a distinction in between "courts" and "judges". On the other side, the comparative law, the Constitution (Article 113.8), the Law on Constitutional Court (Article 51) and the Rules of Procedure (Rule 75), when dealing with the incidental control, always refer to a "court".

56. Thus, the Court considers that the Referral submitted by the Applicant cannot be taken as a referral submitted by a "court", as specified in the legislation mentioned above and, more precisely, in Article 113.8 of the Constitution.

57. Consequently, the Court concludes that the Applicant is not an authorized party to file that Referral and, therefore, the referral is inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.8 of the Constitution, Article 51 of the Law and Rule 75 (2) of the Rules of Procedure, on 26 June 2014, unanimously:

DECIDES

I. TO DECLARE the Referral Inadmissible;

II. TO NOTIFY this Decision to the Parties;

III. TO RETURN the casefile to the Basic Courtin Gjakova

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**

Almiro Rodrigues Prof. Dr. Enver Hasani

KI58/14, Shefqet Hasimi, Resolution of 1 July 2014 - Constitutional Review of the Decision of the Court of Appeal, KA. no. 89/2014, of 6 February 2014

CaseKI 58/14, Decision of 1 July 2014.

Key words: Individual Referral, inadmissible, manifestly ill-founded

The subject matter is the constitutional review of the Decision of the Court of Appeal of 6 February 2014, which upheld the Decision of 20 January 2014 of the Basic Court in Prishtina. The Basic Court in Prishtina by the aforementioned Decision had found the Applicant guilty of a minor offence in the traffic.

The Applicant does not specify in his referral what rights and freedoms have been violated and what constitutional provision in particular supports his Referral.

The Constitutional Court declared the Referral as inadmissible for being manifestly ill-founded because the Referral was not prima facie justified and the Applicant did not sufficiently substantiate his claim.

RESOLUTION ON INADMISSIBILITY
in
Case no. KI58/14
Applicant
Shefqet Hasimi
Constitutional review of the Decision of the Court of Appeal, KA. no. 89/2014, of 6 February 2014

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 and
Arta Rama-Hajrizi, Judge

Applicant

1. The Applicant is Mr. Shefqet Hasimi (hereinafter: the Applicant), with residence in Prishtina.

Challenged decisions

2. The challenged decision is the Decision of the Court of Appeal, KA. no. 89/2014, of 6 February 2014, which was served on the Applicant on an unspecified date.

Subject matter

3. The subject matter is the constitutional review of the Decision of the Court of Appeal, KA. no. 89/2014, of 6 February 2014, which upheld Decision, Reg. no. 53490/13, of 20 January 2014 of the Basic Court in Prishtina, General Department, Division for Minor Offence (hereinafter: the Basic Court in Prishtina). The Basic Court in Prishtina by the aforementioned Decision had found the Applicant guilty of a minor offence in the traffic.

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 (hereinafter: the Law), and Rule 56 of the Rules of Procedure (hereinafter: the Rules).

Proceedings before the Constitutional Court

5. On 31 March 2014 the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 3 April 2014 the President by Decision No. GJR. KI58/14, appointed Judge Altay Suroy as Judge Rapporteur. On the same date, the President by Decision No. KSH. KI58/14, appointed Review Panel, composed of Judges: Robert Carolan (Presiding), Ivan Čukalović and Enver Hasani.

7. On 28 April 2014 the Constitutional Court notified the Applicant on the registration of the Referral. On the same date, the Court submitted a copy of the Referral to the Court of Appeal.

8. On 26 June 2014, Judge Kadri Kryeziu notified in writing the Court for his exclusion from the deliberations for the period June-July 2014 until the Court decides regarding certain allegations raised against him.

9. On 1 July 2014, theReview Panel considered the report of the Judge Rapporteur and made a recommendation to the full Court on the inadmissibility of the Referral.

Summary of Case

10. On 23 August 2013, the Police Station South in Prishtina filed with the Basic Court in Prishtina the request for initiation of minor offence procedure against the Applicant for committing a minor offence (driving the vehicle without using the safety belt) in violation of Article 198, paragraph 1 of the Law No. 02/ L- 70 on the Road Traffic Safety.

11. On 23 September 2013, the Basic Court in Prishtina (Decision Reg. no. 53490/13) found the Applicant guilty of the minor offence (driving a vehicle without using the safety belt) under Article 198, paragraph 1 of the Law on the Road Traffic Safety (hereinafter: LRTS) and fined him in the amount of 35 (thirty five) euro.

12. Against the abovementioned Decision of the Basic Court in Prishtina, the Applicant filed an appeal with the Court of Appeal.

13. On 6 November 2013, the Court of Appeal (Decision, KA. No. 1155/2013) approved the Applicant's appeal as grounded and quashed the Decision (Reg. no. 53490/13, of 23 September 2013) of the Basic Court in Prishtina, by remanding the case to the first instance court for retrial and reconsideration.

14. The Court of Appeal concluded that the Basic Court in Prishtina found the Applicant guilty of a minor offence under Article 198, paragraph 1 of the LRTS, driving the vehicle without using the safety belt, while the abovementioned court did not render any decision regarding two other minor offences, namely driving the vehicle without turning the lights on and improper behavior towards the police officer. Consequently, the Court of Appeal decided that the Basic Court in Prishtina should proceed with the completion of procedure and decide on all minor offences.

15. On 5 December 2013, the Applicant filed a request with the President of the Basic Court in Prishtina for exemption of the Judge from the minor offence procedure, by claiming that the latter showed partiality during the procedure.

16. On 20 December 2013, the President of the Basic Court rejected the Applicant's request.

17. On 20 January 2014, the Basic Court in Prishtina (Decision, Reg. no. 53490/13), found the Applicant guilty of minor traffic offence, under Article 198, paragraph 1 of the LRTS, driving the vehicle without using the safety belt. This Court, further suspended the minor offence procedure against the Applicant, regarding the minor offence under Article 122, paragraph 1 of the LRTS (driving the vehicle without using the lights), while regarding the improper behavior towards the police officer, it concluded that this action cannot be qualified as a minor offence, and issued a warning to the Applicant for the behavior.

18. Against the abovementioned Decision of the Basic Court in Prishtina, the Applicant filed an appeal with the Court of Appeal with allegation of erroneous application of substantive law, erroneous determination of factual situation and violation of the provisions of the minor offence procedure.

19. On 6 February 2014, the Court of Appeal (Decision, KA. no. 89/2014) rejected the Applicant's appeal as ungrounded and upheld the Decision of the Basic Court in Prishtina (Reg. no. 53490/13 of 20 January 2014).

20. The Court of Appeal concluded as it follows:

> *[...]*
>
> *"The panel assessed that the first instance court during implementation of the minor offence procedure has not committed violation of procedural provisions, namely the erroneous application of the substantive law, while the fine imposed on the defendant Shefqet Hasimi, pursuant to Article 7 of the LT, in the amount of 35 (thirty five) €, is considered to be set based on the degree of the responsibility, the nature of the committed offence and the circumstances under which the minor offence was committed, therefore in this respect there is no legal ground for modification of the challenged ruling".*

21. On 26 February 2014, against the Decisions of the Basic Court in Prishtina (Reg. no. 53490/13 of 20 January 2014) and the Court of Appeal (KA. no. 89/2014 of 6 February 2014), the Applicant filed a request with the Office of the State Chief Prosecutor for initiation of a request for protection of legality.

22. On 1 July 2014, the State Prosecutor in his Notification (KMLP. I. No. 2/14) considered that there is no legal ground for initiation of the request for protection of legality.

Applicant's allegations

23. The Applicant addresses the Court as following:

> *"In this Referral addressed to the Constitutional Court of Kosovo, complaining against the decisions, rendered by violating the Constitution, by violating the citizens' rights to be equally treated before the law and the Constitution and not to be*

discriminated and brutally violating the law. When pronouncing the sentence, there is no evidence that I Shefqet Hasimi, the officer in the Ministry of Justice, violated the law on 09.07.2013. I propose to the Panel to consider my referral in a careful manner, in order to find that there is a violation of the Law-the Constitution and in particular when the Panel of the Court of Appeal decides twice on the same matter".

24. The Applicant does not specify in his referral what rights and freedoms have been violated and what constitutional provision in particular supports his referral.

Admissibility of the Referral

25. 26. In order to be able to adjudicate the Applicant's referral, the Court needs to examine beforehand whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution and further specified in the Law and the 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. The Court also takes 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".

28. As it i stated above, the Applicant has addressed the Court with the request, to hold that *[...]"I propose to the Panel to consider the referral in a careful manner, in order to find that there is a violation of the Law-the Constitution and in particular when the Panel of the Court of Appeal decides twice on the same matter".*

29. In this respect, the Court notes that the Applicant does not state in his Referral what right has been violated and what Article of the Constitution supports his referral.

30. The Court also reiterates that the Constitutional Court cannot replace the role of the regular courts. It is the role of regular courts to interpret and apply the pertinent rules of both procedural and substantive law (see, case *Garcia Ruiz v. Spain*, ECHR, Judgment of 21 January 1999; see also case KI70/11 of Applicants *Faik Hima, Magbule Hima and Bestar Hima,* Resolution on Inadmissibility, of 16 December 2011.

31. As regards to the Applicant's allegation cited in the paragraph 28, the Court notes that the reasoning provided in the Decision of the Court of Appeal is clear and, after reviewing the entire proceedings, the Court has also found that the proceedings before the Court of Appeal and the Basic Court in Prishtina, have not been unfair and arbitrary (see case *Shub v. Lithuania*, no. 17064/06, ECHR, Decision of 30 June 2009).

32. Moreover, the Applicant has not submitted any *prima facie* evidence indicating a violation of the rights guaranteed by the Constitution (see case *Vanek v. Slovak Republic*, ECHR, No. 53363/99, Decision of 31 May 2005). The Applicant has not specified what rights guaranteed by the Constitution support his claim, as required by Article 113.7 of the Constitution and Article 48 of the Law.

33. Consequently, the Court considers that the Referral is manifestly ill-founded pursuant to Rule 36 (2) a) and d) of the Rules of Procedure, which provides: *"The Court shall reject a Referral as being manifestly ill-founded when it is satisfied that: (a) the Referral is not prima facie justified; and (d) when the Applicant does not sufficiently substantiate his claim"*.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 48 and Rules 36 (2), a) and d) and 56 (2) of the Rules of Procedure, on 1 July 2014, unanimously:

DECIDES

I. TO DECLARE 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

KI66/14 Ruhan Sadiku, Zymrije Hyseni, Ramadan Palushi, Xhevat Haziri, Mehdi Dibra and Aziz Hashani, Resolution of 3 July 2014- Constitutional Review of the Judgment Rev. no. 210/13 of the Supreme Court of the Republic of Kosovo, of 18 December 2013

Case KI66/14, Decision of 3 July 2014.

Key words: individual referral, civil contest, right to fair and impartial trial, judicial protection of rights, manifestly ill-founded referral.

In this case, the Applicants alleged that"the Judgment of the Supreme Court of Kosovo Rev. no. 210/ 2013 of 18.12.2013, is partial, unfair and arbitrary, due to these reasons: a) Partiality, unfairness and procedural arbitrariness. Despite the fact that the adjudicated matter-res judicata is a fundamental absolute principle and constitutes procedural negative presumption that excludes the possibility of retrial for the same adjudicated matter, and according to the judgment of the Supreme Court, is considered that the employment relationship was terminated due to privatization, despite the fact that this objection has been once rejected by final decision as a "arisen fact" in fact revived or renewed fact, because that fact ceased to exist by final decision E. no. 1248/2007, without any legal ground, constitutes impartiality, arbitrariness and procedural injustice. b) The partiality and procedural arbitrariness caused partiality and material arbitrariness to the detriment of the claimants, by modifying the judgments of the lower instance courts" [...].

In the present case, the Court did not consider that the proceedings in the Supreme Court were partial or in any way unfair or arbitrary. In this regard, the Court referred to mutatis mutandis, case Shub vs. Lithuania,ECHR Decision as to the Admissibility of Application Nr. 17064/06, of 30 June 2009.

The Constitutional Court further considered that the allegation of a violation based on the disrespect of a final and binding decision is unfounded, as the facts and arguments presented by the Applicants do not logically explain and reasonably show that the Supreme Court has violated the *res judicata* principle.

Insum, the Court concludes that the Applicants' Referral is manifestly ill/founded, pursuant to Article 48 of the Law and Rule 36 (1) c) of the Rules of Procedure.

RESOLUTION ON INADMISSIBILITY
in
Case no. KI66/14
Applicants
Ruhan Sadiku, Zymrije Hyseni, Ramadan Palushi, Xhevat Haziri, Mehdi Dibra and Aziz Hashani
Constitutional review of the Judgment Rev. no. 210/13 of the Supreme Court of the Republic of Kosovo, of 18 December 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, and
Arta Rama-Hajrizi, Judge

Applicants

1. Applicants are: Mr. Ruhan Sadiku from village Llugaxhi, Municipality of Lipjan; Ms. Zymrije Hyseni from village Prelez, Municipality of Ferizaj; Mr. Ramadan Palushi from Ferizaj; Mr. Xhevat Haziri from Ferizaj; Mr. Mehdi Dibra from Ferizaj and Mr. Aziz Hashani from Ferizaj. The Applicants are represented by Mr. Halil Ilazi, lawyer.

Challenged decision

2. The Applicants challenge the Judgment Rev. no. 210/13 of the Supreme Court, of 18 December 2013, which was served on them on 15 January 2013.

Subject matter

3. The subject matter is the constitutional review of the challenged decision, which allegedly violated the Applicants' constitutional rights, as guaranteed by Article 22 [Direct Applicability of International Agreements and Instruments], Article 31 paragraph 1 and 2 [Right to Fair and Impartial Trial]; Article 54 [Judicial

Protection of Rights]; Article 6 [Right to fair trial] and Article 13 [Right to effective remedy] of the European Convention on Protection of Human Rights and Fundamental Freedoms (hereinafter, the Convention).

Legal basis

4. The legal basis is: Article 113 (7) of the Constitution and Articles 20 and 47 of the Law on the Constitutional Court of the Republic of Kosovo, no. 03/L-121 (hereinafter, the Law).

Proceedings before the Constitutional Court

5. On 4 April 2014, the Applicants submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).

6. On 6 May 2014, the President of the Court appointed Judge Almiro Rodrigues as Judge Rapporteur and the Review Panel, composed of JudgesAltay Suroy (Presiding), Kadri Kryeziu and Arta Rama-Hajrizi.

7. On 16 May 2014, the Court notified the Applicants on the registration of Referral and sent a copy of the Referral to the Supreme Court.

8. On 26 June 201, Judge Kadri Kryeziu notified in writing the Court for his exclusion from the deliberations for the period June-July 2014 until the Court decides regarding the allegations raised against him.

9. On 30 June 2014, the President of the Court replaced Judge Kadri Kryeziu Judge Ivan Čukalović as a member of the Review Panel.

10. On 3 July 2014, the Review Panel considered the report of the Judge Rapporteur and recommended to the Court the inadmissibility of the Referral.

Summary of facts

11. On 27 March 2004, the Public Passenger TransportCompany "Kosovatrans" (hereinafter, the Kosovatrans) decided to send the Applicants on paid leave of 50% (Decision no. 46).

12. On 30 December 2005, the Municipal Court in Ferizaj (Judgment C. no. 250/05) decided to: I) aprove the statement of claim of the Applicants and annul as unlawful the decision of Kosovatrans sending the Applicants to paid leave with 50% of personal income; II) oblige the Kosovatransto reinstate the Applicants to their working places with all rights and obligations from the employment relationship; III) oblige the Kosovatrans to pay to the Applicants the compensation of damage for the loss of personal income for the period from 01.04.2004 until 30.12.2005, with interest rate of 4% to be counted from 30.12.2005 until the final payment; IV) oblige the Kosovatrans to pay to the Applicants the damage in the amount of daily allowance for the period from 01.04.2004 until 30.12.2005, with the same interest rate of 4%, from 30.12.2005 until final payment and V) oblige the Kosovatrans to compensate to the Applicants the costs of the contest..

13. The Kosovatrans filed an appeal with the District Court in Prishtina against the Judgment of the Municipal Court.

14. On 1 November 2006, the District Court (Judgment Ac. no. 168/2006) decided to: I) rejectas ungrounded the appeal of the Kosovatrans, in paragraph I, II and in the part of the paragraph III of the judgment, where it has to do with the compensation of damage for the loss of personal income for the period from 01.04.2004 until 30.12.2005; II) upholdparagraph V of the judgment; III) quashed paragraph III of the Judgment, in the part that has to do with the interest rate of 4%, which will be calculated from 30.12.2005, until the final payment and IV) quashed the request in paragraph IV.

15. On 5December2006, the Applicants filed a request for execution of the judgment of Municipal Court in Ferizaj (C. no. 250/2005 of 30.12.2005).

16. On 20 December 2006, the Municipal Court allowed the execution and ordered the Kosovatrans to reinstate the Applicants to their working places and pay a compensation for their unpaid salaries from 2 April 2004 until 30 December 2005.

17. On 19 February 2007, the Kosovo Trust Agency (KTA) filed a request for suspension of the execution because of the privatization of a part of the Kosovatrans.

18. On 23 April 2007, the Municipal Court (Decision E. no. 1348/06) rejected the request of KTA and reiterated the obligation of the

Kosovatrans to reinstate the Applicants to their working places, under the threat of forced execution.

19. On 27 September 2007, the District Court in Prishtina (Judgment Ac. no. 448/2007) rejected as ungrounded the appeal of KTA and upheld the Decision of the Municipal Court in Ferizaj, E. no. 1348/2006, of 23 April 2007.

20. On 19 November 2007, the Municipal Court concluded (E. no. 1348/06, Official Note) that *"the Judgment of the Municipal Court in Ferizaj C. no. 250/05 of 30.12.2005 is executed in entirety, so that the [Applicants] have been reinstated to their working places and entered the debtor's premises"*

21. On 7 May 2009, the Municipal Court in Ferizaj (Judgment C. no. 676/06) decided to: I) approve the statement of claim of the Applicants and obligate the Kosovatrans to pay to the Applicants the unpaid salaries for the period of 01.01.2006 until 30.04.2009 and II) reject as ungrounded the statement of claim of the Applicants by which the Kosovatrans is obligated to pay for meal coupons for the period of 01.04.2004 until 30.04.2009.

22. On 10 May 2012, the District Court in Prishtina (Judgment Ac. no. 881/2009) rejected as ungrounded the appeal of the Applicants and upheld the appeal of the Kosovatrans.

23. The Kosovatrans and PAK filed with the Supreme Court a revision against the second instance court judgment, due to essential violations of the contested procedure provisions and erroneous application of the material law.

24. On 18 December 2012, the Supreme Court (Judgment Rev. no. 210/2013) decided to: I) admit the revision of the Kosovatrans; II) modify the judgments of Municipal Court in Ferizaj (C.no.676/2006 of 07.05.2009) and of District Court in Prishtina (Ac.no.881/2009 of 10.05.2012) so that the statement of claim of the Applicants is rejected as ungrounded for the obligation of the Kosovatrans to compensate the unpaid salaries to the Applicants for the period from 01.01.2006 until 30.04.2009; and III) non-review the remaining other part of the judgments.

Applicant's allegations

25. The Applicants claim that "*the Judgment of the Supreme Court of Kosovo Rev. no. 210/2013 of 18.12.2013, is partial, unfair and arbitrary, due to these reasons:*

> *a) Partiality, unfairness and procedural arbitrariness. Despite the fact that the adjudicated matter-res judicata is a fundamental absolute principle and constitutes procedural negative presumption that excludes the possibility of retrial for the same adjudicated matter, and according to the judgment of the Supreme Court, is considered that the employment relationship was terminated due to privatization, despite the fact that this objection has been once rejected by final decision as a "arisen fact" in fact revived or renewed fact, because that fact ceased to exist by final decision E. no. 1248/2007, without any legal ground, constitutes impartiality, arbitrariness and procedural injustice.*
>
> *b) The partiality and procedural arbitrariness caused partiality and material arbitrariness to the detriment of the claimants, by modifying the judgments of the lower instance courts".*

26. The Applicants allege that the Judgment of the Supreme Court violated "*Article 31.1 and 2 (Right to Fair and Impartial Trial), Article 22 (Direct Applicability of International Agreements and Instruments), Article 54 (Judicial Protection of Rights) of the Constitution of the Republic of Kosovo, Article 6 para. 1 (Right to a fair trial) and Article 13 (Right to Effective Remedy) of the European Convention of Human Rights and Fundamental Freedoms".*

27. The Applicants also refer to the Court Judgment in Case KI08/09 adopted on 17 December 2010.

28. The Applicants request the Court *"to modify the Judgment of the Supreme Court, so that the claimant's revision is rejected as ungrounded".*

Admissibility of the Referral

29. The Court first examines whether the Applicants have fulfilled the admissibility requirements laid down in the Constitution, the Law and in the Rules of Procedure.

30. In this respect, 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".*

31. In addition, Rule 36 (1) c) and 36 (2) d) 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:*
>
> *[...]*
>
> *c) the presented facts do not in any way justify the allegation of a violation of the constitutional rights;*
>
> *[...]*
>
> *d) the Applicant does not sufficiently substantiate his claim.*

32. The Applicants allege that the Judgment Rev. no. 210/13 of the Supreme Court, of 18 December 2013, is partial, unfair and arbitrary, because the abovementioned court modified the decisions of the lower instance courts, which were final and binding, *res judicata*.

33. The Court notes that the Kosovatrans was entitled to file a revision with the Supreme Court against the judgments of the lower instance courts.

34. The Court considers that a decision of the lower instance court cannot be considered final and binding, as long as the parties are entitled to file an appeal with the higher instance court against it, as it happened in the present case.

35. The Court further notes that the Supreme Court reviewed the matters raised in the revision and provided extensive and comprehensive reasons.

36. In fact, the Court notes that the Supreme Court correctly observed the procedural situation stating:

> *[...]*
>
> *On 14.08.2006, which means that the second instance* [District Court] *judgment Ac.no.168/2006 is rendered* [on 1 November 2006] *and prior the case is sent to retrial through Kosovo Trust Agency is made privatization of the respondent* [Kosovatrans]*, as a result of which to a significant number of employees, among them the claimants* [Applicants]*, was terminated the employment relationship. Kosovo Trust Agency for this informed the employees – and the respondents and this fact also among the parties is not contentious. As a consequence of this derived the legal inability so that the claimants are returned to their workplaces, despite rendering the first instance conclusion E.no.1348/2006 of 19.11.2007, by which the claimants return to work at the respondent to execute the first judgment of this court C. no. 250/2005 of 30.12.2005. The claimants have not filed objection against notices for termination of employment relationship of 14.08.2006 even though they possessed this legal right.*

37. More precisely, the Supreme Court noted:

> *Municipal Court in Ferizaj has again adjudicated the matter, which by judgment of District Court in Prishtina Ac.no.168/2006 of 01.11.2006 is remanded for retrial to decide only on part which is remanded for retrial, thus in conjunction with interest rate and compensation of meal. However, by standing behind the statement of claim on meal, the claimants modified the statement of claim by presenting the modified claim in written on 29.02.2008, so that the entire subject of review and reconsideration with new judgment in the part of approval of statement of claim, was the compensation of*

income from work for the period 2006-2009, as it was described in a more detailed manner.

38. The Supreme Court considered:

... by administered evidence it results that on 14.08.2006, the privatization of respondent was concluded in entirety and in the case file are found official information of Kosovo Trust Agency sent to the claimants in which is stated that the result of the sale assets of the respondent, their employment was terminated, whereas the requests of employees in relation to salaries will be reviewed in the liquidation procedure.

The allegations in revision(s) that sending the claimants to paid leave with 50% of income is not interrelated with termination of their employment due to privatization of respondent, are not grounded which presents entirely different ground for termination of employment relationship. The decision to terminate the employment relationship to the claimants was not made by the respondent but by the Kosovo Trust Agency.

39. Finally, the Supreme Court found that "*the substantive law (material law) was not applied correctly for what reason the judgments of lower instance courts were modified as per the enacting clause*".

40. The Court considers that the judgment (C. no. 250/05) of the Municipal Court in Ferizaj dated of 30 December 2005, which allegedly became final and binding, does not affect the judgment (C. no. 676/06) of the same court dated of 7 May 2009, which is the subject of the contested revision of the Supreme Court. These judgments are interrelated, but they are separated and different.

41. Moreover, the judgment dated of 30 December 2005 relates to the personal income of the Applicants for the period from 1 April 2004 until 30 December 2005, while the judgment dated of 7 May 2009 relates to the personal income of the Applicants for the period from 1 January 2006 until 30 April 2009.

42. Therefore, the Court considers that the Applicants have not explained and proved how and why the Supreme Court finding that*"the substantive law (material law) was not applied correctly*

by the lower instance courts" is partial, unfair and arbitrary, and namely violated the *res judicata* principle.

43. In addition, the Applicants found their reasoning on the basis of the Court case law, namely alleging that their case is similar to the Case KI08/09 (judgment of 17 December 2010).

44. In that respect, the Court emphasizes that the factual circumstances of Case KI08/09 are not similar to the Applicants' case. In fact, in Case KI08/09, the Court found a violation regarding the non-execution of the first instance court decision, which became final because no appeal was filed against it; in the Applicants' case, the unsatisfied parties, as mentioned above, with full legitimacy filed with the Supreme Court a revision against the lower instance court judgments.

45. Therefore, the circumstances of the Applicants' case are significantly different from the circumstances of the Case KI08/09 and thus cannot be referred by the Applicants as support of their allegation.

46. Moreover, the Court notes that, in Case KI08/09, *"the Special Chamber rejected the appeal by KTA, stating that (...) KTA (...) provided detailed arguments, which exclusively dealt with the merits of the judgment issued in January 2002. In the Chamber's opinion, it was clear that KTA was making attempts to appeal that judgment of 2002. Moreover, the Municipal Court was competent to decide on the claim-suit of January 2002 and that the respective judgment was never appealed and had become final (res judicata)".* In addition, the Special Chamber observed that K*TA "was established under UNMIK Regulation 2002/12 of 13 June 2002, meaning that it was established after the decision of the Municipal Court of 11 January 2002 became res judicata".*

47. Furthermore, the Court cannot act as a court of fourth instance, regarding the judgment rendered by the Supreme Court. It is the duty of the regular courts to interpret and apply the pertinent rules of both procedural and substantive law. 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 case *Edwards v. United Kingdom*, No. 13071/87, Report of the European Commission of Human Rights of 10 July 1991).

48. In the present case, the Court does not consider that the proceedings in the Supreme Court were partial or in any way unfair or arbitrary (See, *mutatis mutandis, Shub vs. Lithuania,* ECHR Decision as to the Admissibility of ApplicationNr. 17064/06, of 30 June 2009).

49. The Constitutional Court futher considers that the allegation of a violation based on the disrespect of a final and binding decision is unfounded, as the facts and arguments presented by the Applicants do not logically explain and reasonably show that the Supreme Court has violated the res judicata principle.

50. Consequently, there is no need for further detailed review of other alleged violations, as summarized and included in the Applicants' allegations for violation of the rights to fair and impartial trial, to judicial protection of rights and to Effective Remedy.

51. In sum, the Court concludes that the Applicants' Referral is manifestly ill-founded, pursuant to Article 48 of the Law and Rule 36 (1) c) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113 (7) of the Constitution, Article 48 of the Law and Rules 36 (1) c); 36 (2) b) and d); and 56 (2) of the Rules of Procedure, on 3 July 2014, unanimously:

DECIDES

I. TO DECLARE the Referral 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	**President of the Constitutional Court**
Almiro Rodrigues	Prof. Dr. Enver Hasani

KI 52/14, Rasić Verica, Aksić Rašić Danijela, Aksić Dosta, Arsić Dragica, Bečelić Danica, Bulatović Rade, Cvejić (Mariković) Vesna, Furunović (llić) Dušanka, Galić Svetislav, Joksimović (Drašković) Jasmina, Joksimović Malina, Jovanović Milena, Kilibarda Branislav, Kilibarda (Arsić) Zlatana, Krivokapić Staljinka, Lekić Božidar, Lekić Duško, Maksimović Živko, Marinković Svetislav, Marinković Zoran, Micić Rodoljub, Milanović Vasna, Milošević Darko, Milovanović Nebojša, Milovanović Radovan, Milovanović Zlatija, Mitrović Bačević Dušanka, Nedeljković Stana, Novaković Dragoljub, Novaković Nikola, Novaković Zdenka, Ognjenović Miloslavka, Pavić Biserka, Stamenković-Janković Jasmina, Stojanović Desanka, Stojković (Nikolić) Vidosava, Trajković Zoran, Vasić Siniša dhe Kovačević Marija, Resolution of 3 July 2014 - Constitutional review of Judgment AC-I-12-0012 of the Appellate Panel of the Special Chamber of the Supreme Court, of 24 October 2013

Case KI 52/14, Decision of 3 July 2014.

Key words: Individual referral, manifestly ill-founded, non-exhaustion of legal remedies

The Appellate Panel of the Special Chamber of the Supreme Court of Kosovo by Judgment AC-I-12-0012 of 24 October 2013 rejected the claim of the Applicants to a share of proceeds from the privatization of the SOE "SLOGA".

The Applicants alleged that their right to a fair and impartial trial as guaranteed by Article 31 of the Constitution was violated to their detriment.

The Constitutional Court declared the referral inadmissible for non-exhaustion of legal remedies for one Applicant whereas the referral of other Applicants was declared inadmissible for being manifestly ill-founded. The Constitutional Court noted that the reasoning provided in the Judgment of the Appellate Panel is clear, comprehensive and fair.

RESOLUTION ON INADMISSIBILITY
in
Case no. KI52/14
Applicants
Rasić Verica;Aksić Rašić Danijela; Aksić Dosta; Arsić Dragica; Bečelić Danica; Bulatovic Rade; Cvejić (Mariković) Vesna; Furunović (llić) Dušanka; Galić Svetislav; Joksimović (Drašković) Jasmina; Joksimović Malina; Jovanović Milena; Kilibarda Branislav; Kilibarda (Arsić) Zlatana; Krivokapić Staljinka; Lekić Božidar; Lekić Duško; Maksimović Živko;Marinković Svetislav; Marinković Zoran; Micić Rodoljub; Milanović Vasna; Milošević Darko; Milovanović Nebojša; Milovanović Radovan; Milovanović Zlatija;Mitrović Bačević Dušanka; Nedeljković Stana; Novaković Dragoljub; Novaković Nikola; Novaković Zdenka; Ognjenović Miloslavka; Pavić Biserka; Stamenković-Janković Jasmina; Stojanović Desanka; Stojković (Nikolić) Vidosava; Trajković Zoran; Vasić Siniša andKovačević Marija
Constitutional review of
Judgment AC-I-12-0012 of the Appellate Panel of the Special Chamber of the Supreme Court, of 24 October 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
Arta Rama-Hajrizi, Judge

Applicant

1. The Referral was submitted by Rasić Verica, Aksić Rašić Danijela, Aksić Dosta, Arsić Dragica, Bečelić Danica, Bulatovic Rade, Cvejić (Mariković) Vesna, Furunović (llić) Dušanka, Galić Svetislav, Joksimović (Drašković) Jasmina, Joksimović Malina, Jovanović Milena, Kilibarda Branislav, Kilibarda (Arsić) Zlatana, Krivokapić Staljinka, Lekić Božidar, Lekić Duško, Maksimović Živko,Marinković Svetislav, Marinković Zoran, Micić Rodoljub,

Milanović Vasna, Milošević Darko, Milovanović Nebojša, Milovanović Radovan, Milovanović Zlatija,Mitrović Bačević Dušanka, Nedeljković Stana, Novaković Dragoljub, Novaković Nikola, Novaković Zdenka, Ognjenović Miloslavka, Pavić Biserka, Stamenković-Janković Jasmina, Stojanović Desanka, Stojković (Nikolić) Vidosava, Trajković Zoran, Vasić Siniša andKovačević Marija (hereinafter, the Applicants), who are represented by Mr. Slavko D. Aničić, lawyer from Belgrade.

Challenged decision

2. The Applicants challenge the Judgment ASC-I-12-0012of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo (hereinafter: the Appellate Panel)of 24 October 2013, which was served on the Applicants on 22 November 2013.

3. The Judgment was served on the Applicants on 22 November 2013, Applicant Stamenković-Janković Jasmina was not mentionedwith that judgment.

Subject matter

4. The subject matter is the constitutional review of the challenged decision, which allegedly denies to the Applicants the right to 20% share from the privatization of Socially Owned Enterprise HTP "SLOGA" from Prishtina (hereinafter: SLOGA).

5. The Applicants claim that by challenged decision were violated their rights, guaranteed by the Constitution of the Republic of Kosovo (hereinafter: the Constitution), namely Article 22 [Direct Applicability of International Agreements and Instruments] and Article 31 [Right to Fair and Impartial Trial] in conjunction with Article46 [Protection of Property], and Article 6 (1) [Right to fair trial] of the European Convention on Human Rights and Fundamental Freedoms (hereinafter, the Convention).

Legal basis

6. The Referral is based on Article 113.7 of the Constitution and Article 47 of the Law on the Constitutional Court of the Republic of Kosovo no. 03/L-121 (hereinafter: the Law).

Proceedings before the Constitutional Court

7. On 21 March 2014, the Applicants submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

8. On 2 April 2014, the President appointed Judge Almiro Rodrigues as Judge Rapporteur and the Review Panel composed of Judges Altay Suroy (Presiding), Arta Rama-Hajrizi and Kadri Kryeziu.

9. On 14 May 2014, the Court notified the Applicants on the registration of Referral and sent a copy of the Referral to the Special Chamber of the Supreme Court (hereinafter: SCSC).

10. On 23 May 2014, the Court requested from the Applicant Stamenković-Janković Jasmina to clarify some aspects of the appeal procedurebefore SCSC.

11. On 13 Jun 2014, the ApplicantStamenković-Janković Jasmina informedthat there is no decision of the Appellate Panel in relation to her case.

12. On 26 June 2014, Judge Kadri Kryeziu notified in writing the Court for his exclusion from the deliberation sessions for the period June-July 2014 until the Court decides regarding the allegations raised against him.
13. On 30 June 2014 the President of the Court replaced Judge Kadri Kryeziu with Judge Ivan Čukalović as a member of the Review Panel.
14. On 3 July 2014, the Review Panel considered the report of the Judge Rapporteur and recommended to the Court the inadmissibility of the Referral.

Summary of facts

15. On 24 November 2005, the process of the privatization of SLOGA started.

16. On 5 August 2009, the Privatization Agency of Kosovo (hereinafter, the Agency) published the final list of the employees entitled to 20% share from privatization of SLOGA.

17. On 26 August 2009, the Applicants filed with the SCSC an appeal against the decision publishing the final list of the entitled employees.

18. On 23 December 2011, the SCSC Trial Panel (Judgment SCEL-09-0023) rejected the Applicants' claims, considering that the Applicants have not met the requirements of Article 10.4 of UNMIK Regulation 2003/13, because the termination of the employment relationship to the Applicants happened before 9 June 1999.

19. The SCSC Trial Panel reasoned that:

> *"As to the requirements prescribed by law that the employee was in employment relationship for at least three years prior to privatization, the Court takes into account as evidence in the following order: 1) the data of the employee from the registry book, 2) the data from the work booklet of the complainant, 3) the so-called forms M1-M2 (insurance forms), in which is determined the beginning and the end of employment relationship with the SOE, and the reasons for termination of insurance (and therefore the termination of the employment relationship), 4) the certificate issued by the Archives of the Municipality of Prishtina, stating the duration of employment relationship with the SOE, 5) the certificate issued by the Board of the Kosovo Pension Fund, which provides the duration of employment relationship with the SOE, 6) other decisions and certificates of the SOE related to the employment relationship of the Appellant with the SOE, and decisions on the appointment in the job position, on annual leave, on determination of salary, and so on".*

20. More specifically, the Trial Panel of SCSC rejected the appeal of the Applicant Biserka Pavić with the reasoning *"that she had disability pension, before the privatization of SLOGA* ".

21. In May 2012, the Applicants appealed the Judgment of the Trial Panel, *"due to erroneous facts, violation of material and procedural law"*.

22. On 24 October 2013, the Appellate Panel (Judgment AC-I-12-0012) rejected the Applicant's appeal and upheld the Judgment of the Trial Panel.

23. However, by that Judgment of the Appellate Panel (AC-I-12-0012) was not consideredtheappeal of the Applicant Stamenković-Janković Jasmina. Even though she filed the appeal together with the other Applicants, thejudgment of the Appellate Panel does not mentionat all either her situation or even her name.

Applicable law

"REGULATION NO. 2003/13 ON THE TRANSFORMATION OF THE RIGHT OF USE TO SOCIALLY-OWNED IMMOVABLE PROPERTY

Article 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.

Applicant's allegations

24. The Applicants allege that*"the stance of the mentioned Panels – that the appellants terminated their work before 09.06.1999 – is a result of insufficiently careful and conscientious assessment of presented evidence and erroneous assessment of the result of the entire proceedings conducted by the Special Chamber of the Supreme Court of Kosovo and since it is in evident contradiction with other evidence of higher probative value, then it implies that the same Court consciously violated the right to fair and impartial trial guaranteed by Constitution (Article 31 of the Constitution), in this case to the detriment of the appellants".*

25. The Applicants consider that *"rendering Judgment SCEL-09-0023 of 23.12.2011 and Judgment AC-I-12-0012of date 24.10.2013, the Special Chamber of the Supreme Court of Kosovo, in the part that is challenged by this Referral, violated the provisions of Article 22*

and Article 31 in conjunction with Article 46 of the Constitution of the Republic of Kosovo, as well as Article 6 (1) of the European Convention of Human Rights, thus directly denying their right to share of proceeds from the sale of SOE HTP SLOGA in Prishtina, provided by Article 10 of UNMIK Regulation 2003/13 of 9 May 2013".

Admissibility of the Referral

26. The Court first examines whether the Applicants have fulfilled admissibility requirements as laid down in the Constitution and further specified in the Law and Rules of Procedure.

27. In this 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".*

28. The Court, also refers to Articles 47 (2) and 48 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.*
>
> *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. The Court, also takes into account Rule 36 (1) a) and c) and 36 (2) d) of the Rules of Procedure, which provides:

> *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,*

...
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:

(...)

d) the Applicant does not sufficiently substantiate his claim;

30. The Court recalls that the challenged decisionhas missed to respond tothe appeal of the Applicant Stamenković-Janković Jasmina. Thus, due to an omission of the Appellate Panel, nofinaldecision was madeon her appeal.

31. The Court considers that the omission relevant for the purpose of assessing the admissibility of the Referral, as there is no final Appellate Panel decision in relation to the appeal of the Applicant Stamenković-Janković Jasmina.

32. The Court considers that the omission in Appellate Panel decision is a matter of legality and it is not the task of the Constitutional Court to correct the omissions of such nature of the regular courts. (See Constitutional Court Resolution in case KI 104/13, Applicant *Adem Maloku,* Constitutional Review of the Decision ASC-11-0069 of the Appellate Panel of the Special Chamber of the Supreme Court, para 33).

33. Therefore the Applicant Stamenković-Janković Jasmina has not exhausted all legal remedies provided by law, including the request to the Appellate Panel in order to have a decision on her appeal.

34. The rationale for the exhaustion rule is to afford the concerned public authorities 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 shall provide an effective legal remedy for the violation of the constitutional rights. This is an important aspect of the subsidiary character of the Constitution. (See Resolution on inadmissibility, *AAB-RIINVEST University L.L.C. Prishtina v. the Government of the Republic of Kosovo,* case KI41/09, of 21 January 2012 and see *mutatis mutandis*, ECHR *Selmouni vs France*, No. 25803/94, decision of 28 July 1999).

35. Therefore, in accordance with Rule 36 (1) a) of the Rules of Procedure, the Referral is inadmissible in relation to the Applicant Stamenković-Janković Jasmina.

36. In relation to the other Applicants, the Court recalls that they claim that the Appellate Panel has not assessed the presented evidence in a sufficiently careful and conscientious manner and has erroneously assessed the results of the entire proceedings, and for that reason has violated their rights guaranteed by the Constitution.

37. The Court notes that the Appellate Panel, in answering the allegations of the appeal, took into due account all the requirements prescribed by law that allow the employee to be entitled to the 20% share from the privatization of Socially Owned Enterprise SLOGA.

38. The Court further notes that the reasoning provided in the Judgment of the Appellate Panel is clear, comprehensible and fair.

39. The Court considers that the Applicants have not substantiated their allegation nor showed that the Appellate Panel of the Special Chamber denied their rights guaranteed by the Constitution.

40. In this respect, the 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*, *Garcia Ruiz v. Spain*, no. 30544/96, ECHR, Judgment of 21 January *1999, § 28;* see also case No. KI70/11, Applicants *Faik Hima, Magbule Himaand Bestar Hima,* Resolution on inadmissibility, *of 16 December 2011)*

41. The Constitutional Courtemphasizes that the correct and complete determination of the factual situation is a full 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 instance court" (see case *Akdivar v. Turkey*, no. 21893/93, ECHR, Judgment of 16 September 1996, para.65, see also case Kl86/11, Applicant *Milaim Berisha*, Resolution on Inadmissibility of 5 April 2012).

42. Furthermore, it is not the task of the Constitutional Court to substitute its own assessment of the facts with those 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 the evidence was taken. (See case *Edwards v. United Kingdom*, No.13071/87, Report of the European Commission of Human Rights of 10 July 1991).

43. In sum, the Court considers that the Applicants have not justified and substantiated the allegation that there is an entitlement to a share of proceeds even after the old age or the disability pension.

44. Furthermore, the dissatisfaction of the Applicants with the outcome of the case cannot of itself raise an arguable claim of a breach of the provisions of the Constitution. (See case *Mezotur-Tiszazugi Tarsulat v. Hungary,* no. 5503/02, ECHR, Judgment of 26 July 2005).

45. The Court considers that the facts presented by the Applicants do not in any way justify the allegation of a violation of the constitutional rights. Therefore, in accordance with Rule 36 (1) c) and (2) d) of the Rules of Procedure, the Referral is manifestly ill-founded and thus inadmissible.

46. In all, the Referral is inadmissible, because the Applicant Stamenković-Janković Jasmina has not exhausted all legal remedies provided by law and the other Applicants have not substantiated their allegations.

FOR THESE REASONS

The Constitutional Court of Kosovo, pursuant to Article 113.7 of the Constitution, Articles 47.2 and 48 of the Law and Rules 36 (1) a) and c) and 36 (2) d) of the Rules of Procedure, in the session held on 3 July 2014, unanimously

DECIDES

I. TO DECLARE the Referral Inadmissible;

II. To notify this decision to the parties and to publish this decision in the Official Gazette, in accordance with Article 20 paragraph 4 of the Law; and

III. This Decision is effective immediately.

Judge Rapporteur
Almiro Rodrigues

President of the Constitutional Court
Prof. Dr. Enver Hasani

KI39/14, Bujar Spahiu, Resolution of 3 July 2014 - Constitutional Review of the Judgment of the Supreme Court, Pml. No. 215/2013, of 9 December 2013

KI39/14, Decision of 3 July 2014.

Key words: Individual Referral, manifestly ill-founded

The subject matter is the constitutional review of the Judgment of the Supreme Court, Rev. No. 31/2013, dated 13 March 2013. The Applicant was sentenced to 2 years of imprisonment and a fine after he was found guilty for committing the criminal offence of "unauthorized possession, distribution and sale of dangerous narcotic drugs and psychotropic substances". Once the Judgment of the Supreme Court became final the Applicant started serving his sentence. Whilst serving his sentence, the Applicant filed a request with the Basic Court in Prizren requesting the reopening of the criminal proceedings in his case. The Basic Court in Prizren rejected the request of the Applicant whereas the Court of Appeal and the Supreme Court rejected his appeal and protection of legality respectively.

The Applicants then filed a Referral with the Constitutional Court where they alleged that the challenged Judgment violated their rights guaranteed by Article 30 [Rights of the Accused] paragraph 6, Article 31 [Right to Fair and Impartial Trial] and Article 32 [Right to Legal Remedies] of the Constitution of the Republic of Kosovo (hereinafter, the Constitution).

The Constitutional Court declared the Referral inadmissible for being manifestly ill founded. In its reasoning, the Constitutional Court held that the regular courts reasoned well their decisions and that the arguments presented by the Applicant raise issues of *"legality"* rather than *"constitutionality"*. Furthermore, the Court stated that the facts presented by the Applicant do not in any way justify the alleged violations of the constitutional rights invoked by him.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI39/14
Applicant
Bujar Spahiu
Constitutional Review of the Judgment, Pml. No. 215/2013 of the Supreme Court dated 9 December 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 and
Arta Rama-Hajrizi, Judge

Applicant

1. The Applicant is Mr. Bujar Spahiu (hereinafter: the Applicant) with residence in Prizren, represented by his mother Ms. Ajshe Spahiu.

Challenged decision

2. The Applicant challenges the Judgment, Pml. No. 215/2013 of the Supreme Court of Kosovo of 9 December 2013, which was served on the Applicant on 13 January 2014.

Subject matter

3. The subject matter is the request for constitutional review of Judgment, Pml. No. 215/2013 of the Supreme Court dated 9 December 2013. In its Judgment the Supreme Court rejected the Applicant's request for protection of legality as ungrounded and confirmed the Decisions of the Court of Appeal and the Basic Court in Prizren which had rejected his request for reopening of the criminal proceedings.

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 Constitutional Court of the Republic of Kosovo (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 4 March 2014 the Applicantsubmitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 1 April 2014 the President of the Court by Decision, GJR. KI39/14 appointed Judge Snezhana Botusharova as Judge Rapporteur and by Decision, KSH. KI39/14 appointed the Review Panel composed of Judges, Robert Carolan (presiding), Almiro Rodrigues and Enver Hasani.

7. On 22 April 2014 the Court informed the Applicant on the registration of the Referral and sent a copy of the Referral to the Supreme Court.

8. On 26 June 2014 Judge Kadri Kryeziu notified in writing the Court for his exclusion from the deliberations for the period June - July 2014 until the Court decides regarding certain allegations raised against him.

9. On 3 July 2014 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

10. On 6 February 2012 the District Public Prosecution indicted (PP. No. 358/2012) the Applicant on the suspicion that he committed the criminal offence of “Unauthorized Possession, Distribution and Sale of Dangerous Narcotic Drugs and Psychotropic Substances” pursuant to Article 229, paragraph 2 of the Provisional Criminal Code of Kosovo (hereinafter: PCCK).

11. On 19 June 2012 the District Court in Prizren with its Judgment, P. No. 52/2012 found the Applicant guilty after he entered guilty plea for committing the criminal offence for which he was indicted. The District Court sentenced him to 2 (two) years of imprisonment and a fine.

12. Currently, the Applicant is serving his imprisonment sentence which was confirmed and thus became final by the Judgment (Ap. No. 440/2012, dated 1 November 2012) of the Supreme Court of Kosovo.

13. On 9 September 2013 the Applicant, whilst serving his sentence, filed a request with the Basic Court in Prizren for reopening of the criminal proceedings, alleging that the first instance court [District Court in Prizren, Judgment P. No. 52/2012 of 19 June 2012] adjudicated the matter by basing its decision on evidence which were obtained unlawfully and in contradiction with the provisions of the Criminal Procedure Code of Kosovo (hereinafter: CPCK).

14. On 8 October 2013, the Basic Court in Prizren with its Decision, PK. No. 56/2013 rejected the request of the Applicant to reopen the criminal proceedings as ungrounded and stated that:

> *"The review panel concluded that the allegations of the authorized representative of the convict* [Applicant]*, lawyer […], that the judgment contains legal violations and this based on police report of 22.11.2011, no.2011-DHTN5-058, whereby according to the content of the same the first instance court bases its decision on evidence which were provided unlawfully and in contradiction with PCPCK* [Provisional Criminal Procedure Code of Kosovo] *provisions there is no legal ground in Article 423 paragraph 1 CPCK for allowing the reopening of the criminal proceedings, because the facts on which the request of the authorized representative to allow for the reopening of the criminal proceeding is based do not offer reasons for allowing the reopening of this criminal proceedings.*
>
> *The review panel concluded that the convict Bujar Spahiu voluntarily entered the guilty plea pursuant to PCPCK provisions and the entered guilty plea is made after detailed consultation with his defence counsels, likewise the convict stated that he understood the nature and consequences of entered guilty plea and that in relation to statement for entered guilty plea or not the convict was advised on time*

before it is stated that the entered guilty plea is based on facts of the matter that the indictment contains and on any other evidence."

15. On 14 October 2013, against the Decision of the Basic Court in Prizren, the Applicant filed an appeal with the Court of Appeal requesting that it approves his request to reopen the criminal proceedings. In his appeal, the Applicant alleged that: *"since the evidence which formed part of the criminal proceedings was provided by the Kosovo Police without an order of the Pre-trial Judge, contrary to Article 246, paragraph 1, CPCK, the entire judgment is unlawful."*

16. On 28 October 2013 the Court of Appeal by Decision, PN. No. 668/2013 rejected the appeal of the Applicant as ungrounded and held that:

> *"The first instance court [...] assessed the allegations of the request for reopening of the criminal proceeding and in an articulated manner provided sufficient reasons that the request for reopening of the criminal proceeding, terminated by final judgment, does not have legal ground since the defence of the convicted* [Applicant] *did not provide convincing arguments to substantiate such request, as foreseen by Article 423, paragraph 1 CPCK and in this case due to lack of legal basis the court of the first instance had to reject the request pursuant to the provisions of Article 426 paragraph 1 CPCK.*
>
> *The defence of the convict* [Applicant] *in his appeal did not present new evidence pursuant to Article 423 paragraph 1 CPCK, by which it would be determined that the judgement was based on falsified documents or on false statements of the witness, expert or translator, that the judgment is a consequence of the committed criminal offence by the judge or the person who took the investigation actions or that new facts are discovered or new evidence is presented which alone or together with the previous evidence is likely to prove the innocence of the convicted person.*
> *[...]."*

17. On 18 November 2013 the Applicant filed a request for protection of legality with the Supreme Court of Kosovo claiming that the Decisions of the Basic Court in Prizren and the Court of Appeal

contain violations of law and substantial violations of procedural provisions. More specifically, the Applicant argued that:

> *"[…]the Court has not reviewed at all the request of the convict* [Applicant]*for reopening of the proceedings and has not assessed the allegations of the defence and, what is more important that, although the convict* [Applicant]*entered a guilty plea, the plea should not have been admitted by the court in compliance with Article 315 paragraph 1, item 4 PCPCK since […] the court has an obligation to officially take care that the entered guilty plea is based on facts of the matter contained in the indictment, based on evidence and material presented by the prosecutor and based on any other evidence*."

18. On 9 December 2013 the Supreme Court of Kosovo by Judgment, Pml. No. 215/2013 [challenged Judgment] rejected the Applicant's request for protection of legality by concluding that:

> *"[…] even if such* [Applicant's] *allegations were true, but in the present case are ungrounded since the entered guilty plea was based in all aspects of the legal norms that regulate the issue of guilty plea, this cannot be a legal ground for reopening of the criminal proceeding because Article 423 CPCK explicitly provides the cases when the reopening of the criminal proceeding in favour of the defendant is allowed. In the concrete case none of the legal requirements mentioned in this Article are met to justify the reopening of the proceedings. This means that the lower court instances have acted correctly when they rejected the request for reopening of the criminal proceedings against the convict* [Applicant]*, and for these reasons the request for protection of legality results to be ungrounded."*

Applicant's allegations

19. The Applicant alleges that Judgment, Pml.No.215/2013 of the Supreme Court of 9 December 2013, by rejecting his request for protection of legality and by not approving his request for reopening of the criminal proceedings, has violated his rights guaranteed by the Constitution, namely Article 30 [Rights of the Accused], paragraph 6, Article 31 [Right to Fair and Impartial Trial] and Article 32 [Right to Legal Remedies].

20. With regards to the alleged violation of his rights under Article 30, paragraph 6 of the Constitution the Applicant alleges that he: "*was*

forced to admit guilt under the threat by the police, and this circumstance was not taken into consideration at all by the court".

21. With regards to the alleged violation of his rights under Article 31 of the Constitution the Applicant states that: "*[...] the rejection of the request for reopening of the criminal proceedings [...] is unlawful and in contradiction with the constitutional principles determined by the Constitution of the Republic of Kosovo, Article 31 paragraph 2 on fair and impartial trial.*"

22. With regards to the alleged violation of his rights under Article 32 of the Constitution, the Applicant states that: "*The rejection of the request for reopening of the criminal proceedings is in contradiction with the provisions of Articles 427 and 423 CPCK, since, even though all legal requirements for reopening of criminal proceedings have been met, the court rejected this request contrary to Article 32 of the Constitution [...].*"

23. In summarizing his allegations the Applicant states that: *"... the entire criminal proceeding contained legal violations while the judgment was based on unlawful evidence which violates human rights and freedoms. Since on the convict* [Applicant]*was exercised search and administration of items without order of the court pursuant to Article 423 paragraph 2, subparagraph 1.1.* PCPCK, *neither this evidence, nor the decision of the court on entering guilty plea based on this evidence can be admitted."*

24. *Finally, the Applicant concludes by requesting the Court*: "[...] to nullify the Decision P. No. 52/2012 of the District Court in Prizren of 19.06.2012, Decision PK. No. 56/2012 of 08.10.2013, Decision of Court of Appeal of Kosovo Pn. No. 668/2013 of 28.10.2013 and Judgment Pml. No. 215/2013 of Supreme Court of 09.12.2013, because they constitute violations of law and violations of fundamental rights of the convict [Applicant] Bujar Spahiu guaranteed by Articles 30, 31 and 32 of the Constitution of the Republic of Kosovo."

Relevant provisions of the Criminal Codes and Criminal Procedure Codes related to Applicant's complaint

Provisional Criminal Code of Kosovo (UNMIK/REG/2003/25 of 6 July 2003)

Article 229 [Unauthorized Purchase, Possession, Distribution and Sale of Dangerous Narcotic Drugs and Psychotropic Substances]

[…]
(2) Whoever, without authorisation, distributes, sells, transports or delivers substances or preparations which have been declared to be dangerous narcotic drugs or psychotropic substances, with the intent that that they shall be distributed, sold or offered for sale shall be punished by a fine and by imprisonment of one to eight years.
[…]

Provisional Criminal Procedure Code of Kosovo (UNMIK/REG/2003/26 of 6 July 2003)

Article 315

(1) Where the defendant pleads guilty on each count of the indictment under Article 314 paragraph 4 of the present Code, the judge shall determine whether:
1) The defendant understands the nature and consequences of the guilty plea;
2) The guilty plea is voluntarily made by the defendant after sufficient consultation with defence counsel, if the defendant has a defence counsel;
3) The guilty plea is supported by the facts of the case that are contained in the indictment, materials presented by the prosecutor to supplement the indictment and accepted by the defendant; and any other evidence, such as the testimony of witnesses, presented by the prosecutor or the defendant; and
4) None of the circumstances under Article 316 paragraphs 1 to 3 of the present
Code exists.
(2) In considering the guilty plea of the defendant, the judge may invite the views of the prosecutor, the defence counsel and the injured party.
(3) If the judge is not satisfied that the matters provided for in paragraph 1 of the present article are established, he or she shall proceed with the confirmation hearing as if the guilty plea has not been made.
(4) If the judge is satisfied that the matters provided for in paragraph 1 of the present

Article are established, he or she shall render a ruling to accept the guilty plea made by the defendant and proceed in accordance with Article 316.

Criminal Procedure Code of Kosovo (No. 04/L-123 of 13 December 2012)

Article 423 [Reopening Criminal Proceedings Terminated by Final Judgment]

1. Criminal proceedings terminated by a final judgment may only be reopened if:

1.1. it is proven that the judgment rests on a forged document or a false statement of a witness, expert witness or interpreter;
1.2. it is proven that the judgment ensued from a criminal offence committed by a judge or a person who undertook investigative actions;

1.3. new facts are discovered or new evidence is produced which, alone or in connection with previous evidence, appears likely to justify the acquittal of the convicted person or his or her conviction under a less severe criminal provision;

1.4. a person was tried more than once for the same offence or several persons were convicted of the same offence which could have been committed only by a single person or only by some of them; or

1.5. in the case of conviction for a continuous criminal offence, or some other criminal offence which under the law includes several acts of the same kind or different kinds, new facts are discovered or new evidence is produced which indicates that the convicted person did not commit an act included in the criminal offence, of which he or she was convicted and the existence of these facts would have critically influenced the determination of punishment.

2. Criminal proceedings terminated by a final judgment may be reopened only in favour of the defendant, except that if it is proven that the circumstances under paragraph 1 subparagraphs 1.1 and 1.2 of the present Article have been a result of a criminal offence committed by the defendant or a person acting on his/her behalf against a witness, expert

witness, interpreter, state prosecutor, judge or those close to such persons, criminal proceedings terminated by a final judgment may be reopened against the defendant. The reopening of criminal proceedings against a defendant is only permissible within five (5) years of the time the final judgment was rendered.

3. In cases under paragraph 1 subparagraphs 1.1 and 1.2 or paragraph 2 of the present Article, it must be proven by a final judgment that the persons concerned have been found guilty of criminal offences in question. If proceedings against these persons cannot be conducted because they are dead or because other circumstances exist which preclude criminal prosecution, the facts under paragraph 1 subparagraphs 1.1 and 1.2 or paragraph 2 of the present Article may be proven by using other evidence.

Article 426 [Basis and procedure for dismissing the request to reopen criminal proceedings]

1. The court shall dismiss the request by a ruling on the basis of the request itself and the files of previous proceedings if it finds that:

1.1. the request has been filed by an unauthorized person;

1.2. there are no legal grounds for reopening of proceedings;

1.3. the facts and evidence on which the request rests were presented in an earlier request for reopening of proceedings which was rejected by a final ruling;

1.4. the facts and evidence obviously do not provide adequate grounds to grant the reopening of proceedings; or

1.5. the person who requests the reopening of proceedings did not abide by the provisions under Article 425, paragraph 2, of the present Code.

2. If the request is not dismissed, the court shall serve a copy of the request on the state prosecutor or opposing party who shall be entitled to reply within eight (8) days. After the court has received the reply to the request, or after the time limit for the reply has expired, the presiding judge of the review panel shall

order that the facts and evidence indicated in the request and the reply thereto be produced and examined.

Assessment of the admissibility

25. First of all, in order to be able to adjudicate the Applicant's Referral, the Court has to examine 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 Rule 36 (1) c) and 36 (2) b) of the Rules of Procedure, 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:

[...]

b) the presented facts do not in any way justify the allegation of a violation of the constitutional rights,

[...]"

27. As mentioned above, the Applicant alleges that Judgment, Pml. No. 215/2013 of the Supreme Court was rendered in violation of Articles 30 [Rights of the Accused] paragraph 6, 31 [Right to Fair and Impartial Trial] and 32 [Right to Legal Remedies] of the Constitution.

28. The Court notes that in the appeal procedure, the Court of Appeal and the Supreme Court regarding the request for reopening of the criminal procedure reasoned their Decisions referring to the provisions of the Law in force. In this regard, the Court finds that what the Applicant raises is a question of legality and not of constitutionality.

29. In relation to this, the Court recalls the reasoning of the Supreme Court in answering the Applicant's allegation of violations of the law and substantial violations of procedural provisions allegedly committed by the Court of Appeal when it rejected his appeal on

the reopening of the criminal proceedings. The Supreme Court stated that: "*Article 423 of the CPCK explicitly provides for the cases when the reopening of the criminal proceeding in favour of the defendant is allowed and in the concrete case none of the legal requirements contained in this Article are met which would justify the reopening to be allowed. This means that the lower court instances have acted correctly when they rejected the request for reopening of the criminal proceedings [...]*".

30. In this regard, the Court emphasizes that it is not the task of the Constitutional Court to deal with errors of fact of 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).

31. The Constitutional Court further 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.The role of the regular courts is to interpret and apply the pertinent rules of both procedural and substantive law. (See case *Garcia Ruiz vs. Spain*, No. 30544/96, ECHR, Judgment of 21 January 1999; see also case KI70/11 of the Applicants *Faik Hima, Magbule Hima and Bestar Hima*, Constitutional Court, Resolution on Inadmissibility of 16 December 2011). The mere fact that the Applicant is not satisfied with the outcome of the proceedings in his case do not give rise to an arguable claim of a violation of his rights as protected by the Constitution. The Court notes that the Applicant had ample opportunity to present his case before the regular courts.

32. The Constitutional Court can only consider whether the evidence has been presented in a correct a manner and whether 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* case *Edwards v. United Kingdom*, Application No 13071/87, Report of the European Commission on Human Rights adopted on 10 July 1991).

33. In relation to this, the Court notes that the reasoning referring to the request for reopening of the criminal proceeding in the Judgment of the Supreme Court is clear and, after having reviewed all the proceedings, the Court has also found that the proceedings before the Court of Appeal and the Basic Court have not been unfair or arbitrary (See case *Shub vs. Lithuania*, no. 17064/06, ECHR, Decision of 30 June 2009).

34. For the foregoing reasons, the Court considers that the facts presented by the Applicant do not in any way justify the alleged violation of the constitutional rights invoked by the Applicant.

35. Consequently, the Referral is manifestly ill-founded and should be declared inadmissible pursuant to Rule 36 (1) c) and 36 (2) b) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113 (7) of the Constitution, Article 47 of the Law, Rules 36 (1) c), 36 (2) b) and 56 (2) of the Rules of Procedure, on 3 July 2014, unanimously:

DECIDES

I. TO DECLARE 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	**President of the Constitutional Court**
Snezhana Botusharova	Prof. Dr. Enver Hasani

KI03/14, Afrim Terpeza, Resolution of 2 July 2014- Constitutional Review of the Judgment of the Supreme Court, Pml. No. 214/2013, of 12 December 2013

CaseKI03/14, Desicion of 2 July 2014.

Key words: Individual Referral, manifestly ill-founded,

The subject matter is the constitutional review of the Judgment of the Supreme Court, Pml. No. 214/2013, dated 12 December 2013. The Municipal Court sentenced the Applicant to 6 months imprisonment for committing the criminal offence of *"endangering public safety"*. Following an appeal filed by the Applicant, the District Court annulled the Judgment of the Municipal Court and remanded the case for retrial. Upon retrial, the Municipal Court sentenced the Applicant with the same sentence. The Court of Appeal and the Supreme Court rejected the Applicant's appeal, respectively request for protection of legality and confirmed the last decision of the Municipal Court.

The Applicant then filed a Referral with the Constitutional Court where he alleged that the challenged Judgment violated his rights guaranteed by Article 3 [Equality Before the Law], Article 21 [General Principles], Article 24 [Equality Before the Law], Article 30 [Rights of the Accused] paragraphs 2 and 5, Article 31 [Right to Fair and Impartial Trial] paragraphs 4 and 6, Article 54 [Judicial Protection of Rights] and Article 106 [Incompatibility] paragraph 2 of the Constitution of the Republic of Kosovo. The Applicant also alleged a violation of his rights as guaranteed by Article 6 [Right to a Fair Trial] of the European Convention on Human Rights and Article 7 and 10 of the Universal Declaration of Human Rights.

The Constitutional Court declared the Referral inadmissible for being manifestly ill founded. When assessing the admissibility of the Referral, the Constitutional Court divided the Applicant's allegations under three main points:

A) The Municipal Court did not provide any instruction to the right to an attorney;

B) The Applicant did not have the possibility to examine the witnesses, experts or the injured parties; and

C) The Supreme Court did not review the possibility to impose an alternative sanction. In regards to claims under A), the Constitutional Court stated that the Applicant has never alleged such violation before

the regular courts. Therefore, no violation of the right to an attorney has to be considered.

In regards to claims under B), the Constitutional Court held that the Applicant should have provided the regular courts with an opportunity to review these particular complaints and if necessary fix them in line with their jurisdiction and legal competencies.

Lastly, in regards to claims under C), the Constitutional Court held that the arguments raised by the Applicant pertain to the domain of legality and not of constitutionality and that he has not submitted any *prima facie* evidence indicating a violation of his constitutional rights.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI03/14
Applicant
Afrim Terpeza
Constitutional review of the
Judgment Pml. No. 214/2013 of the Supreme Court of Kosovo, dated 12 December 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
Arta Rama-Hajrizi, Judge

Applicant

1. The Referral was submitted by Mr. Afrim Terpeza, from Prishtina (hereinafter, the Applicant), represented by Mr. Sevdali Zejnullahu.

Challenged Decision

2. The Applicant challenges the Judgment Pml. No. 214/2013 of the Supreme Court of Kosovo, dated 12 December 2013, which rejected as ungroundedthe Applicant's request for protection of legality, following the judgments of the Municipal Court in Prishtina and the Court of Appeals. The Judgment of the Supreme Court was served on him on 15 December 2013.

Subject Matter

3. The subject matteris the constitutional review of the challenged Judgment, which allegedly *"violated his rights guaranteed by the Constitution, namely Article 3 [Equality Before the Law], Article 21 [General Principles], Article 24 [Equality Before the Law], Article 30, paragraphs 2 and 5 [Rights of the Accused], Article 31, paragraph 4 and 6 [Right to Fair and Impartial Trial], Article 54 [Judicial Protection of Rights] and Article 106, paragraph 2*

[Incompatibility] of the Constitution of the Republic of Kosovo, Article 6 [Right to a Fair Trial] of the European Convention on Human Rights (hereinafter, ECHR) and Article 7 and 10 of the Universal Declaration of Human Rights (hereinafter, UDHR).”

Legal basis

4. The Referral is based on Article 113 (7) of the Constitution of the Republic of Kosovo, Articles 22 and 47 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo (hereinafter, the Law).

Proceedings before the Constitutional Court

5. On 9 January 2014, the Applicantsubmitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter, Court).

6. On 30 January 2014, the President of the Court appointed Judge Almiro Rodrigues as Judge Rapporteur and the Review Panel composed of Judges Altay Suroy (presiding), Kadri Kyeziu and Arta Rama-Hajrizi.

7. On 10 February 2014, the Court notified the Applicant on the registration of the Referral and sent a copy of the Referral to the Supreme Court.

8. On 26 June 2014, Judge Kadri Kryeziu notified in writing the Court for his exclusion from the deliberations for the period June-July 2014 until the Court decides regarding the allegations raised against him.

9. On 2 July 2014, the President of the Court replaced Judge Kadri Kryeziu with Judge Ivan Čukalović as a member of the Review Panel.

10. On 2 July 2014 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 29 January 2008, the Municipal Court (Judgment P. No. 962/2007) sentenced the Applicant to imprisonment of six (6)

months for having committed the criminal offence of endangering public safety.

12. The Applicant appealed the Judgment of the Municipal Court, due to improper weighting of the mitigating and extraordinarily mitigating circumstances and proposed that *"[...] upon review of the first instance judgment, within the meaning of Article 415, paragraph 1 of the Criminal Procedure Code of Kosovo, to amend the judgment in terms of sentence, and impose upon the accused a conditional sentence"*.

13. On 18 November 2010, the District Court (Judgment AP. No. 319/2008) annulled the Judgment of the Municipal Court and remanded the case for retrial.

14. On 16 June 2011, following a new trial, the Municipal Court (P. No. 1940/2011) sentenced the Applicant with imprisonment of six (6) months.

15. The Applicant appealed that Judgment proposing that "[...] *the second instance court (...) amend the judgment challenged so as to relieve the accused from charges, or sentence him with a conditional sentence."*

16. On 5 June 2013, theCourt of Appeals(PA1. No. 780/12) refused as unfounded the appeal of the Applicant and upheld the Judgment of the Municipal Court.

17. The Court of Appealsheld that *"[...] the sanction imposed upon the accused by the first instance court is fair and lawful; it is in harmony with the degree of criminal liability of the accused, and the intensity of endangerment or damage of protected values. In the presence of all these circumstances, there was no possibility for the accused to be imposed a more lenient sanction, or a conditional sentence as claimed by the defense counsel of the accused"*.

18. On 18 June 2013, the Applicant filed a request for protection of legality, arguing that *"[...] all the conditions have been fulfilled so that the Review Panel of this Court (the Supreme Court) amends the decision and thus substitutes the imprisonment sentence with a fine or other alternative sentences."*

19. On 2 December 2013, the Supreme Court (Judgment Pml. No. 214/2013) decided to *"deny as ungrounded the request for*

protection of legality", concluding that *"The allegations of the sentenced party on violation of the criminal law do not stand ground".*

Applicant's allegations

20. The Applicant alleges that the Judgment (P. No. 1940/2011, dated 16 June 2011)rendered by the Municipal Court violated his rights *"[...] because the procedure did not provide any instruction to the right to an attorney which is a right guaranteed by the Constitution and the Criminal Code".*

21. The Applicant further pointsout that *"there was never a possibility to examine the witnesses, experts or the injured parties"* which allegedly violated his rights guaranteed by Article 31 of the Constitution. In addition, the Applicant states that "[...] *the traffic expert never took part in the session [...] and this infringed my right to examine the parties, [...] and the introductory part of the judgment does not provide any reason for the expert not to be there".*

22. The Applicant also claims that the Judgment of the Supreme Court "[...] *never reviewed the possibility of imposing an alternative sanction [...]"* and thus violated his rights guaranteed by the Constitution, ECHR and UDHR.

Admissibility of the Referral

23. First of all, the Court examines whether the Applicant has fulfilled the Referral admissibility requirements.

24. 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".*

25. 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".

26. In the instant case, the Court notes that the Applicant started judicial proceedings before the first and second instance 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 December 2013 and filed his Referral with the Court on 9 January 2014.

27. Thus, the Court considers that the Applicant is an authorized party and has exhausted all legalremedies afforded to him by the applicable law and the Referral was submitted within the four months time limit.

28. However, the Court also must take into account Article 48 of the Law and Rule 36 of the Rules of Procedure.

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."

Rule 36 of the Rules of Procedure

"(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"

29. The Applicant, as said above, challenged the Judgment of the Court of Appeals, before the Supreme Court, for violations of the criminal law and of criminal procedure law.

30. Meanwhile, the Applicant made three allegations before the Constitutional Court, namely that:

A) the Judgment (P. No. 1940/2011, dated 6 June 2011) of the Municipal Court violated his rights because it did not provide any instruction to the right to an attorney;

B) his rights were violated because he did not have the possibility to examine the witnesses, experts or the injured parties;

C) the Judgment (Pml. No. 214/2013, dated 12 December 2013) of the Supreme Court violated his rights because it did not review the possibility to impose an alternative sanction.

A) The Municipal Court did not provide any instruction to the right to an attorney

31. The Court notes that the Applicant was not represented by an attorney only in the proceedings which took place before the Municipal Court (Judgment P. No. 962/2007), dated 29 January 2008. However, after that date, and mainly after resuming the proceedings following the remand of the case for retrial, the Applicant was always represented by an attorney in the proceedings.

32. Furthermore, the Applicant has never alleged before the regular courts a violation of his right to an attorney.

33. Therefore, the Court concludes that no violation of the right to an attorney has to be considered.

B) The Applicant did not have the possibility to examine the witnesses, experts or the injured parties

34. The Court notes that the Applicant has never alleged before the Court of Appeals or the Supreme Court a violation of his right to examine witnesses, experts or the injured parties. He only complained that the conditions to replace his imprisonment sentence with an alternative sanction have been fulfilled. Thus, the Supreme Court could not take into account such allegations.

35. The Court recalls that one of the foundation principles of the constitutional review is the principle of subsidiarity. In the special context of the Constitutional Court, this implies that the duty to ensure respect for the rights provided by the Constitution pertains originally to the domestic judicial authorities, and not directly or

immediately to the Constitutional Court (see *Scordino vs. Italy*, no. 1, [GC], § 140).

36. In this regard, the Court considers that the Applicant should have provided the regular courts with an opportunity to review these particular complaints and if necessary fix them in line with their jurisdiction and legal competencies.

C) The Supreme Court did not review the possibility to impose an alternative sanction

37. The Court notes that the Supreme Court addressed the complaint of the Applicant by explaining that *"The Criminal Code provision, namely Articles 47 and 48 of the CCK, do provide the possibility for the Court to replace an imprisonment sentence of six (6) months with a fine, or community service, but not an obligation to do so. These two provisions [...], do not allow for the way of interpretation as given by the sentenced, because they clearly provide for the conditions to replace the imprisonment sentence and this is a possibility only for the first instance court [...].*

In relation to the allegation on imposing a conditional sentence, apart from quoting the Articles 51 and 52 of the CCK, and describing conditions of imposing such sentence, there is no reasoning of the request of the sentenced [...]".

38. The Court also notes that the Supreme Court further responded on this allegation by holding that *"all circumstances as provided by Article 73 and 74 of the CCK were assessed and are recorded in the reasoning of the first and second instance judgments. [...] Therefore, there are no grounds for the allegation of review of aggravating circumstances by the first and second instance courts, as claimed by the request. These circumstances, both mitigating and aggravating, were included and further elaborated in the second instance judgment, in a proper way".*

39. The Court considers that the justification provided by the Supreme Court, in answering the allegations made by the Applicant with regards to the sanctioning decision, is clear, reasoned and fair.

40. In addition, the Court emphasizes that it is not the task of the Constitutional Court to deal with errors of fact or law (legality) allegedly committed by the regular courts, unless and in so far as they may have infringed rights and freedoms protected by the Constitution (constitutionality).

41. The Constitutional Court also reiterates that it does not 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 Constitutional Court case No. KI70/11, Applicants *Faik Hima, Magbule Hima and Bestar Hima*, Resolution on Inadmissibility of 16 December 2011).

42. The Constitutional Court can only consider whether the regular courts' 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).

43. 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).

44. In this regard, the Court notes that 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 the referred articles of the Constitution, ECHR and UDHR support his claim, as required by Article 113.7 of the Constitution and Article 48 of the Law.

45. Moreover, the Applicant has neither accurately clarified how and why the denial by the Supreme Court of the replacement of his imprisonment sentence with an alternative sanction entails a violation of his individual rights and freedoms guaranteed by the Constitution nor he has presented facts justifying the allegation of such a violation.

46. In sum, the allegations of a violation of his rights and freedoms by the Supreme Court are unsubstantiated and not proven.

47. For the foregoing reasons, the Court considers that, in accordance with Rule 36 (1) c) and (2) b), the Referral is inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113 (7) of the Constitution, Article 48 of the Law, Rules 36 (1) c), 36 (2) b) and 56 (2) of the Rules of Procedure, on 2 July 2014, unanimously:

DECIDES

I. TO DECLARE 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	**President of the Constitutional Court**
Almiro Rodrigues	Prof. Dr. Enver Hasani

KI117/12/A, KI119/12/A, KI121/12/A, KI138/12, Fatmire Berisha, Musa Pllana and Ismije Pllana, Vesel Bardhi, Ramë Berisha, Dragica Stanojević, Resolution of 11 February 2014- Constitutional Review of the Decision of the District Court in Mitrovica, Ac. nr. 130/12, dated 17 September 2012, Ac. No. 1070/2012, dated 2 May 2013, Ac. no. 138/12, datred 9 July 2012, Ac. no. 1068/2012, of 2 May t 2013

Joined Cases KI117/12/A, KI119/12/A, KI121/12/A, KI138/12, Decision of 11 February 2014.

Key words: Individual Referral, manifestly ill-founded.

The Applicants claim that they have worked in the SOE "Cyqavica" in Vushtrri until 1991, whereby Serbian forces coercively removed them from work and discriminated them.

The Applicants allege that their rights guaranteed by the Constitution were violated because they are entitled to a share of proceeds from the privatization of SOE "Cyqavica" as a form of compensation for their salary for the years 1991 until 1999. The Applicants call upon Article 53 [Interpretation of Human Rights Provisions] and 54 [Judicial Protection of Rights] of the Constitution.

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 Constitutional Court, pursuant to Article 113.7 of the Constitution, Rules 36 (1) a) and 56 (2) of the Rules of Procedure, on 19 November 2013, unanimously declares the Referral inadmissible as manifestly ill-founded.

RESOLUTION ON INADMISSIBILITY
Cases No.
KI117/12, KI118/12, K119/12, KI121/12, KI124/12, KI125/12
Applicants
Fatmire Berisha, Musa Pllana and Ismije Pllana, Vesel Bardhi, Ramë Berisha, Dragica Stanojević
Constitutional Review of the Judgment of the Municipal Court in Vushtrri of the Republic of Kosovo C. nr. 215/06 dated 3 July 2006

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 the following Applicants:
   KI117/12 Fatmire Berisha, residing in Mitrovica
   KI118/12 Musa and Ismije Pllana, residing in Vushtrri
   KI119/12 Vesel Bardhi, residing in Vushtrri
   KI121/12 Ramë Berisha, residing in Vushtrri
   KI124/12 Dragica Stanojević, residing in Vushtrri
   KI125/12 Zlatana Nikić, residing in Vushtrri

Challenged decisions

2. The Applicants in the referral complain about the non-enforcement of the Judgment of the Municipal Court in Vushtrri of the Republic of Kosovo C.nr. 215/06 (hereinafter: the Municipal Court in Vushtrri) of 3 July 2006, which was received by the Applicants on an unspecified date.

Subject matter

3. The subject matter is the constitutional review of the non-enforcement of the above mentioned Judgment of the Municipal Court in Vushtrri.

Legal basis

4. The Referrals are based on Article 113.7 of the Constitution, Article 47.2 of the Law, No. 03/L-121, on the Constitutional Court of the Republic of Kosovo (hereinafter: the "Law") and Rule 56 (2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the "Rules of Procedure").

Proceedings before the Court

5. The Applicants have submitted the referrals between 20 November 2012 and 31 December 2012

6. On 1 January 2013, the President of the Constitutional Court, with Decision No. GJR. KI117/12, appointed Judge Altay Suroy as Judge Rapporteur. On the same date, the President of the Constitutional Court, by Decision No. KSH. KI117/12, appointed the Review Panel composed of Judges Snezhana Botusharova (Presiding), Ivan Čukalović and Arta Rama-Hajrizi.

7. On 19 April 2013, the Referrals were communicated to the Basic Court in Vushtrri (hereinafter: Basic Court).

8. On 16 January 2013, the President of the Court rendered Decision (KI117/12, KI118/12, KI119/12, KI121/12, KI124/12 and KI125/12), on the joinder of cases.

9. On 22 November 2013, in compliance with Rule 37 of the Rules of Procedure, the Court informed the Applicants on the joinder of referrals.

10. The Applicants have not filed any objection against the decision on the joinder of referrals.

11. On 11 February 2014, after having considered the report of Judge Rapporteur, the Review Panel made a recommendation to the Court on the inadmissibility of the Referrals.

Summary of facts

12. The applicants were employed as workers of the Socially Owned Enterprise "Çyçavica" until the year 1992.

13. According to the documents submitted, based on the Judgment of the Municipal Court in Vushtrri C 215/06 dated 3 July 2006, the SOE "Çyçavica" in Vushtrri was ordered to restore all the salary entitlements for period 1992 until 1999 with an interest of 4.5% per year as of 29 June 2005 until its final payment for all the Applicants. Since no appeal was filed against it, the decision became final on 15 September 2006. However, it was never enforced.

14. The Applicants filed a request with the Municipal Court in Vushtrri for the Execution of the previous Municipal Court Judgment C. no. 215/06 of 3 July 2006.

15. On 5 October 2006, the Municipal Court in Vushtrri decided on the execution of the Judgment C. no. 215/06 dated 3 July 2006 (e.g. the Decision e. no. 845/06 dated 5 October 2006 in the case of the first Applicant Fatmire Berisha). The account of the SOE "Çyçavica" was blocked and the "New Bank in Kosovo" branch in Vushtrri was ordered to pay the Applicants the specified amount plus the specified interest.

Applicants' allegations

16. The Applicants claim that they have worked in the SOE "Çyçavica" in Vushtrri until year 1991 whereby Serbian forces coercively removed them from work and discriminated them.

17. The Applicants allege that their rights guaranteed by the Constitution were violated because they are entitled to a share of proceeds from the privatization of SOE "Çyçavica" as a form of compensation for their salaries for the years 1991 until 1999.

Assessment of the admissibility

18. 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.

19. As to the Applicants Referral, the Court refers to Rule 36 (3) h) which reads as follows: *"A referral may also be deemed inadmissible if the Referral is incompatible ratione temporis with the Constitution."*

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

21. The Court notes that the Applicants complain of unpaid compensation of their salaries for the years 1992-1999. In that respects the Applicants allege that there has been a violation due to the non-enforcement of the Judgment of the Municipal Court in Vushtrri C. no. 215/06 dated 3 July 2006.

22. This means that the alleged interference with Applicants' right guaranteed by the Constitution occurred prior to 15 June 2008 that is the date of the entry into force of the Constitution and from which date the Court has temporal jurisdiction.

23. Moreover, with reference to cases adjudicated by the Court regarding suspension of the execution procedure, specifically with reference to the case No. KI08/09, 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.

24. The Court reiterates that indeed is competent to examine the facts of the present case for their compatibility with the Constitution only in so far as they occurred after the entry into force of the Constitution. It may, however, have regard to the facts prior to entry into force of the Constitution inasmuch as they could be considered to have created a situation extending beyond that date or may be relevant for the understanding of facts occurring after that date.

25. As mentioned above, in the present case the situation is different from case No. KI08/09, Independent Union of Workers of IMK

Steel Factory in Ferizaj, Judgment of 17 December 2010. Namely, the Court notes that no attempts whatsoever have been made by the Applicants to have their judgment executed, because they waited six years before submitting their referrals to the Court. Even assuming that the applicants hadno effective remedies as alleged, the Court notes that they have been aware of this long before November-December 2012, the dates on which they submitted their referrals unlike the Applicants in case No. KI08/09 who submitted their referral on 3 March 2009 that is within the time limit of 4 months after the entry into force of the Law on the Constitutional Court, as provided by Article 56 [Earlier Cases] of that law.

26. Furthermore, the applicants should have shown convincingly that there was continuous and concrete progress throughout the previous ten years that could justify the delay in submitting the referral to the Court.

27. It follows that the Applicant's referral is incompatible *ratione temporis* with the provisions of the Constitution.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Rules 36 (3) h) and 56 (2) of the Rules of Procedure, on 11 February 2014, unanimously

DECIDES

I. TO DECLARE the Referral as Inadmissible;

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

III. This Decision is effective immediately.

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

KI208/13, Rexhep Kabashi, Resolution of 8 May 2014- Constitutional Review of the Decision of the Special Chamber of the Supreme Court, ACI-13-0094-A0001, of 30 October 2013

Case KI 208/13, Decision of 8 May 2014.

Key words: violation of constitutional provisions, Articles 24, 31, 32, individual referral, unauthorized party.

The Applicant filed his Referral based on Article 113.7 of the Constitution of Kosovo, claiming that his constitutional rights and freedoms have been violated by the judgment of regular courts. The Applicant had submitted a request for the protection of legality before the Special Chamber of Supreme Court (SCSC) and stated that the decision of the SCSC was rendered in violation of constitutional provisions, violation of provisions of Articles 31, 32, 24 of the Constitution of the Republic of Kosovo.

The Court found that the Referral of the Applicant is inadmissible based on Rule 36 (3) c) of the Rules of Procedure because it considers that the Referral was not filed in a legal manner and the Applicant is not an authorized party as per requirements prescribed in Article 113, paragraphs 1 and 7 of the Constitution. The Court considers that there does not seem to be any reason, why M.J, B.J, T.J, R.J and LJ could not have submitted a Referral to this Court on their own behalf, after exhaustion of all legal remedies and within 4 (four) months deadline, from the date on which the Decisions of the Appellate Panel of the SCSC were served. Individuals are entitled to submit a referral, without mediation by any third party, with this Court as per prescribed requirements of Article 113.7of the Constitution. Due to the abovementioned reasons, the Court decided to reject the Referral as inadmissible.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI208/13
Applicant
Rexhep Kabashi
Constitutional Review of the Decision of the Special Chamber of the Supreme Court, ACI-13-0094-A0001, dated 30 October 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. Rexhep Kabashi, State Prosecutor in the Office of the State Prosecutor (hereinafter: the "Applicant").

Challenged decision

2. The Applicant has submitted the Referral in relation to the cases of M. J, B. J, T. J, R. J and I. J challenges the Decision ACI-13-0094-A0001of the Special Chamber of the Supreme Court (hereinafter: the SCSC), dated 30 October 2013. The date when the challenged decision was served upon the Applicants is unknown.

Subject matter

3. The subject matter is the request for constitutional review of the Decision ACI-13-0094-A0001 of the SCSC, dated 30 October 2013. The above-mentioned Decision of the SCSC rejected as inadmissible the request for protection of legality submitted by the Applicant.

Legal basis

4. The Referral is based on Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), Articles 47 of the Law No. 121/03 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 56.2 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Court

5. On 18 November 2013, the Applicant filed a referral with the Constitutional Court.

6. On 3 December 2013, the President, by Decision GJR.KI208/13, appointed Judge Ivan Čukalović as the Judge Rapporteur. On the same date, the President, by Decision KSH. KI208/13, appointed the Review Panel composed of judges: Altay Suroy (Presiding), Snezhana Botusharova and Arta Rama-Hajrizi.

7. On 7 February 2014, the Court notified the Applicant on the registration of referral. The Court had also asked the Applicant to clarify several aspects and complete his referral. On the same date, the SCSC was notified about the registration of the referral.

8. On 11 February 2014, the Applicant submitted to the Court the completed referral.

9. On 8 May 2014, 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 9 August 2013, the Applicant submitted a request for the protection of legality before the SCSC addressed to the Supreme Court of Kosovo against the judgment/decisions of the Municipal Court of Prishtine/Pristina C. no. 1738/2007 dated 19 July 2007, The Trial Panel of the SCSC SCA-08-0041 dated 27 December 2011 and The Appellate Panel of the SCS, AC-I-12-0055, dated 30 April 2013 considering that in the above mentioned judgments a violation of legal provisions has taken place.

11. The SCSC held that:

> *"The Appellate Panel considers that pursuant to Article 10 , paragraph 14 of law no. 04/l-033 on the Special Chamber of the Supreme Court on Privatization Agency of Kosovo Related Matters to (lSC), all Judgments and Decisions of the Appellate Panel are final and not subject to any further appeal. In addition, the lSC and its Annex do not provide any extraordinary remedy against such decisions or judgments of the Appellate Panel (such extraordinary remedy is neither foreseen by UNMIK Regulation 2008/4 nor by UNMIK Administrative Direction 2008/ 6)".*

12. Furthermore the SCS held that:

> *"The request for protection of legality submitted by the State Prosecutor pursuant to provisions of law on Contested Procedure (lCP) on behalf of one party, may, apply for this extraordinary legal remedy against a final decision of lower instance Courts, but not against a final decision of the Appellate Panel of the SCSC because as it was mentioned above Article 10.14 of LSC prevents such possibility".*
>
> *[...]*
>
> *"Therefore, the request for protection of legality, as an extraordinary remedy, may not be applied against such decisions, so as such, it is dismissed as inadmissible".*

Applicant's allegations

13. The Applicant alleges that the Decision of the SCSC, has violated the following provisions of the Constitution:

> *"- Article 31 of the Constitution of the Republic of Kosovo in conjunction with Articles 6 and 13 of the European Convention on Human Rights on Fair and Impartial Trial;*
> *- Article 32 of the Constitution of the Republic of Kosovo on Right to Legal Remedies, as well as in conjunction with Article 8 of the Universal Declaration of Human Rights; and*
> *- Article 24 of the Constitution of the Republic of Kosovo – Equality Before the Law, and in conjunction with Article 7 of the Universal Declaration of Human Rights".*

14. In this regard, the Applicant requests the following:

> *"The Decision of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo, on Privatization Agency of Kosovo related matters, ACI.-13-0094-A0001 of 30.10.2013 be quashed (annulled) and the Appellate Panel of this Chamber be obliged that the Request of the State Prosecutor on protection of legality KMLC.no.58/2011 of 25.06.2013, submitted for the Supreme Court of Kosovo against the final Judgment of the Municipal Court in Prishtina, C.no.1738/2007 of 19.11.2007, Decision of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo related matters, SCA-08-0041 of 27.12.2012, and against the Decision of the same court, AC-I-12-005 of 30.04.2013, submits to the Supreme Court of Kosovo, as a court competent exclusively to decide on extraordinary legal remedies".*

15. In relation to the admissibility criteria the Applicant alleges the following"

> *"The State Prosecutor in the Office of the Chief State Prosecutor of the Republic of Kosovo, in terms of Article 113, paragraph 7 and in conjunction with Article 21.4 of the Constitution of the Republic of Kosovo, claims to have the right to address the Constitutional Court with a request for review of legality of the Decision of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo, on Privatization Agency of Kosovo related matters, ACI.-13-0094-A0001 of 30.10.2013, from the fact that the State Prosecutor is the only legal authority, legally authorized, whom in terms of provisions of Article 245 of LCP (Law no.03-L-0006 of 30.06.2008) files a request for protection of legality against the final court decisions by which the fundamental rights and freedoms of the parties have been violated, and in this case we are dealing with violation of rights and freedoms of the responding party – KBI (Kosova Export) in Fushe Kosova, whose rights and freedoms are protected by the State Prosecutor, since the parties do not have such a right. In this case, the State Prosecutor, by defending the rights and interests of parties, is in the capacity of party in procedure by law in terms of provision of Article 73.1 and 73.2 of LCP. Therefore, if the State Prosecutor is a party in procedure, in terms of provisions of Article 113, paragraph 7 and in conjunction with Article 21.4 of the Constitution, it has*

the right to raise matters of legality of final court decisions before the Constitutional Court of Kosovo".

Admissibility of the Referral

16. The Court observes that, in order to be able to adjudicate the Applicant's complaint, it is necessary to examine whether he has fulfilled the admissibility requirements laid down in 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 providing:

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

18. The Court also refers to Rule 36 (3) c) of the Rules of Procedure reading:

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

[...]

c) the Referral was lodged by an unauthorized person;"

19. 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.

20. In this connection, the Constitutional Court notes that the Applicant has submitted the Referral in relation to the cases of M.J, B.J, T.J, R.J and I.J. against the judgment/decisions of the Municipal Court of Prishtine/Pristina C. no. 1738/2007 dated 19 July 2007, The Trial Panel of the SCSC SCA-08-0041 dated 27 December 2011 and The Appellate Panel of the SCS, AC-I-12-0055, dated 30 April 2013.

21. In the instant case, the Applicant in relation to the Referral has inter alia stated:

[...]

> *"The State Prosecutor in the Office of the Chief State Prosecutor of the Republic of Kosovo in terms of Article 113, paragraph 7 and in conjunction with Article 21.4 of the Constitution of the Republic of Kosovo, claims to have the right to address the Constitutional Court with a request for review of legality of the Decision of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo, on Privatization Agency of Kosovo related matters, ACI.-13-0094-A0001 of 30.10.2013, from the fact that the State Prosecutor is the only legal authority, legally authorized, whom in terms of provisions of Article 245 of LCP files a request for protection of legality against the final court decisions…".*

22. However, since an individual can bring a Referral before the Court, pursuant to Article 113.7, providing:

> *"Individuals are authorized to refer violations by public authorities of their individual rights and freedoms guaranteed by the Constitution, but only after exhaustion of all legal remedies provided by law".*

23. The Court considers that there does not seem to be any reason, why M.J, B.J, T.J, R.J and I.J could not have submitted a Referral to this Court on their own behalf, after exhaustion of all legal remedies and within four months deadline, from the date on which the Decisions of the Appellate Panel of the SCSC were served. Individuals are entitled to submit a referral, without mediation by any third party, with this Court as per prescribed requirements of Article 113.7 of the Constitution.

24. The Court, therefore, considers that the Referral was not filed in a legal manner and that the Applicant is not an authorized party as per prescribed requirements of Article 113 paragraphs 1 and 7 of the Constitution.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.1 and 113.7 of the Constitution, and Rule 56 (2) of the Rules of Procedure, on 8 May 2014, unanimously

DECIDES

I. TO DECLARE the Referral Inadmissible;

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

III. This Decision is effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Ivan Čukalović	Prof. Dr. Enver Hasani

KI68/14, Fahri Rexhepi, Resolution of 3 July 2014- Constitutional Review of the Decision ASC-II-003S, of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters, of 23 November 2012

CaseKI 68/14, Decision of 3 July 2014.

Key words: *Individual Referral, out of time*

The Applicant alleged that the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo violated his right guaranteed by Article 24 [Equality before Law] of the Constitution.

The Constitutional Court declared the Referral inadmissible for being out of time because the Applicant did not submit his referral within the legal deadlines prescribed by the Law and further specified in the Rules of Procedure.

RESOLUTION ON INADMISSIBILITY
in
Case no. KI68/14
Applicant
Fahri Rexhepi
Constitutional review of the Decision ASC-II-0035, of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters, of 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 and
Arta Rama-Hajrizi, Judge

Applicant

1. The Applicant is Mr. Fahri Rexhepi from village Tenezhdoll, Municipality of Prishtina (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges the Decision ASC-II-0035 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 23November 2012, which was served on the Applicant on 9 January 2013.

Subject matter

3. The subject matter is the constitutional review of the Decision ASC-II-0035 of the Appellate Panel, which allegedly has violated the Applicant's rights, guaranteed by Article 24 [Equality before Law]of the Constitution and denied him the right to 20% share from privatization of 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 on the Constitutional Court of the Republic of Kosovo no. 03/L-121 (hereinafter: the Law), and Rule 56 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 8 April 2014, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 6 May 2014, the President by Decision no. GJR. KI68/14, appointed Judge Ivan Čukalović as Judge Rapporteur. On the same date, the President by Decision no. KSH. KI68/14, appointed the Review Panel composed of Judges: Altay Suroy (Presiding), Snezhana Botusharova and Arta Rama-Hajrizi.

7. On 26 May 2014, the Court notified the Applicant and the Special Chamber of the Supreme Court (hereinafter: SCSC) on the registration of Referral.

8. On 3 July 2014, after having considered the report of the Judge Rapporteur, the Review Panel recommended to the full Court, the inadmissibility of the Referral.

Summary of facts

9. On 5 March 2010, the Applicant, dissatisfied with the decision of the Privatization Agency (hereinafter: the Agency), which did not include him on the final list of employees entitled to 20% share from privatization, filed an appeal with the Special Chamber of the Supreme Court.

10. On 24 February 2011, the Trial Panel of the Special Chamber rendered the Decision SCEL-09-0001-C1175, by which the Applicant's appeal was rejected as ungrounded. In the reasoning of its decision, the Trial Panel stated that:

> *"The Appellate Panel considers that by taking account that the appeal was filed more than three months after the deadline for*

filing the appeals (legal deadline for submission of appeals has expired on 27 March 2009) (...) there is no possibility to return to previous situation and the appeal should be deemed on time. Therefore, the appeal is rejected as ungrounded."

11. On 23 November 2012, the Appellate Panel of the SCSC, by Decision ASC-II-0035 rejected the Applicant's appeal and upheld the Judgment of the Trial Panel, SCEL-09-001-C1175.

Applicant's allegations

12. In his Referral, the Applicant alleges:

> *"The decisions and orders of the Special Chamber of the Supreme Court of Kosovo are unlawful, because in my opinion I continuously submitted appeals against this decision and orders however, they were always rejected with the reasoning that the appeal was out of time".*

13. The Applicant addresses the Court with the following request:

> *„I request from the Constitutional Court to render a fair decision and to oblige the Special Chamber to render a Decision to include my name in the list of employees that benefit 20% from the privatization".*

Admissibility of the Referral

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

15. 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".*

16. 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. (...)".

17. The Court also takes into account Rule 36 (1) b) 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 ..."

18. Based on the data from the case file, the Court concludes that the Applicant filed his Referral on 8 April 2014. Based on available documents, the Court found that the Decision of the Appellate Panel, ASC-II-0035 of 23 November 2012, was submitted to the Applicant on 9 January 2013, therefore the Applicant submitted his referral after the expiry of the legal deadline of four months, as provided by Article 49 of the Law and Rule 36 (1) b) of the Rules of Procedure.

19. The Court recalls that the objective of the four month legal deadline under Article 49 of the Law and Rule 36 (1) b) of the Rules of Procedures is to promote the legal certainty, by ensuring that cases raising issues under the Constitution are dealt with within a reasonable time and that past decisions are not continually open to challenge (See case *O'LOUGHLIN and Others v. United Kingdom*, No. 23274/04, ECHR, Decision of 25 August 2005).

20. Therefore, the Court concludes that the Referral is out of time.

FOR THESE REASONS

The Constitutional Court of Kosovo, pursuant to Article 113.7 of the Constitution and Rule 36 (1) b) of the Rules of Procedure, on 3 July 2014, unanimously

DECIDES

I. TO DECLARE the Referral Inadmissible;

II. To notify this Decision to the parties to publish this Decision 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

KI62/14, Rexhep Haziri, Decision of 3 July 2014- Constitutional Review of final list of eligible employees Fi-64/ 90 entitled to compensation from privatization of SOE "Ramiz Sadiku" from Prishtina, published by Privatization Agency of Kosovo of 27 March 2009

CaseKI62/14, Decision of 3 July 2014.

Key words: Individual Referral, strike out of the referral

The Applicant's main allegation was that KTA and management of the SOE "Ramiz Sadiku" in Prishtina made it impossible for him to get a share of proceeds from the privatization of the SOE in question.

The Constitutional Court decided to strike out the referral because the Applicant had filed an unclear and unintelligible referral and because the Applicant had failed to clarify and specify his Referral, despite a request from the Court to do so.

DECISION TO STRIKE OUT THE REFERRAL
in
Case No. KI62/14
Applicant
Rexhep Haziri
Constitutional Review of final list of eligible employees Fi-64/90
entitled to compensation from privatization of SOE „Ramiz Sadiku“ from Prishtina, published by Privatization Agency of Kosovo, of 27 March 2009

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, and
Arta Rama-Hajrizi, Judge

Applicant

1. The Applicant is Mr. Rexhep Haziri (hereinafter: the Applicant) from the village of Kaçandol Municipality of Mitrovica, who is represented by Mr. Ismail Haziri from Vushtrri.

Challenged decision

2. The Applicant challenges the final list of employees Fi-64/90, of the Privatization Agency of Kosovo (hereinafter: PAK), which was published on 27 March 2009.

Subject matter

3. The subject matter is exercising the right to 20% share from the privatization of the SOE „Ramiz Sadiku“ (hereinafter: SOE „Ramiz Sadiku“). The Applicant does not specifically state the Articles of the Constitution, which are violated.

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 on the Constitutional Court of the Republic of Kosovo No. 03/L-121 (hereinafter: the Law), and Rule 56 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 2 April 2014,the Applicant filed the Referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 6 May 2014, the President by Decision no. GJR. KI62/14 appointed Judge Kadri Kryeziu as Judge Rapporteur. On the same date, the President by Decision no. KSH. KI62/14 appointed the Review Panel composed of Judges: Robert Carolan (Presiding), Almiro Rodrigues and Ivan Čukalović.

7. On 21 May 2014, the Court notified the Applicant on the registration of Referral and requested from the Applicant to submit to the Court relevant decision (the certified copy) and to specify which of the submitted decisions violates his constitutionally guaranteed rights and in what part.

8. On 26 June 2014 Judge Kadri Kryeziu notified in writing the Court for his exclusion from the deliberations for the period June-July 2014 until the Court decides regarding the allegations raised against him.

9. On 30 June 2014 the President of the Court, by Decision no. KI KSH. 62/14, replaced Judge Kadri Kryeziu as a Judge Rapporteur, and in his place appointed Judge Arta Rama-Hajrizi.

10. On 2 June 2014, the Applicant submitted a written reply, to which he did not attach any relevant decision and he did not specify how and what constitutionally guaranteed rights were violated in his case, but he only reiterated the same allegations from the original referral.

11. On 3 July 2014, after having considered the report of the Judge Rapporteur, the Review Panel recommended to the Court the inadmissibility of the Referral.

Summary of facts

12. On 2 April2014, the Applicant submitted the Referral to the Court, using the referral form for submission of referrals. Regarding the summary of facts, he stated that he was an employee of the SOE „Ramiz Sadiku“ for more than 11 years, from 1978 until 1990. According to the Applicant's claims, despite his submitted requests that his name is included in the final list of the eligible employees to 20% share of proceeds from privatization of the SOE „Ramiz Sadiku“ he was rejected with a justification that this right does not belong to the employees who did not work 3 years after the war.

13. The Applicant submitted: Records on pension and disability insurance, community decision of municipal employees, a copy of the work booklet, a copy of the statement of SOE "Ramiz Sadiku" employees and the power of attorney for the legal representative.

14. On 21 May 2014, the Court requested from the Applicant to complete and clarify the Referral. In the notification, the Applicant was notified that if he does not submit the requested information and documents, the Court will not be able to review the Referral.

15. On 2 June 2014, the Applicant submitted the written reply, to which he did not attach any additional documents and clarification, but he only repeated his requests from the original referral.

Applicant's allegations

16. The Applicant alleges:

> *„I consider that in my case was violated the Constitution, because to me was*
> *not paid the amount that belongs to me on the basis of 20% share of the privatization of SOE "Ramiz Sadiku", given that I was an employee and I paid contribution to this company from 1978 until 1999".*

17. The Applicant requests from the Court:

> *„I seek from the Constitutional Court to hold that there was a violation of the law and the Constitution, since it was not made possible to me to request what belongs to me, 20% share of proceeds from the sale of SOE „Ramiz Sadiku" from Prishtina, from the management and the Commission, as well as from former KTA."*

18. The Applicant requests further from the Court:

> *„I want that the public is informed that the management of the SOE „Ramiz Sadiku" from Prishtina and all the others who are mentioned in this Referral, have committed violation of the law and the Constitution."*

Admissibility of the Referral

19. The Court examines beforehand whether the Applicant has met the admissibility requirements, laid down in the Constitution and further specified in the Law and Rules of Procedure.

20. In this respect, the Court refers to Article 113.7 of the Constitution [Jurisdiction and Authorized Parties] of the Court, 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."*

21. The Court also refers to Article48 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".*

22. The Court also takes into account Rule 29 (2) of the Rules of Procedure, Filing of Referral and Replies, which provides:

> *"(...)*
>
> *(2) The referral shall also include: (a) the name and address of the party filing the referral; (b) the name and address of representative for service, if any; (c) a power of Attorney for representative, if any; (d) the name and address for service of*

the opposing party or parties, if known; (e) a statement of the relief sought; (f) a succinct description of the facts; (g) the procedural and substantive justification of the referral; and (h) the supporting documentation and information.
(3) Copies of any relevant documents submitted in support of the referral shall be attached to the referral when filed. If only parts of a document are relevant, only the relevant parts are necessary to be attached".

23. In addition, the Court takes into account Rule 32 (4) of the Rules of Procedure, which provides:

> *"The Court may dismiss a referral when the Court determines a claim to be moot or does not otherwise present a case or controversy".*

24. In the present case the Court notes that the Applicant has submitted an unclear and unintelligible Referral. Furthermore, he has failed to take any actions in order to clarify and specify his Referral, despite a request from the Court to do so.

25. In fact, the proceedings before the Constitutional Court are adversarial in nature. Therefore, it is up to the Applicant to substantiate his allegations (by providing the Court with the necessary factual arguments), and also the legal arguments (explaining why and how, in his view, the constitutional provisions have been breached). The Court is responsible for establishing the facts; it is up to the Applicant to provide the Court with necessary information and relevant documents.

26. Before all the foregoing, it is not up to the Court to build the case on behalf of the Applicant. On the contrary, it is up to the Applicant, while referring the matter to the Court, to comply with all requirements on admissibility of a referral.

27. The Court recalls that a letter has been sent to the Applicant, warning him that if he does not provide the requested information and documents, the Court will not be able to consider the Referral. The Court further states that in his reply the Applicant did not provide any relevant documents for review, including the final list of employees that were eligible to receive a compensation from the privatization of SOE "Ramiz Sadiku", published under number Fi-64/90.

28. Based on the above, the Court considers that the abovementioned Referral does not reach the minimum threshold to be considered as a referral, furthermore, the Court considers that it is legitimate to assume that the Applicant is not anymore interested in further proceeding with his Referral. (see case KI143/13, Applicant *Nebih Sejdiu,* Decision to strike out the Referral, of 24 April 2014, also *mutatis mutandis* see case *Starodub v. Ukraine,* No. 5483/02, ECHR, Decision of 7 June 2005).

29. The Court concludes that there is no case or controversy pending in relation to the referral above, and in compliance with Rule 32 (4) of the Rules of Procedure the Referral must be declared inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant toArticle 113.7 of the Constitution, Article 47 of the Law and Rule 32 (4) of the Rules of Procedure, in its session held on 3 July 2014, 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;

IV. This Decision is effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Arta Rama-Hajrizi	Prof. Dr. Enver Hasani

KO119/14 Xhavit Haliti and 29 other Deputies of the Assembly of the Republic of Kosovo, Judgment of 21 August 2014 - Constitutional Review of Decision No. 05-V-001 voted by 83 Deputies of the Assembly of the Republic of Kosovo on the election of the President of the Assembly of the Republic of Kosovo, of 17 July 2014

Case KO119/14, Decision of 21 August 2014.

Keywords: deputies of assembly, constitutional interpretation, procedure, election of the president of the parliament, political party, coalition, interim measure

The Referral was filed by 30 Deputies of the Assembly of the Republic of Kosovo, who challenged the Decision No. 05-V-001 voted by 83 Deputies of the Assembly of the Republic of Kosovo on the election of the President of the Assembly of the Republic of Kosovo (the Assembly) as regards its substance and as well the procedure followed during the Constitutive Session of the Assembly on 17 July 2014.

The Applicants filed the Referral based on Article 113.5 of the Constitution, alleging that during the preparation for the constitutive session of the Assembly there was a violation of the Constitution, because the chairperson of the meeting, the President of the previous legislature Mr. Krasniqi, exceeded his powers set out in the Constitution, namely his interpretation of the largest parliamentary group. The Applicants further claimed that the Decision of the Assembly of the Republic of Kosovo, dated 17 July 2014 (No. 05-V-001), on the election of the President of the Assembly of the Republic of Kosovo, including the preparatory procedure followed in connection with the constitutive process of the Assembly are not in accordance with the provisions of Article 67 of the Constitution of the Republic of Kosovo, which provide that the President of the Assembly is proposed by the largest parliamentary group which won the majority of seats in the Assembly and is elected by a majority vote of all deputies of the Assembly.

On 23 July 2014, the Court granted the Applicants request for an interim measure, suspending the implementation of the challenged decision, until the Court will render a final decision on the matter.

The Court found that the Referral of the Applicants is admissible since it meets all the requirements of admissibility which are foreseen by the Rules of Procedure. In assessing the merits of the Referral, the Court concluded that the Decision No. 05-V-001 of 17 July 2014 is unconstitutional as regards the procedure followed and as well as in

substance as it was not the largest parliamentary group that proposed the President of the Assembly and, therefore, is null and void; and that the Constitutive Session of the Assembly, which started on 17 July 2014, has not been accomplished, namely by not electing President and Deputy Presidents of the Assembly. Therefore, the Assembly has to complete the Constitutive Session, by electing President and Deputy Presidents in accordance with Article 67 (2) in conjunction with Article 64 (1) of the Constitution and Chapter III of the Rules of Procedure implementing these Articles and this Judgment.

JUDGMENT
in
Case No. KO119/14
Applicants
Xhavit Haliti and 29 other Deputies of the Assembly of the Republic of Kosovo
Constitutional review of Decision No. 05-V-001 voted by 83 Deputies of the Assembly of the Republic of Kosovo on the election of the President of the Assembly of the Republic of Kosovo, dated 17 July 2014.

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, and
Arta Rama-Hajrizi, Judge

Applicant

1. The Referral was filed by the following 30 Deputies of the Assembly of the Republic of Kosovo: Hashim Thaçi, Xhavit Haliti, Hajredin Kuçi, Enver Hoxhaj, Arsim Bajrami, Memli Krasniqi, Margarita Kadriu-Ukelli, Zenun Pajaziti, Elmi Reçica, Rafet Rama, Ganimete Musliu, Selvije Halimi, Safete Hadërgjonaj, Bekim Haxhiu, Flora Brovina, Fadil Beka, Xhevahire Izmaku, Agim Aliu, Sala Berisha-Shala, Agim Çeku, Besim Beqaj, Raif Qela, Naim Fetahu, Blerta Deliu-Kodra, Mexhide Mjaku-Topalli, Adem Grabovci, Azem Syla, Nuredin Lushtaku, Nezir Çoçaj and Kadri Veseli (hereinafter, the Applicants). The Applicants have authorized Mr. Xhavit Haliti to represent them before the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).

Challenged decision

2. The Applicants challenge the Decision No. 05-V-001 voted by 83 Deputies of the Assembly of the Republic of Kosovo on the election of the President of the Assembly of the Republic of Kosovo (hereinafter: the "Assembly") as regards its substance and as well

the procedure followed during the Constitutive Session of the Assembly on 17 July 2014.

Subject matter

3. The subject matter of the Referral is the assessment of the constitutionality of Decision No. 05-V-001 voted by 83 Deputies of the Assembly on 17 July 2014, by which Mr. Isa Mustafa was elected President of the Assembly.

4. The Applicants contest the constitutionality of the procedure for the election of the President of the Assembly as applied during the Constitutive Session of the Assembly held on 17 July 2014, alleging a violation of Article 67 [Election of the President and Deputy Presidents] of the Constitution of the Republic of Kosovo (hereinafter, the Constitution) and the Rules of Procedure of the Assembly.

5. Furthermore, the Applicants request the Court to impose interim measures suspending the Constitutive Session of the Assembly pending the final decision of the Court. The Applicants allege that *"The Interim Measure is in the public interest, because unrecoverable damage could be caused to the functioning of the institutions of the Republic of Kosovo as well as to the democracy in the Republic of Kosovo."*

Legal basis

6. The Referral is based on Article 113.5 of the Constitution, Articles 42 and 43 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (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 Court

7. On 18 July 2014, the Applicants submitted the Referral to the Court.

8. On 21 July 2014, pursuant to Rule 33 of the Rules of Procedure, the President of the Constitutional Court, by Decision No. GJR. KO119/14, appointed Judge Robert Carolan as Judge Rapporteur. On the same date, the President of the Constitutional Court, by Decision No. KSH. KO119/14, appointed the Review Panel

composed of Judges Altay Suroy (Presiding), Almiro Rodrigues and Ivan Čukalović.

9. On 21 July 2014, the Court notified the Applicants of the registration of the Referral and sent a copy of the Referral to the President of the Republic of Kosovo, the Caretaker Government of the Republic of Kosovo (hereinafter, the Caretaker Government) and the Secretary General of the Assembly. The latter was requested to submit to the Court a copy of the transcript of the Constitutive Session held on 17 July 2014 and to provide a copy of Referral KO 119/14 to each Deputy in order to enable them to submit their comments regarding this Referral to the Court.

10. On 23 July 2014, the Court granted the Applicants request for an interim measure *"[…] until the final decision is published and no later than 18 September 2014 from adoption of […]"* the decision on interim measure.

11. On 29 July 2014, 67 Deputies of the Assembly submitted their comments in respect to Referral KO119/14.

12. On 30 July 2014, the Court sent a copy of the comments of the 67 Deputies of the Assembly to the Applicants, which did not submit any comments.

13. On 30 July 2014, Deputy Mr. Arsim Bajrami submitted his comments in respect to Referral KO119/14.

14. On 31 July 2014, the Secretary General of the Assembly submitted to the Court the requested documents.

15. On 4 August 2014, five Deputies of the Assembly informed the Court that they support the comments of the 67 Deputies of the Assembly.

16. On the same date, the Secretary General of the Assembly submitted to the Court the comments of the Deputies of the Assembly in respect to Case KO119/14.

17. On 19 August 2014, the Court deliberated and voted in the case of Judge Kadri Kryeziu whereby the Court ruled:

> *TO REPRIMAND Judge Kadri Kryeziu for violating Articles 1 and 4 of the Code of Conduct for Judges of the Constitutional Court;*

TO EXCLUDE Judge Kadri Kryeziu from participating in the deliberations in all future referrals to the Constitutional Court involving political parties or individuals in political parties or on any other case having a political context, where a party, inter alia, may appear in the proceedings before the Court such as the President of the Republic of Kosovo, the Assembly, the Government, the Ombudsperson and Municipalities;

18. Therefore, Judge Kadri Kryeziu did not participate in the Court's proceedings and ruling on Case KO 119/14.

19. On 21 August 2014, the Court held a public hearing.

20. On the same day, the Court deliberated and voted on the Case, whereas the Judge Rapporteur, Judge Robert Carolan, requested to be replaced because he was minority. The President of the Constitutional Court pursuant to Rules 60 (1) and 44 (4) of the Rules of Procedure replaced Judge Robert Carolan with Judge Almiro Rodrigues as Judge Rapporteur (Decision No. GJR. KO119/14). Consequently, Judge Snezhana Botusharova was appointed member of the Review Panel (Decision No. KSH. KO119/14).

Summary of facts

21. On 7 May 2014, the Assembly in its extraordinary plenary session decided to dissolve the Assembly.

22. On 8 May 2014, the President of the Republic of Kosovo decreed early elections to take place on 8 June 2014.

23. On 8 June 2014, the elections took place in the Republic of Kosovo.

24. On 27 June 2014, the Central Election Commission (hereinafter, the CEC) published the election results.

25. On 4 July 2014, CEC certified the election results.

26. On 7 July 2014, the President of the Republic of Kosovo decided that the Constitutive Session of the Assembly be held on 17 July 2014.

27. On 8 July 2014, the former President of the Assembly from the IV legislature called for a joint meeting with the Presidency of the Assembly of the IV legislature and the heads of the parliamentarian parties to prepare the Constitutive Session of the V legislature. Attached to the invitation for the meeting were the materials from CEC, namely the notification of the certified election results, CEC decision No. 1579-2014 of 4 July 2014 on the certification of election results and the list of candidates elected for the Assembly.

28. On 11 July 2014, Democratic League of Kosovo (LDK), Alliance for the future of Kosovo (AAK) and NISMA informed the former President of the Assembly of the IV legislature that the Deputies of the political subject LDK-AAK-NISMA have decided to form the parliamentary group LDK-AAK-NISMA.

29. On 12 July 2014, the former President and Presidency of the IV legislature held a meeting with the aim to prepare the draft agenda for the Constitutive Session.

30. The draft agenda for the Constitutive Session of the Assembly contained the following issues:

    a. Establishment of the *ad hoc* Committee for the verification of quorum and mandates of the Deputies;
    b. Taking of the oath by the Deputies of the Assembly;
    c. Notification on the formation of parliamentary groups; and
    d. The election of the President and Deputy Presidents of the Assembly.

31. On 17 July 2014, the Assembly held its Constitutive Session chaired by the oldest member of the Assembly, Ms. Flora Brovina, (hereinafter, the Chairperson) and assisted by the youngest member of the Assembly, Ms. Teuta Rugova.

32. The Chairperson opened the Constitutive Session of the Assembly and then requested from the political parties to nominate one member each for the *ad hoc* Committee for verification of quorum and mandates. The Democratic Party of Kosovo (PDK) nominated Deputy Mr. Memli Krasniqi; LDK, AAK and NISMA nominated Deputy Mr. Armend Zemaj; Vetëvendosja (VV) nominated Deputy Ms. Albulena Haxhiu; Lista Srpska nominated Deputy Ms. Jelena Bontić; Kosovo Demokratik Tyrk Partisinominated Deputy Ms. Müfera Şinik; Koalicija VAKAT nominated Deputy Mr. Duda Balje; Progresivna Demokratska Stranskanominated Deputy Mr. Emilija

Redžepi; Egyptian Liberal Partynominated Deputy Mr. Veton Berisha; Egyptian Liberal Partynominated Deputy Mr. Etem Arifi; Kosovaki Nevi Romani Partianominated Deputy Mr. Kujtim Paqaku. This composition of the *ad hoc* Committee for verification of quorum and mandates was voted and approved by all 120 Deputies.

33. The *ad hoc* Committee presented a report on the validity of mandates of Deputies and verified the quorum of the Constitutive Session of the Assembly, based on the list of the certified election results in the following order:

a. PDK; 37 Deputies
b. LDK; 30 Deputies
c. VV; 16 Deputies
d. AAK; 11 Deputies
e. Srpska Lista; 9 Deputies
f. NISMA; 6 Deputies
g. Kosovo Demokratik Tyrk Partisi; 2 Deputies
h. Koalicija Vakat; 2 Deputies
i. Progresivna Demokratska Stranska; 1 Deputy
j. Kosovo Democratic Party of Ashkali; 1 Deputy
k. Nova Demokratska Stranka; 1 Deputy
l. Egyptian Liberal Party; 1 Deputy
m. Ashkali Party for Integration; 1 Deputy
n. Koalicija za Gora; 1 Deputy
o. Kosovaki Nevi Romani Partia; 1 Deputy

34. Thereupon, the Chairperson stated that all 120 Deputies were present and put the report of the *ad hoc* Committee for verification of quorum and mandates to the vote. 44 Deputies voted in favour, while the rest of the Deputies neither voted against nor abstained. Thereafter, the Chairperson held a break.

35. After the break, the Chairperson held a second voting round. The Chairperson stated that all 120 Deputies were present and that, out of the Deputies present, 117 Deputies voted in favour of the report of the *ad hoc* Committee.

36. The Chairperson requested the Deputies present to take the oath which they did.

37. As to point three of the agenda, the formation of Parliamentary Groups, the Chairperson stated that she and the youngest member

of the Assembly did not have a formal competence in that regard and that they are only there because of their age. Therefore, the formation of the Parliamentary Groups has to be done after point 4, election of President and Deputy Presidents of Assembly.

38. The Chairperson continued with the agenda for the Constitutive Session of the Assembly requesting from PDK to propose a candidate for President of the Assembly and the three largest political parties to propose their candidates for Deputy Presidents of the Assembly. PDK proposed Deputy Mr. Agim Aliu as a candidate for President of the Assembly, while LDK proposed Deputy Mr. Isa Mustafa as a candidate for President of the Assembly. The other political parties did not propose their candidates for Deputy Presidents for the Assembly. When the Chairperson put the candidacy of Mr. Agim Aliu of PDK to vote, the following political parties LDK, VV, AAK, NISMA and Lista Srpska left the Assembly Hall. Upon her request, the remaining Deputies were counted and 47 Deputies were present. Thus, the Chairperson declared the session closed until further notice in writing because there was no longer a quorum.

39. Thereafter, although the Constitutive Session of the Assembly was officially adjourned by the Chairperson until further notice in writing, LDK, AAK, NISMA, VV and Lista Srpska returned to the Assembly Hall and started a meeting. The youngest member of the Assembly Deputy Ms. Teuta Rugova presided the meeting and requested the 83 Deputies present to vote the motion submitted by LDK, AAK, NISMA and VV to replace the Chairperson, Deputy Flora Brovina. The motion was approved by 82 votes in favour. Consequently, the second oldest member of the Assembly, Deputy Ms. Milka Vulić , took the chair of the meeting.

40. Ms. Milka Vulić asked LDK, AAK and NISMA to propose a candidate for President of the Assembly and the three largest political parties to propose one candidate each for the Deputy Presidents of the Assembly. LDK, AAK and NISMA proposed Deputy Mr. Isa Mustafa as a candidate for President of the Assembly, while VV proposed Deputy Mr. Glauk Konjufca as a candidate for Deputy President of the Assembly and Group 6+ proposed as a candidate for Deputy President of the Assembly, on a rotation basis, Deputies Ms. Duda Balje, Ms. Müfera Şinik, Mr. Danush Ademi and Mr. Kujtim Paqaku. The other political parties declared that they would propose their candidates for Deputy Presidents for the Assembly at a later stage.

41. Ms. Milka Vulić put the candidates to the vote, whereby Mr. Isa Mustafa was elected President of the Assembly with 65 votes in favour out of 83 Deputies present. Mr. Glauk Konjufca from VV was elected Deputy President with 82 votes in favour, while Ms. Duda Balje, Ms. Müfera Şinik, Mr. Danush Ademi and Mr. Kujtim Paqaku from Group 6+ were elected Deputy President on a rotation basis with 82 votes in favour.

Arguments presented by the Applicants

42. The Applicants claim that *"During the preparation for the constitutive session of the Assembly there was a violation of the Constitution and the Rules of Procedure of the Assembly. During the meeting, dated 12.07.2014, the chairperson of the meeting, the President of the previous legislature Mr. Krasniqi, exceeded his powers set out in the Constitution, namely his interpretation of the largest parliamentary group, which is, according to the former President, the "Parliamentary group" established with 47 deputies during the registration process of the fifth legislature has to sit in the center and consequently this Parliamentary Group has to propose the President of the Assembly. However, taking into consideration that the "Parliamentary Group LDK-AAK-NISMA" are not certified as the largest parliamentary group by the Central Election Commission, as determined by Article 15 and 18 of Law no. 03/L-073 on General Elections in the Republic of Kosovo (Official Gazette of the Republic of Kosovo/Pristina: Year III/no. 31/ 15 June 2008), the action of the President of the Assembly of the fourth legislature authorizing the merger of one Parliamentary Group consisted of the deputies of LDK, AAK and NISMA, without being certified as the largest parliamentary group, before the constituency of the fifth legislature of the Assembly of the Republic of Kosovo, constitutes a violation of the Constitution of the Republic of Kosovo, respectively Article 64 (1) and Article 67, and Article 15 and 18 of Law no. 03/L-073 on General Elections in the Republic of Kosovo (Official Gazette of the Republic of Kosovo/Pristina: Year III / no. 31/15 June 2008). Also, the action of the President of the Assembly of the fourth legislature is also in conflict with the practices that have been confirmed so far by the Transcript of Meetings of the Presidency with representatives of parliamentary parties, held on 10.02.2011."*

43. Furthermore, the Applicants allege that the *"Decision of the Assembly of the Republic of Kosovo, dated 17 July 2014 (No. 05-V-*

001), on the election of the President of the Assembly of the Republic of Kosovo, including the preparatory procedure followed in connection with the constitutive process of the Assembly are not in accordance with the provisions of Article 67 of the Constitution of the Republic of Kosovo. Based on Article 67.2 of the Constitution and the Constitutional Court Judgment in Case no. KO103/14 filed by the President of the Republic of Kosovo, regarding the assessment of compatibility of Article 84 (14) (Competencies of the President) with Article 95 (Election of the Government) of the Constitution of the Republic of Kosovo (Ref No.: AG 671114, 1 July 2014), the President of the Assembly is proposed by the largest parliamentary group which won the majority of seats in the Assembly and is elected by a majority vote of all deputies of the Assembly."

44. Thus, the Applicants request the Constitutional Court to answer the following questions:

    a. *To assess the constitutionality of the Decision of the Assembly of the Republic of Kosovo, dated 17.07.2014 (no. 05-V-001) if the President of the Assembly has been proposed by the largest parliamentary group according to Article 67.2 of the Constitution of the Republic of Kosovo.*

    b. *To clarify who is the largest parliamentary group, as defined in Article 67 (paragraph 2) of the Constitution of the Republic of Kosovo and Article 12 of the Rules of Procedure of the Assembly of the Republic of Kosovo (29 April 2010), respectively is it the Parliamentary group that has won in the election for the Assembly of 8 June 2014 or the grouping that has been formed during the registration of the deputies and, therefore,: Who has the right to propose the candidate for President of the Assembly during the constitutive session of the Assembly?*

    c. *To clarify whether there was a violation of the Constitution by the President of the Assembly from the previous legislature according to Article 67.7. What are the competences of the President of the Assembly from the previous legislature during the preparatory meeting dated 07.12.2014?*

d. After the official closing of the constitutive session, was there a right to discharge the Chairperson and to continue with the constitutive session without inviting the members and taking into account this and the steps that have followed with the election of President and Deputy Presidents of the Assembly, has there during the constitutive session of the Assembly of the Republic of Kosovo been a violation of the Constitution and the Rules of Procedure of the Assembly?

Comments presented by the 67 Deputies of the Assembly

45. On 29 July 2014, 67 Deputies, represented by Mr. Bajram Gecaj, submitted their comments in respect of Referral KO119/14.

46. As to the admissibility of the Referral, the 67 Deputies claim that the Applicants are not an authorized party to file a Referral pursuant to Article 113.5 of the Constitution because the *"[…] violations alleged by Applicants are matters provided for in the Rules of the Assembly or determined by Decisions of the Presidency of Assembly, and not matters provided for in the Constitution."* The 67 Deputies argue that the Court has taken a stance in Case No. KO29/11 and Case No. KO108/13 *"[…] whereby the Court refused to interpret matters provided for in the Rules of the Assembly, but only those provided for in the Constitution."*

47. In this respect, the 67 Deputies allege that:

a. the notion "largest parliamentary group" *"[…] is defined by the Rules of the Assembly in its Annex no. 1. Consequently, in accordance with the clear position of this Court that it does not enter into interpretation of matters regulated by laws or regulations, in the present case too, the Applicants cannot request the Constitutional Court to interpret matters that are regulated by the Rules of the Assembly and not by the Constitution, namely, an interpretation of the definition given in Annex 1 of the Rules of the Assembly. […]"* and *"The definition of the term "parliamentary group" is a political question, as it is closely linked with the political will of the deputies of the Assembly of Kosovo to regulate, through the Rules of the Assembly, the procedures of the functioning of this institution and their activity as deputies."*

b. the Decision of the Presidency of the Assembly is not a constitutional matter and from Case No. KO115/13 *"It is a clear position of this Court that it does not deal with interpretation of the decisions of the Presidency of the Assembly or other bodies of the Assembly, but only with Decisions voted by deputies in the Session."*

48. In the present case, LDK-AAK-NISMA have formed a joint parliamentary group based on their program similarities and executed their rights as parliamentary groups, by proposing the candidate for the President of the Assembly in accordance with Article 67 (2) of the Constitution.

49. In the view of the 67 Deputies, the Applicants do not in any way specify how their allegation may present constitutional violations. Moreover, the Applicants have requested clarification, which are incompatible *ratione materiae* with the Constitution.

50. As to the merits of the Referral, the 67 Deputies claim that the Referral is ungrounded because allegedly *"Both essential requirements of the Constitution [i.e. Article 67.2 of the Constitution], that is, the proposal from the largest parliamentary group and the vote by majority of the deputies of the Assembly, have been met in the concrete case. All other questions are questions that are regulated by the Rules of the Assembly."*

51. As to the notion of "parliamentary group", the 67 Deputies hold that the notion is not defined in the Constitution, but in the Rules of Procedure of the Assembly, where it reads in Annex 1 [Definition of Terms used in the Rules of Procedure]: *"a group of not less than 5 %, respectively 6 Members of the Assembly, who have informed the President and the Presidency of the Assembly about their intention to act as a parliamentary group."* They also refer to Article 20 (1) of the Rules, providing that *"Members of Assembly may establish a parliamentary group on account of their political affiliation or programme determination.*", while paragraph 2 stipulates *"The Member of Assembly shall have the right to take part equally in a parliamentary group, leave the group, form a new parliamentary group, join another group or act as an independent Member of Assembly. In each case, the Member of Assembly shall be obliged to notify the President of the Assembly on his decision in writing."*

52. In this respect, the 67 Deputies claim that *"On 8 July 2014, a group of 47 deputies formed the parliamentary group LDK, AAK,*

NISMA based on program determination and, in accordance with Article 20 of the Rules, informed thereof the President and the Presidency of the Assembly, that was caretaking in accordance with Article 8 of the Rules of the Assembly. The formation of parliamentary groups before the holding of the constitutive session can by no means be contested for the reason that if we refer to Article 8 (3) of the Rules it can be clearly seen that parliamentary groups may be formed also before the constitutive session. This position is also in accordance with Article 70 (2) of the Constitution […]" and *"The results of parliamentary elections were certified on 4 July 2014 by the Central Election Commission, whereas the constitutive session was held on 17 July 2014. Based on that, the deputies whose mandate had already begun 13 days before the constitutive session had the right and were free to join in parliamentary groups even before the constitutive session. Formation of parliamentary groups even before the constitutive session is proved also by previous precedents of parliamentary practice. In the IV legislature of the Assembly of Kosovo, the certification of results was done on 7 February 2011, and Parliamentary group 6+ had submitted the list of deputies of their parliamentary group (joining different parties that had run separately in the elections), on 9 February 2011, whereas the constitutive session was held on 21 February 2011."*

53. On the other hand, the 67 Deputies state that the Applicants also erroneously conclude that Parliamentary Group is synonym to the notion of "Party or Coalition". In their view, the largest "parliamentary group" is not determined by the political party or coalition, but by the free will of the Deputies to join either based on political affiliation or based on program as stipulated in the Rules of Procedure of the Assembly.

54. As to the Applicants' request from the Court to clarify whether there was a violation of the Constitution by the President of the previous legislature during the preparatory meeting of 12 July 2014, the 67 Deputies submit that the Court does not have competence to review decisions of the Presidency of the Assembly, but only decisions taken in the session by a majority of Deputies. In their opinion, *"[…] this was a Decision of the Presidency, with no vote against that is, taken with consensus and with sufficient quorum to take decisions. In taking this decision, the Presidency has acted in full accordance with the Constitution and the Rules of the Assembly, because, as it is explained above, the Presidency of the previous legislature continues the mandate until the election*

of the President of the new legislature, including the taking of decisions about the constitutive session."

55. Moreover, as to the Applicants' claim that there was a violation when the Chairperson was replaced, the 67 Deputies argue that this *"[…] is not an issue to be dealt by the Court, because this is provided by the Rules of Procedure of the Assembly and not by the Constitution. It is clear that all the Rules [Rules of Procedure of the Assembly] included in it, which amongst others provide the rights and obligations of the deputies, apply to every session. Thus, from the moment of taking the oath, the deputies were entitled to their right, including the right to request the floor, to vote in favor and against, to request the continuation of the Session, to request pause, to propose a motion and to replace the Chairperson, pursuant to the provisions of the Rules of Procedure."*

56. The 67 Deputies allege that they had requested the replacement of the Chairperson, pursuant to the Rules of Procedure of the Assembly in light of what follows.

    a. *"[…] despite the decision of the Presidency that the seats in the middle will belong to the parliamentary group of LDK, AAK and NISMA, the deputies of PDK had usurped those seats. On behalf of the parliamentary group of LDK-AAK-NISMA, the MP Vjosa Osmani asked for the floor from the Chairperson of the session to object this violation, but the Chairperson did not pass the floor to her. […] The same objection on the violation of the Decision of Presidency, regarding the seat order in the Assembly, expressed as well by the MP Visar Ymeri on behalf of the parliamentary group of Vetëvendosje. Despite this objection, the Chair of the session did not react to correct the violation of the Decision of the Presidency of 12 July 2014."*

    b. *"[…] the Chairperson of the session attempted to suspend the session, despite the will of the deputies (over 2/3) of them), to continue it. She and other PDK deputies left the hall. Meanwhile 2/3 of deputies remained in the hall requesting to proceed with the session. At the moment when the Assistant of the Chairperson, Teuta Rugova, asked the quorum to be verified and then to proceed with the session by calling the other oldest deputy, since Mr. Flora Brovina refused to chair the session, Flora Brovina*

returned to the hall and usurped the seat of the Chairperson thus not allowing to continue the session, neither discussions nor vote nor any other action. In this way she kept hostages over 2/3 of the deputies of Assembly, by responding only to the PDK's request to not continue the session."

c. *"The third item on the agenda, which defined the notification of the formation of the parliamentary groups, was skipped arbitrarily by the Chair of the session. […]"* because *"[…] if there is no objection on the agenda at the beginning of the session, that agenda is considered adopted and cannot be amended (Article 42.2 of the Rules of Procedure of the Assembly). For any deviation from this Rule and from the Rules of Procedure of the Assembly is required 2/3 of the votes of deputies present (Article 84 of the Rules of Procedure of the Assembly), but such a voting did not happen at all."*

d. *"When the Chairperson reached the fourth item on the agenda she was obliged in accordance with the Scenario prepared by the Secretariat, regarding the progress of the session, to pass the floor to the largest parliamentary group, i.e. the group of LDK-AAK-NISMA, to propose the President to the Assembly, pursuant to the Constitution (Article 67.2), Rules of Procedures of the Assembly (Article 8 and 12), Conclusion of the Presidency, and the Scenario prepared by the Secretariat of the Assembly. However, she violated all these documents and first passed the floor to the parliamentary group of PDK with only 37 MPs, unlike the parliamentary group of LDK-AAK-NISMA with 47 MPs."*

57. Finally, the 67 Deputies *"Pursuant to the Rule 39 of the Rules of Procedure of the Constitutional Court […] request from the Constitutional Court to hold a hearing session, since this is more than necessary to clarify the evidence of this subject, in particular the transcript of the constitutive session of the Assembly. A hearing session is essential since the transcript is made based on the statements given over the open microphone with permission of the Chairperson of the Session, while the Chairperson has given the microphone (the floor) only to the deputies of her party (PDK) and did not give the microphone (the floor) to the other deputies, submitters of these Comments, but, they have expressed their*

views in the Assembly without microphone and have repeatedly requested for mechanical minutes to be taken, due to these blocking circumstances created by the Chairperson of the Session, Flora Brovina. Moreover, there is a necessity that the parties (representatives of parliamentary groups in the Assembly and the Secretariat of the Administration of the Assembly) express their stands not only regarding the transcript, but on other documents and issues related to the smooth conduct of the Session."

Comments presented by the Deputy of the Assembly, Mr. Arsim Bajrami

58. On 30 July 2014, Deputy Mr. Arsim Bajrami submitted his comments to the Court in respect to Referral KO119/14, which are summarized as follows.

    a. *"The conclusion of the Presidency of the previous legislature (dated 12.07.2014) on distribution of the seats in the Assembly, signed by the President of the previous legislature Mr. Jakup Krasniqi, is in direct contradiction with Article 64.1 of the Constitution of the Republic of Kosovo, because according to this decision on the distribution of seats in the Assembly was not made based on the votes won in the elections for the Assembly, but on the post-election numbers and coalitions, which were not registered in the CEC in accordance with the Law on General Elections No. 03/L-073, Article 15 and 18. Inevitably, by this method of distribution of seats, it was violated the previous parliamentary practice, as well as the will of the sovereign, transmitted through the elections […]".*

    b. *"In the meeting held on 12 July 2014, the Presidency of the previous legislature, on purpose ignored the fact that none of the Deputies of the fifth legislature, including those from the post-election group of LDK-AAK-NISMA did not take the solemn oath and therefore they do not enjoy the legal and constitutional right to exercise their function as Deputy. Even though the mandate of the Deputy commences on the date of certification of the elections result (Article 70.2), the elected Deputy cannot exercise the duty of Deputy before the inauguration of the Assembly, respectively before taking the oath. This is the reason why in the Rules of Procedure, the sequence of events starts with the preparations for the session*

(Article 8), verification of mandate (Article 9), take of the oath (Article 10) and election of the Assembly's bodies (Article 12). Also, this is the reason why Article 70.3 specifies that the mandate of Deputy is declared invalid if the Deputy does not take the oath."

c. *"[…] on the day of inauguration, the term "parliamentary group" reflects only the will expressed in elections and all certified parties or coalitions must sit according to the political power, based on their result from the elections."*

d. *"Only after taking oath by the deputies and fulfilling the foreseen procedures on election of the new President and Presidency of the Assembly (Article 12 with reference to Article 8 of the Rules of Procedure), deputies are free to move and on these movements shall in written notify the new Presidency of the Assembly (Article 20.2) […]. The post-election Group LDK-AAK-NISMA has the right to join into one common group only after the constitutive session. As such, they were not the largest parliamentary group in the inaugural session dated 17 July 2014, therefore, pursuant to Article 67.2 of the Constitution, they did not have and do not have the right to propose the candidate for the President of the Assembly."*

e. In addition, the Deputy Mr. Arsim Bajrami refers to the Rules of Procedure of the Assembly of Slovenia, Serbia, Austria, Czech Republic, Macedonia, Albania, Croatia, Portugal, Bulgaria and Montenegro arguing that *"[…] fluctuation of deputies and new parliamentary groups are established only after the constitutive session […]."*

Comments presented by the Deputy of the Assembly, Ms. Luljeta Veselaj-Gutaj

59. On 4 August 2014, Deputy Ms. Luljeta Veselaj-Gutaj submitted her comments to the Court in respect of Referral KO119/14 *"Contesting the procedure for the election of the President of the Assembly of Kosovo Mr. Isa Mustafa during the constitutive session of the Assembly held on 17 July 2014 where there has been a violation of Article 67. The constitution of the Assembly has not been developed in accordance with Article 67 (Election of President and Deputy Presidents), paragraphs 2 and 3 of the Constitution in*

connection with Chapter III (Inauguration of the Assembly) of the Rules of Procedure of the Assembly."

Comments presented by the Deputies of the Assembly of Group 6+

60. On 4 August 2014, Deputies of Group 6 + submitted their comments to the Court in respect to Referral KO119/14 alleging that they participated in the constitution of the Assembly and that the decisions adopted during the constitutive session of the Assembly were taken in accordance with the Constitution.

Comments presented by the Deputy of the Assembly, Mr. Etem Arifi

61. On 4 August 2014, Deputy Mr. Etem Arifi submitted his comments to the Court in respect of Referral KO119/14 stating that he participated in the constitution of the Assembly and that his opinion during the constitutive session was based on his free will without any pressure.

Comments presented by the Deputy of the Assembly, Mr. Veton Berisha

62. On 4 August 2014, Deputy Mr. Veton Berisha submitted his comments to the Court in respect of Referral KO119/14 stating that he participated in the constitution of the Assembly and that his opinion during the constitutive session was based on his free will without any pressure and based on his knowledge of the establishment of institutions based on applicable legislation.

Public hearing

63. On 21 August 2014, the Court held a public hearing where the following parties were present and duly represented as follows:

    a. For the Applicants, Deputy Mr. Arsim Bajrami;

    b. For the Respondents,

        i. LDK, Deputy Ms. Vjosa Osmani;
        ii. VV, Deputy Ms. Albulena Haxhiu;
        iii. AAK, Mr. Ardian Gjini;
        iv. Lista Srpska, Deputy Ms. Milka Vulić ;
        v. NISMA, Deputy Ms. Valdete Bajrami;

vi. Kosovo Demokratik Tyrk Partisi, Deputy Mr. Mahir Yagcilar;
vii. Progresivna Demokratska Stranska, Deputy Mr. Nenad Rasic;
viii. Nova Demokratska Stranka, Deputy Ms. Emilija Rexhepi;
ix. Egyptian Liberal Party, Deputy Mr. Veton Berisha;
x. Ashkali Party for Integration, Deputy Mr. Etem Arifi; and
xi. Kosovaki Nevi Romani Partia, Deputy Mr. Kujtim Paqaku.

64. During the hearing, the following parties took the floor:

a. For the Applicants, Deputy Mr. Arsim Bajrami;

b. For the Respondents,

i. LDK, AAK and NISMA, Deputy Ms. Vjosa Osmani and Mr. Ardian Gjini; and

ii. VV, Deputy Ms. Albulena Haxhiu;

65. LDK and VV provided the Court with additional documents.

66. The Court heard the oral pleadings of the parties on the Referral.

Admissibility of the Referral

67. The Court firstexamines whether the admissibility requirements laid down in the Constitution, and as further specified in the Law and the Rules of Procedure, have been fulfilled.

68. 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."*

69. As to these requirements, the Court recalls that the Applicants filed their Referral pursuant to Article 113.5 of the Constitution, which 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."* [**the Serbian version differs from the English and Albanian versions**]

70. In addition, the Court refers to Article 42 [Accuracy of the Referral] of the Law which foresees:

> *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.*

71. Apart from the names and signatures of the Deputies who submitted the Referral, the contested decision and the relevant provisions of the Constitution as well as the evidence in support of the Referral have been mentioned by the Applicants.

72. As to the challenged decision, the Court notes that the Applicants contest Decision No. 05-V-001 on the election of a President of the Assembly voted by 83 Deputies of the Assembly.

73. As to the time limit, the Court notes that the Decision No. 05-V-001 on the election of the President of the Assembly voted by 83 Deputies of the Assembly was adopted by the Assembly on 17 July 2014 and the Referral was made to the Court on 18 July 2014. It follows that the Referral has been submitted within the constitutionally prescribed period of eight days.

74. The Court concludes that the admissibility requirements laid down in Article 113.5 of the Constitution and Article 42 of the Law have been fulfilled.

75. In these circumstances, the Court considers that the Referral raises important constitutional questions in relation to the Constitutive Session of the Assembly and, thus, there is no ground to declare it inadmissible or even more to go into the analysis of the additional admissibility grounds submitted by the Applicants.

Comparative study

76. Before entering into the analysis of the case, the Court will conduct a comparative study of relevant constitutional provisions of the Constitutional Framework for Provisional Self-Government in Kosovo (hereinafter, the Constitutional Framework) and of a number of neighboring and other countries.

Constitutional Framework for Provisional Self-Government in Kosovo 2001

77. Articles 9.1.7, 9.1.8 and 9.1.9 of the Constitutional Framework provide:

Presidency** of **the Assembly

9.1.7 The Assembly shall have a Presidency consisting of eight Assembly members who shall be selected as follows:

(a) Two members shall be appointed by the party or coalition having obtained the highest number of votes in the Assembly elections;

(b) Two members shall be appointed by the party or coalition having obtained the second highest number of votes in the Assembly elections;

(c) One member shall be appointed by the party or coalition having obtained the third highest number of votes in the Assembly elections;

(d) One member shall be appointed by the party or coalition having obtained the fourth highest number of votes in the Assembly elections;

(e) One member shall be appointed from among the members of the Assembly belonging to those parties having

declared themselves representative of the Kosovo Serb Community; and

(f) One member shall be appointed from among the members of the Assembly belonging to parties having declared themselves representative of a non-Kosovo Albanian and non-Kosovo Serb Community. The method for appointing this latter member shall be determined by members of the Assembly belonging to these same Communities.

9.1.8 The Assembly shall endorse these appointments by a formal vote.

President of the Assembly

9.1.9 A member of the Presidency from the party or coalition having obtained the highest number of votes in the elections for the Assembly shall be the President of the Assembly.

Albania

78. Articles 67 and 75 of the Constitution of Albania provide:

Article 67

1. The President of the Republic convenes the newly elected Assembly not earlier than the date of the termination of the mandate of the preceding Assembly, but no later than 10 days after such mandate has expired. If the preceding Assembly has been dissolved before the termination of its mandate, the President of the Republic convenes the new Assembly not later than 10 days from the announcement of the election results.

2. If the President of the Republic does not exercise such a competence, the Assembly convenes itself on the tenth day of the period of time provided in point 1 of this Article.

Article 75

1. The Assembly elects and discharges its Speaker.

2. The Assembly is organized and operates according to regulations approved by a majority of all its members.

79. Articles 6 and 15 of the Rules of Procedure of the Assembly of the Republic of Albania provide:

Article 6 – Election of the President of the Assembly

1. The candidate for President of the Assembly is proposed by at least 15 deputies. An MP cannot support more than one candidate. The proposal shall be in writing, containing the respective signatures and presented to the Interim Secretariat of the Assembly.

2. The election of the President of the Assembly is done without debate and by secret ballot, with a majority of votes in the presence of more than half of all members of the Assembly. In the event that no candidate has obtained the required majority, a second round is followed, whereby the two candidates who received the most votes are voted for.

3. Voting is organized publicly and run by a voting committee, composed of five deputies, which reflects, as far as possible, the political composition of the Parliament. The oldest member at age performs the duty of the chairman of the committee voting and announce the voting results.

4. The leader of the session immediately invites the Assembly Speaker to take his place.

Article 15 – Formation of Parliamentary Groups

1. MPs may form parliamentary groups of party affiliation or political orientation.

2. Establishing a parliamentary group requires a minimum of 7 members. Each member can only be a member of a parliamentary group. An outgoing member of the parliamentary group, may join another parliamentary group after only six months from the date of departure.

3. When the number of members of a parliamentary group falls below the number prescribed by paragraph 2 of this Article, the group ceases to exist.

4. Within 3 days from the date of election of the President of the Assembly, any member states in writing to which

parliamentary group he/she chooses. Only deputies who do not declare the above or do not belong to any parliamentary group may form a mixed group.

5. Each member has the right to leave the parliamentary group. For this he/she must submit a written statement to the head of the parliamentary group and notify the Bureau of the Assembly.

6. MPs elected in the legislature, within 3 days from the oath, declares in writing to which parliamentary group he/she belongs.

Bulgaria

80. Articles 75 and 76 of the Constitution of the Republic of Bulgaria provide:

Article 75

A newly elected National Assembly shall be convened for a first session by the President of the Republic within a month following its election. Should the President fail to do so, it shall be convened by one-fifth of the Members of the National Assembly.

Article 76

1. The first session of the National Assembly shall be opened by the senior present Member.

2. At the first session the Members shall swear the following oath:

"I swear in the name of the Republic of Bulgaria to observe the Constitution and the laws of the country and in all my actions to be guided by the interests of the people. I have sworn."

3. The National Assembly shall elect at the same session its Chairperson and Deputy Chairpersons.

81. Chapter II and Chapter IV of the Rules of Procedure of the Bulgarian National Assembly provide:

Chapter Two

CONSTITUTION OF THE NATIONAL ASSEMBLY AND CHANGES IN THE PRESIDING BODY

Article 3.

(1) The first sitting of the National Assembly shall be opened by the eldest Member present. The said Member shall chair the sitting until the National Assembly elects its President.

(2) The Members of the National Assembly shall take a spoken oath in pursuance of Article 76, paragraph 2 of the Constitution to be documented by signing individual oath papers.

Article 4.

(1) Under the Chair of the eldest Member debates shall be held exclusively on the election of President of the National Assembly as well as the election itself.

(2) At the first sitting of the National Assembly the Members shall adopt rules of procedure on the terms and conditions for election of President and Vice-Presidents of the National Assembly.

Article 5.

(1) The President and Vice-Presidents of the National Assembly can be discharged of their powers before the expiry of the term upon:

1. his/her own request;

2. a motion in writing of not less than one third of all Members when he/she is objectively incapable of fulfilling his/her duties, or is systematically abusing his/her authority or fails to carry out the duties within his/her competencies.

3. a motion in writing by the parliamentary group, formed by the parliamentary represented party or coalition, which has nominated them.

(2) The Vice-Presidents of the National Assembly shall be discharged of powers before the term expiry when they have quit the parliamentary group which has nominated them, or when they have been dismissed by it.

(3) In the cases under item 1 of paragraph 1 and 2, the discharge shall be announced without a debate or vote.

(4) In the cases of items 2 and 3 of paragraph 1 the motion shall be put to a vote at the first sitting following the submission date, allowing a hearing to the person concerned. The motion shall be deemed carried if it has been supported by more than one half of the Members of the National Assembly in attendance.

(5) In case of discharge under paragraph 1 and 2, a new election shall take place within 14 days after the decision was adopted under the terms and conditions determined in rules of procedure, adopted by the National Assembly. Until the holding of a new election for President of the National Assembly, the latter shall be chaired by the Vice-President, nominated by the parliamentary represented party or coalition, which has nominated the President.

Article 6.

The National Assembly shall elect 8 Secretaries from among the Members.

Article 7.

At subsequent sittings, the National Assembly shall elect Standing Committees.

Chapter Four

PARLIAMENTARY GROUPS

Article 12.

(1) The Members of the National Assembly may form Parliamentary Groups.

(2) The minimum number of Members of the National Assembly to form a Parliamentary Group shall be 10 (ten).

(3) If the membership of a Parliamentary Group falls below the required minimum, such Group shall cease to exist.

(4) Where a parliamentary group cease to exist the Vice-President elected by it shall be discharged of powers before the expiry of term. The discharge shall be announced at the earliest plenary sitting with no debate or vote.

Article 13.

(1) Each Parliamentary Group shall submit to the President of the National Assembly a resolution on its establishment and a list of its leadership and members signed by all members thereof.

(2) The Parliamentary Groups, their leaderships and any changes therein shall be recorded in a special register of the National Assembly.

(3) The President of the National Assembly shall announce the Parliamentary Groups so registered and their leaderships at a plenary sitting. Every change in the composition of a Parliamentary Group shall be announced by the President of the National Assembly at a plenary sitting.

(4) Any permanent assistants to a Parliamentary Group shall be appointed on the Assembly's staff. On the advice of every Parliamentary Group concerned, the number of such staff shall be approved by the President of the National Assembly in proportion of 1:10 to the number of its members, but not less than 2 for each parliamentary group.

Article 14.

(1) No Member of the National Assembly may be member of more than one Parliamentary Group.

(2) The terms of group membership, the commencement and termination thereof, and the rights and duties of group members shall be established by the Parliamentary Group concerned and in accordance with the provisions of these Rules.

(3) A Member of the National Assembly may resign from his/her Parliamentary Group by addressing his/her resignation in writing to the leader of the Group and to the President of the National Assembly, which shall be announced at a plenary sitting.

(4) On resignation from the Parliamentary Group or on dismissal from it the Member shall lose his/her seat in Standing Committees as a representative of the respective Parliamentary Group, in National Assembly delegations and other elected offices at the National Assembly.

(5) A parliamentary group member who has quit or has been expelled from it shall become a National Assembly Member of no membership with a parliamentary group.

(6) The Members of the European Parliament from the Republic of Bulgaria may also participate in the work of the Parliamentary Groups in a non-voting capacity and according to the registration with the Central Electoral Commission of the party or coalition on the ticket of which they have been elected.

Croatia

82. Article 73 of the Constitution of Croatia provide:

Article 73

[...]

The Croatian Parliament shall be constituted at the first session by the selection of its President by the majority of its members present.

83. The Standing Orders of the Croatian Parliament in part two provides:

Part Two

Constitution of Parliament, Commencement of Duties of Members of Parliament, Suspension and Termination of the Term of Office of Members of Parliament

Article 4

Parliament shall be summoned to its first, Constitutive Session by the President of the Republic.

Until the election of the Speaker of Parliament, the session shall be temporarily chaired by the Speaker of Parliament from the preceding term, or if he/she is prevented from attending, by the oldest present Member of Parliament.

Until the election of the Speaker of Parliament, the temporary chair shall have all rights and duties of the Speaker of Parliament with reference to chairing the session.

Parliament shall be constituted with the election of the Speaker at the first session in which the majority of the Members of Parliament are present.

After the election of the Speaker of Parliament, the elected Speaker shall take the chair.

When Parliament is constituted, the Croatian national anthem shall be played.

Article 5

At its Constitutive Session, Parliament shall also elect the members to the Credentials and Privileges Commission.

In addition to the Speaker of Parliament and the Commission referred to in paragraph 1 hereof, the Deputy Speakers of Parliament, the Secretary of Parliament and the Secretary of the Session of Parliament, the Elections, Appointments and Administration Committee and other working bodies may also be elected at the Constitutive Session of Parliament.

A minimum of 1/3 of elected Members of Parliament shall be entitled to submit proposals for the election of the bodies referred to in paragraphs 1 and 2 hereof at the Constitutive Session.

Germany

84. Article 40 of the Basic Law of the Republic of Germany provide:

Article 40 [Presidency - Rules of procedure]

1. The Bundestag shall elect its President, Vice-Presidents and secretaries. It shall adopt rules of procedure.

85. The Rules of Procedure of the German Bundestag provides:

Rule 1
Constituent meeting

(1) The first meeting of the newly elected Bundestag shall be convened by the outgoing President and shall be held not later than the thirtieth day after the election (Article 39 of the Basic Law).

(2) At the first meeting of the Bundestag, the Member of the Bundestag who is the most advanced in years, or, should he or she decline, the next oldest, shall take the Chair until the newly elected President or one of the Vice-Presidents assumes the office.

(3) The President by age shall appoint Members of the Bundestag to act as Secretaries on a provisional basis. The roll of Members of the Bundestag shall then be called.

(4) After the presence of a quorum has been ascertained, the President, Vice-Presidents and Secretaries shall be elected.

Rule 2
Election of the President and the Vice-Presidents

(1) The Bundestag shall, in secret and separate ballots (Rule 49), elect the President and the Vice-Presidents for the duration of the electoral term. Every parliamentary group in the German Bundestag shall be represented on the Presidium by at least one Vice-President.

(2) The person receiving the votes of the majority of the Members of the Bundestag shall be elected. If a majority is not obtained in the first ballot, new candidates may be proposed for a second ballot. If a majority of the votes of the Members of the Bundestag is still not obtained, a third ballot shall be held. If there is only one candidate in the third ballot, this candidate shall be elected if he or she receives the majority of votes cast. Where there are several candidates, the two candidates with the highest number of votes shall move into the third ballot; the

person who obtains the most votes shall be elected. In the event of a tie, the President in the Chair shall draw lots to decide which of the two candidates is elected.

(3) Further ballots involving a candidate unsuccessful in a third ballot are only permissible with the agreement of the Council of Elders. If new candidates are proposed following unsuccessful proceedings pursuant to paragraph (2), the electoral proceedings pursuant to paragraph (2) shall be set in motion once again.

Rule 10
Formation of parliamentary groups

(1) The parliamentary groups shall be associations of not less than five per cent of the Members of the Bundestag, and their members shall belong to the same party or to parties which, on account of similar political aims, do not compete with each other in any Land. Where Members of the Bundestag form such an association on grounds other than those set out in the first sentence of this paragraph, its recognition as a parliamentary group shall require the consent of the Bundestag.

(2) The formation of a parliamentary group, its designation, and the names of the chairpersons, members and guests shall be communicated to the President in writing.

(3) Parliamentary groups may admit guests who, while not counting towards the strength of the group, shall be taken into account in the distribution of posts (Rule 12).

(4) Members of the Bundestag who wish to form an association but do not reach the prescribed minimum strength for parliamentary group status may be recognised as a grouping. Paragraphs (2) and (3) shall apply to them mutatis mutandis.

(5) Joint technical working parties set up by parliamentary groups shall not affect the number of posts to which the parliamentary groups are entitled in line with their relative strengths.

Greece

86. Article 65 of the Constitution of Greece provide:

Article 65

1. Parliament shall determine the manner of its free and democratic operation by adopting its own Standing Orders; these shall be adopted by the Plenum as specified in Article 76 and shall be published in the Government Gazette on the order of the Speaker.

2. Parliament shall elect from among its members the Speaker and the other members of the Presidium as provided by the Standing Orders.

3. The Speaker and Deputy Speakers shall be elected at the beginning of each parliamentary term. This provision shall not apply to the Speaker and Deputy Speakers elected by the first session of the Fifth Revisionary Parliament. On a recommendation by fifty Members the Parliament may reprimand the Speaker or a member of the Presidium thus causing the termination of his tenure.

87. The Rules of the Hellenic parliament provide:

The Presidium
(articles 6 – 12 of the Standing Orders)

The Presidium consists of:

- *the Speaker of the Hellenic Parliament*
- *seven (7) Deputy Speakers*
- *three (3) Deans*
- *six (6) Secretaries*

The Presidium's fundamental feature is its multi-partisan composition. Thus the first, second and third Deputy Speaker, two of the Deans and four of the Secretaries are affiliated to the governing party; the fourth Deputy Speaker, one dean and a Secretary belong to the major opposition party; the fifth Deputy Speaker and one Secretary are members of the second-biggest opposition party; the sixth Deputy Speaker is affiliated with the third-largest party of the opposition, and the seventh Deputy Speaker belongs to the fourth. A member of the Presidium, who must certainly be an elected MP, cannot be a

Cabinet member (Minister or Under-Secretary). Should a Presidium member agree to assume ministerial or Under-Secretarial duties, then ipso facto he/she has to step down from the post.

The Speaker and the Deputy Speakers are elected at the beginning of each term for the entire duration of that term. Deans and Secretaries' terms last for as long as the regular session period for which they were elected lasts.

Macedonia

88. Articles 63 and 67 of the Constitution of the Republic of Macedonia provide:

Article 63

The Representatives for the Assembly are elected for a term of four years. The mandate of Representatives is verified by the Assembly. The length of the mandate is reckoned from the constitutive meeting of the Assembly. Each newly-elected Assembly must hold a constitutive meeting 20 days at the latest after the election was held. The constitutive meeting is called by the President of the Assembly of the previous term. If a constitutive meeting is not called within the time laid down, the Representatives assemble and constitute the Assembly themselves on the twenty-first day after the completion of the elections. Elections for Representatives to the Assembly are held within the last 90 days of the term of the current Assembly, or within 60 days from the day of dissolution of the Assembly. […]

Article 67

The Assembly elects a President and one or more Vice-Presidents from the ranks of the Representatives by a majority vote of the total number of Representatives. […]

89. Chapter II of the Rules of Procedure of the Assembly of the Republic of Macedonia provide:

II. ESTABLISHMENT OF THE ASSEMBLY

1. Constitutive Session of the Assembly and verification of the mandate of the Members of the Assembly

Article 9

Providing the Constitutive Session is not called by the outgoing President, the session shall be held on the 21st day from the day of completion of elections, at 10:00 hours, and shall be called by the most senior Member of the Assembly by years of age. If the most senior Member of the Assembly by years of age refuses to call the session, that right passes on to the next most senior Member of the Assembly elected, in line up to the elected Member of the Assembly who accepts to call the first session.

The Member of the Assembly who called the first session (the Chairperson) shall preside over the Assembly's session until the newly elected President or one of the Vice-Presidents takes on the duty.

Article 10

The Chairperson presiding over the first session appoints two of the elected Members who shall, subject to need, replace the Chairperson in presiding over the session.

The Chairperson shall by a roll-call of the elected Members verify the number of the attending elected Members.

The Assembly may be established if the majority of the elected Members are attending the session.

Once the quorum is established, the President and Members of the Assembly's Verification Committee (Verification Committee) are elected.

Article 11

The mandate of the Members of the Assembly shall be verified by the Assembly at the Constitutive Session, upon a proposal by the Verification Committee.

Article 12

The Verification Committee shall be elected by the Assembly at the Constitutive Session, upon a proposal by the Chairperson.

Verification Committee shall be composed of a president and four members from among the Members of the Assembly belonging to various political parties represented in the Assembly.

Article 13

The Verification Committee, on the basis of the report of the State Election Commission shall submit a written report to the Assembly for the election of each Member of the Assembly, with a separate proposal for verification of the mandate of each Member of the Assembly.

Article 14

The Assembly shall thoroughly review the report of the Verification Committee.

Providing the Verification Committee denies the election of a Member of the Assembly, it shall suggest to the Assembly to postpone the verification of his/her mandate. The Assembly shall debate and vote separately for each such proposal.

Article 15

The Assembly can postpone the verification of the mandate of a Member of the Assembly and conclude to require that the State Election Commission conduct the necessary insights to check the legality and accuracy of that election and report in no more than 30 days to the Assembly.

Article 16

Until receiving the notification of the State Election Commission, the Member of the Assembly whose verification of the mandate has been postponed, shall not be entitled to attend the Assembly's sessions.

Article 17

The verification of the mandate of Members of the Assembly elected from supplementary lists, or that have become Members of the Assembly from the list of candidates for the

remaining of the mandate shall be done by the Assembly at the first subsequent session on the basis of the report from the State Election Commission, and upon the proposal of the Committee on Procedural and Mandate and Immunity Related Issues.

Article 18

With the verification, the Member of the Assembly shall be entitled to rights and obligations determined with the Constitution, the law and with these Rules of Procedure.

Article 19

An identity card and a card for electronic voting shall be issued to the Member of the Assembly, whose mandate is verified.

The identity card shall include the right to immunity and the other rights that can be exercised on the basis of the function of a Member of the Assembly.

The President of the Assembly shall pass the more detailed regulation related to the content, shape and method of issuing of the identity cards of the Members of the Assembly, as well as the registry of the issued identity cards.

The Secretary General of the Assembly shall be responsible for the issuing and the registry of the issued identity cards.

2. Election of the Committee on Elections and Appointments

Article 20

At its Constitutive Session, the Assembly, upon the proposal of at least ten Members of the Assembly, shall elect a Committee on elections and appointments.

An adequate representation shall be ensured in the Committee of Members belonging to the political parties represented in the Assembly.

3. Election of President and Vice-Presidents of the Assembly

Article 21

The Assembly shall elect a President and Vice-Presidents of the Assembly from among its Members.

The number of vice-presidents shall be determined by the Assembly, upon a proposal by the President of the Assembly. The Vice-Presidents shall be elected from among Members belonging to various political parties represented in the Assembly.

One of the Vice-Presidents shall be elected from among the Members belonging to the biggest opposition party represented in the Assembly.

Article 22

Candidates for the President of the Assembly may be proposed by the Committee on elections and appointments, or by at least twenty Members of the Assembly.

A Member of the Assembly can propose only one candidate for President of the Assembly.

Article 23

The proposals for the candidates for President of the Assembly shall be submitted in a writing at the session of the Assembly and shall contain the name and surname of the candidate with biography data and an explanation, as well as the names and surnames of the Members of the Assembly that submit the proposal and their signatures.

The order of the candidates for President of the Assembly shall be determined in accordance with the alphabet order of their surnames.

Article 24

The vote for the election of a President of the Assembly shall be presided by the Chairperson.

If the Assembly decides that the President of the Assembly should be elected by a secret ballot, the Chairperson shall be assisted in the election by the Secretary General and three Members of the Assembly, elected by the Assembly upon a

proposal by the Chairperson, from among the Members belonging to different political parties represented in the Assembly.

Article 25

The Member of the Assembly shall be entitled to vote only for one of the proposed candidates for President of the Assembly. Providing the Member of the Assembly votes for more candidates for President of the Assembly, the voting of that Member of the Assembly shall be declared null and void.

Article 26

The candidate winning the majority of the votes out of the total number of Members of the Assembly shall be elected for President of the Assembly.

Providing there is only one candidate proposed and if in the first vote he/she does not win the necessary majority of the votes, the complete election procedure shall be repeated.

If two candidates are proposed for President, and if neither of them wins the necessary majority of the votes during the first voting, the voting shall be repeated.

If three or more candidates are proposed for President of the Assembly, the voting shall be repeated for the two candidates who have won the biggest number of votes in the first round of vote.

If among the candidates with biggest number of votes, there are candidates with the same number of votes, the voting shall be repeated for all the candidates with biggest number of votes.

If during the second round of the voting neither of the candidates wins the necessary majority of votes, the complete election procedure shall be repeated.

Article 27

The provisions of these Rules of Procedure that apply to the proposal of candidates and election of President of the Assembly shall also apply to the proposal of candidates and election of Vice-Presidents of the Assembly.

Article 28

The candidate with the majority votes out of the total number of Members of the Assembly shall be elected Vice-President.

If more candidates are proposed for Vice-Presidents than the number of Vice-President that is to be elected, and if the planned number of Vice-Presidents is not elected, the voting shall be repeated for election of the number of Vice-Presidents that were not elected, from among the candidates that won the greatest number of votes.

If the necessary number of Vice-Presidents is not elected in the second round of voting, the election procedure shall be repeated for the number of Vice-Presidents that are still not elected.

If the number of proposed candidates equals the necessary number of positions, and the planned number of positions is not elected, the complete election procedure shall be repeated for that number of Vice–Presidents that were not elected.

2. Parliamentary groups

Article 33

Parliamentary groups shall be established in the Assembly.
One parliamentary group shall be composed of at least five Members of the Assembly that belong to one or more political parties.

The Member of the Assembly shall be a member to only one parliamentary group.

The parliamentary group shall appoint a coordinator of the parliamentary group and no more than two deputies.

The parliamentary group shall submit to the President of the Assembly a list signed by every member of the group, the coordinator and his/her deputy.

The parliamentary group is entitled to expert advice and a separate office, according to the number of Members of the Assembly in the group.

The President of the Assembly shall be informed on any change of the composition of the parliamentary group, the coordinator and his/her deputy, and he shall further inform the Members of the Assembly thereon.

Portugal

90. Articles 149, 173 and 180 of the Constitution of Portugal provide:

Article 149 Constituencies

1. Members shall be elected for constituencies that shall be geographically defined by law. The law may create plurinominal and uninominal constituencies and lay down the nature and complementarity thereof, all in such a way as to ensure that votes are converted into seats in accordance with the proportional representation system and using d'Hondt's highest-average rule.

2. With the exception of the national constituency, if any, the number of Members for each plurinominal constituency in Portuguese territory shall be proportional to the number of citizens registered to vote therein.

Article 173 Sitting following elections

1. The Assembly of the Republic shall sit by right on the third day following the calculation of the general results of its election, or, in the case of elections called because a legislature is due to reach its term and the said third day falls before the said legislature reaches its term, on the first day of the following legislature.

2. In the event that such date falls when the Assembly is not in full session, it shall sit for the purposes of Article 175.

Article 180 Parliamentary groups

1. The Members elected for each party or coalition of parties may form a parliamentary group.

2. Each parliamentary group shall possess the following rights:

a. To take part in Assembly committees in proportion to the number of its Members, and to appoint its representatives on such committees;

b. To be consulted when the order of business is set, and to appeal to the Plenary against that order of business;

c. To cause the holding of emergency debates on issues of urgent current public interest, which the Government shall attend;

d. In each legislative session, to cause the holding of two debates on a matter of general or sectoral policy, by calling on the Government to attend the Assembly;

e. To ask the Standing Committee to take steps to convene the Plenary;

f. To move the formation of parliamentary committees of inquiry;

g. To initiate legislation;

h. To make motions rejecting the Government's Programme;

i. To make motions of no confidence in the Government;

j. To be regularly and directly informed by the Government as to the situation and progress of the main matters of public interest.

3. Each parliamentary group shall possess the right to dispose of places in which to work at the Seat of the Assembly, together with technical and administrative staff of its choice, as laid down by law.

4. Members who do not belong to any parliamentary group shall be ensured certain minimum rights and guarantees, as laid down by the Rules of Procedure.

91. Chapter II of the Rules of Procedure of the Assembly of Portugal provides:

CHAPTER II

Parliamentary groups

Article 6
Formation of parliamentary groups

1 - The Members of the Assembly of the Republic who are elected for each party or coalition of parties may form a parliamentary group.

2 - Each parliamentary group shall be formed by means of a notification addressed to the President of the Assembly, which shall be signed by the Members of the Assembly of the Republic who compose the group and shall state the name of the group, its president, and its vice-presidents if any.

3 - Parliamentary groups shall notify the President of the Assembly of any change in their composition or leadership.

4 - The notifications referred to in paragraphs (2) and (3) shall be published in the Journal.

Article 13
Election of the President of the Assembly

1 - Nominations for President of the Assembly of the Republic must be signed by a minimum of one tenth and a maximum of one fifth of all the Members.

2 - Nominations shall be submitted to the serving President at least two hours before the moment at which the election takes place.

3 - The election shall take place during the first plenary sitting of each legislature.

4 - The candidate who obtains an absolute majority of the votes of all the Members of the Assembly of the Republic in full exercise of their office is elected President of the Assembly.

5 - If none of the candidates obtains that number of votes, a second ballot shall immediately be held solely between the two candidates who received the highest number of votes and have not withdrawn their nomination.

6 - If no candidate is elected, the process shall recommence.

Slovenia

92. Article 84 of the Constitution of Slovenia provides:

Article 84 President of the National Assembly

The National Assembly has a president who is elected by a majority vote of all deputies.

93. Chapter II of the Rules of Procedure of the National Assembly of Slovenia provides:

II. CONSTITUTING THE NATIONAL ASSEMBLY

Article 9

The National Assembly is constituted at the first session at which the election of more than half of the deputies is confirmed.

Article 10

(1) No later than five days before the first session of the National Assembly, the incumbent President of the National Assembly calls a meeting of the temporary leaders of the deputy groups and the deputies of the national communities to determine the draft agenda of the first session, the order of seating of the deputies in the chamber, the deputy groups whose members will hold the offices of chairman and deputy chairman on the Commission for Public Office and Elections and the number of members of this commission that belong to individual deputy groups, and possibly also to determine the deputy groups whose members will hold the offices of chairman and deputy chairman in other working bodies and the number of members of such working bodies belonging to individual deputy groups.

(2) Pending the formation of the Council of the President of the National Assembly, the temporary leaders of the deputy groups and the two deputies of the national communities decide on the proposals referred to in the first, second, and fourth indents of paragraph six of Article 21 of these Rules of Procedure and may propose a candidate for Secretary General of the National Assembly.

(3) The order of seating of the deputies in the chamber is determined by agreement among the deputy groups. If no agreement is reached, the order of seating is determined in a manner such that deputy seating among the vacant deputy seats is determined by the deputy groups in order from the largest to the smallest deputy group. Deputy groups with an equal number of members determine deputy seating in an order determined by prior lot.

Article 11

(1) Until deputy groups are formed in accordance with Article 16 of these Rules of Procedure, deputy groups consist of the deputies elected to the National Assembly from the same list of candidates, deputies elected from voters' lists, and the deputies representing the national communities. The composition of a deputy group is established on the basis of the report on the election results.

(2) No later than three days after the publication of the -report on the election results, the representatives of the lists forward the names of the temporary leaders of the deputy groups from the preceding paragraph to the incumbent President of the National Assembly.

Article 12

(1) Preparations for the first session of the National Assembly are the responsibility of the incumbent President of the National Assembly.

(2) The temporary leaders of the deputy groups inform the incumbent President of the National Assembly of the proposed candidates for chairman, deputy chairman, and members of the Commission for Public Office and Elections.

(3) The draft agenda of the first session includes the appointment of the chairman and deputy chairman of the Commission for Public Office and Elections, the confirmation of the election of deputies, and the election of the President of the National Assembly, and may also include the election of the Vice-Presidents of the National Assembly, the appointment of chairmen and deputy chairmen of the working bodies, and the appointment of the Secretary General of the National Assembly.

(4) Until the President has been elected, the first session of the National Assembly is chaired by the oldest deputy.

Article 13

(1) The Commission for Public Office and Elections examines the report on the election results, the confirmation of the election of deputies, and any complaints by candidates or representatives of the lists of candidates.

(2) The National Assembly decides on the confirmation of the election of deputies on the basis of the report of the Commission for Public Office and Elections on the examination of the confirmation of elections and the content and admissibility of any complaints by candidates or representatives of the lists of candidates.

(3) The National Assembly decides collectively on the confirmation of elections which are not in dispute, and on each disputed election individually.

(4) A deputy whose election is still in dispute may not vote on the confirmation of his election.

(5) It is deemed that by deciding on a disputed election, the National Assembly has also decided on any complaint submitted to the National Assembly by a candidate or representative of a list of candidates.

Article 14

Following the confirmation of the elections, the National Assembly elects the President of the National Assembly.

Article 15

If at the first session the National Assembly fails to elect the Vice-Presidents of the National Assembly and to appoint the chairmen and deputy chairmen of the working bodies and the Secretary General of the National Assembly, it must elect or appoint them no later than 30 days after being constituted.

Article 16

Deputies form deputy groups in accordance with Article 29 of these Rules of Procedure no later than seven days after the National Assembly has been constituted.

Article 17

The provisions of Article 13 of these Rules of Procedure apply mutatis mutandis also to the procedure for confirming the election of a deputy replacing a deputy whose term of office has expired or a deputy whose term of office has been suspended due to his being elected President of the Government or appointed minister.

Relevant legal basis for the Referral

94. Article 67 (1 to 3) [Election of the President and Deputy Presidents] of the Constitution provides:

1. The Assembly of Kosovo elects the President of the Assembly and five (5) Deputy Presidents from among its deputies.

2. The President of the Assembly is proposed by the largest parliamentary group and is elected by a majority vote of all deputies of the Assembly.

3. Three (3) Deputy Presidents proposed by the three largest parliamentary groups are elected by a majority vote of all deputies of the Assembly.

95. Article 64 (1) [Structure of Assembly] of the Constitution provides:

"The Assembly has one hundred twenty (120) deputies elected by secret ballot on the basis of open lists. The seats in the Assembly are distributed amongst all parties, coalitions, citizens' initiatives and independent candidates in proportion

to the number of valid votes received by them in the election to the Assembly."

96. Chapter III of the Rules of Procedure of the Assembly provides as follows:

"Chapter III – Inauguration of the Assembly

Article 7
Inaugural session of the Assembly

The inaugural session of the Assembly shall be convened by the President of the Republic of Kosovo within thirty (30) days from the day of official announcement of election results.

Article 8
Preparation of the inaugural session of the Assembly

1. The President of the previous term shall be responsible for preparations of the inaugural session of the Assembly.

2. The President and the Presidency shall call a joint meeting with the leaders of political parties that have won seats in the Assembly not later than five days before holding the inaugural session of the Assembly's term, to prepare the draft agenda of the inaugural session of the Assembly, to decide on the seating order of Members of the Assembly, respectively political entities in the plenary hall, based on the number of Members of the Assembly of each political entity.

3. If two or more parliamentary groups have the same number of Members of the Assembly then their seating order in the hall shall be decided by draw.

4. The agenda of the inaugural session of the Assembly shall include establishment of an ad hoc committee for verification of the quorum and mandates, election of the president and five (5) Deputy Presidents of the Assembly.

Article 9
Chairing of the inaugural session of the Assembly

1. Until the election of the President and Deputy Presidents of the Assembly, the inaugural session of the Assembly shall be

chaired by the oldest Member of the Assembly and assisted by the youngest one.

2. If the Member of the Assembly, namely Members of Assembly under paragraph 1 of this article, are absent in the inaugural session or refuse to chair the session, then Members of Assembly who are the closest of their age take over.

3. After the agenda has been presented, the Chairperson of the inaugural session shall request from political parties represented in the Assembly, to appoint one member each in the ad hoc Committee for verification of quorum and mandates.

4. The ad hoc Committee shall review the relevant documentation of elections and shall present a report on the validity of mandates of Members of the Assembly and shall verify the quorum of the inaugural session of the Assembly.

Article 10
Oath of the Members of Assembly

1. After verification of the mandates, the Members of the Assembly shall take a solemn oath. The text of the oath shall read as follows:

"I, Member of the Assembly of the Republic of Kosovo, swear that honestly and with devotion, shall carry out my duty and represent the people with dignity, shall work in the interest of Kosovo and all its citizens, shall be committed to protection and respect of the constitutionality and lawfulness, for protection of the territorial and institutional integrity of Kosovo, for guaranteeing human rights and freedoms, in accordance with the domestic laws and European standards. I swear!"

The statement of the oath shall be read by the Chairperson of the session. Members of Assembly take the oath by pronouncing the words "I swear". Each of the members shall sign the text of the Oath.

2. The Member of Assembly, who is absent at the inaugural session, when the oath is taken, shall take the oath in the first coming session.

Article 11
Mandate of the Assembly

1. The Assembly shall be elected for a mandate of four years. The mandate shall start from the inaugural session that shall be held within thirty (30) days from the day of official announcement of election results.

2. The mandate of the Assembly may be extended only in cases defined by Article 66, paragraph 4 of the Constitution of the Republic of Kosovo.

Article 12
Election of the President and Deputy Presidents of the Assembly

1. At the inaugural session of the IV term, the Assembly shall elect the President and the Deputy Presidents from among its Members. The President and the Deputy Presidents shall consist of the Presidency of the Assembly.

2. The Chairperson of the inaugural session shall request from the largest parliamentary group to propose a candidate for the President of the Assembly. The President of the Assembly shall be elected by majority of votes of all Members of Assembly.

3. The Chairperson of the inaugural session shall request from the three largest parliamentary groups to propose one candidate each for the Deputy Presidents of the Assembly, who are elected by the majority of votes of all Members of Assembly.

4. The Presidency as well as other working bodies of the Assembly shall respect the gender composition of the Assembly.

5. The Chairperson of the Inaugural Session shall request from the Members of Assembly holding seats guaranteed for the Serb community and the Members of Assembly holding seats guaranteed for other non-majority communities to propose one candidate each for Deputy Presidents of the Assembly. The Deputy Presidents, under this item, shall be elected by majority of votes of all Members of Assembly.

6. The Chairperson of the inaugural session shall announce the voting results for election of the President and the Deputy

Presidents of the Assembly and shall invite the newly-elected President to take his seat".

97. The Court notes that, in relation to the first session conveyed after the parliamentary elections, the English version of the Constitution uses the word "constitutive session" (Article 66, para. 1 and 3 [Election and Mandate] of the Constitution) and the Rules of Procedure of the Assembly use "Inauguration of the Assembly" (heading of Chapter III) and "inaugural session" (Articles 7, 8 and 9). The Albanian version of the Constitution uses the word "seancë konstituive" (Article 66, para. 1 and 3 [Election and Mandate] of the Constitution) and the Rules of Procedure of the Assembly uses "KONSTITUIMI I LEGJISLATURËS" (heading of Chapter III) and, "konstituive e legjislaturës" (Articles 7, 8 and 9)". The Court considers that the wording "constitutive session" serves better the purpose of clarity. Therefore, the Court has been using and will use the constitutional term "Constitutive Session", meaning the first session conveyed after the parliamentary elections.

Merits of the Referral

98. The Applicants complain that the procedure followed by 83 Deputies to elect the President of the Assembly was in violation of paragraphs 2 and 3 of Article 67 [Election of the President and Deputy Presidents] of the Constitution and Chapter III [Inauguration of the Assembly] of the Rules of Procedure of the Assembly. Thus, in the Applicants' view, the decision of the 83 Deputies, by which Mr. Isa Mustafa was elected President of the Assembly of the Republic of Kosovo, is unconstitutional.

99. The Court notes that the Referral concerns the electio**n** of the President of the Assembly pursuant to Article 67 (2) [Election of the President and Deputy Presidents] of the Constitution. The provision stipulates that *"The President of the Assembly is proposed by the largest parliamentary group and is elected by a majority vote of all deputies of the Assembly."*

100. The Court reiterates that it is not its task to evaluate the facts of the particular case, but to assess whether or not the above mentioned allegations have raised constitutional issues under the relevant constitutional provisions. Consequently, in the present case, the Court will only deal with questions of a constitutional nature raised under Article 67 (2) of the Constitution and other related provisions.

101. The Court notes that in previous cases where the interpretation of the constitutional provisions were at stake, it has asked on numerous occasions that the *Travaux Preparatoires* be submitted in order to get acquainted with the intent of the drafters of the Constitution. The result has always been that the *Travaux Preparatoires* of the Constitution are not available. As a consequence, the Court has ruled that in the absence of the *Travaux Preparatoires* of the Constitution, it has to make the interpretation itself (See for example Case KO103/14, *The President of the Republic of Kosovo concerning the assessment of the compatibility of Article 84 (14) [Competencies of the President] with Article 95 [Election of the Government] of the Constitution of the Republic of Kosovo,* Judgment of 1 July 2014).

102. Therefore, the Court cannot draw any conclusions as to the intentions of the drafters of the Constitution and cannot speculate what they meant. Furthermore, any comparison or taking arguments from the Constitutional Framework of Kosovo of 2001 is hardly relevant. The Constitutional Framework was in force until 15 June 2008 to regulate a different situation. On 9 April 2008, the new modern Constitution was adopted and is applied in the independent state of the Republic of Kosovo since 15 June 2008.

103. Consequently, the Court will make the necessary interpretation of Article 67 (2) [Election of the President and Deputy Presidents] of the Constitution.

104. As a preliminary remark, the Court observes that, in relation to the election of President and Deputy Presidents of the Assembly and the formation of the Government, the Constitution uses different expressions for one and the same reality. The different expressions are, namely: *the seats (...) are distributed (...) in proportion to the number of valid votes received (..) in the election (...)* [Article 64 (1) of the Constitution]; *the largest parliamentary group* [Article 67 (2) of the Constitution]; *the political party or coalition holding the majority in the Assembly* [Article 84 (14) of the Constitution]; *the political party or coalition that has won the majority in the Assembly* [Article 95 (1) of the Constitution].

105. That being said, the Court will have recourse to Article 64 (1) [Structure of Assembly] of the Constitution. It provides that *"The Assembly has one hundred twenty (120) deputies elected by secret ballot on the basis of open lists. The seats in the Assembly are distributed amongst all parties, coalitions, citizens' initiatives and*

independent candidates in proportion to the number of valid votes received by them in the election to the Assembly."

106. The Court notes that the abovementioned Articles 64 (1) and 67 (2) of the Constitution are the legal basis for structuring and constituting the Assembly and Chapter III of the Rules of Procedure of the Assembly serves as a procedural tool and mechanism for the implementation of these constitutional provisions.

107. In this respect, the Court firstly notes that the rules of procedure for the conduct of the Constitutive Session of the Assembly were adopted on 29 April 2010; they are in force and have to be applied, including in relation to the agenda.

108. Secondly, the Court notes that the purpose of the Constitutive Session of the Assembly is to construe the new legislature after the elections, with the procedural help of the President of the previous legislature whose mandate was over before the new parliamentarian elections took place. The Assembly is construed through the verification and confirmation of the mandate of the Deputies, the taking of the oath by the Deputies and the election of the President and the Deputy Presidents of the Assembly (See Article 8, paragraph 4, Article 10 and Article 12 of the Rules of Procedure of the Assembly).

109. Thirdly, the Court notes that the Constitutive Session of the Assembly cannot be considered as having been accomplished if the Assembly has not elected its President and Deputy Presidents.

110. The Court further considers that the Chairperson presiding the Constitutive Session, even though she is not elected, she is bound by the Constitution and the Rules of Procedure of the Assembly for the accomplishment of the Constitutive Session.

111. In order to assess whether the election of the President of the Assembly was constitutional, the Court will interpret the meaning of "largest parliamentary group", according to Article 67 (2) of the Constitution. This interpretation is of crucial importance, as it is related as to who can propose the President of the Assembly.

112. The Court notes that Article 67 (2) of the Constitution is preceded by Article 64 (1) of the Constitution. Both provisions are intertwined and have to be taken into consideration together.

113. The Constitution in its Article 64 (1) stipulates that when structuring the Assembly the seats are to be distributed in proportion to the number of the votes received in the elections to the Assembly. The distribution is done amongst parties, coalitions, citizens' initiatives and independent candidates proportionally to the results in the parliamentary elections. This means that parties, coalitions, citizens' initiatives and independent candidates are awarded the number of seats, equalized to the mandates of the Deputies, that corresponds proportionally to the votes that they received in the elections, having in mind that these parties, coalitions, citizens' initiatives and independent candidates passed the threshold. The Constitution prioritizes the election results as a criterion. It is applicable to the parties and coalitions that registered as such to participate in the elections as well as to the citizens' initiatives and independent candidates.

114. The Court reiterates that *"The use of the terms "political party or coalition" when they are mentioned in connection with Article 84 (14) and Article 95, paragraphs 1 and 4, of the Constitution means a political party or coalition that is registered under the Law on General Elections, participates as an electoral subject, is included in the electoral ballot, passes the threshold and, thus, acquires seats in the Assembly"* (See Case KO103/14, *The President of the Republic of Kosovo concerning the assessment of the compatibility of Article 84 (14) [Competencies of the President] with Article 95 [Election of the Government] of the Constitution of the Republic of Kosovo,* Judgment of 1 July 2014).

115. Furthermore, the Court ruled that the *"[…] the political party or coalition can only be the one that has won the highest number of votes in the elections, respectively most of the seats in the Assembly."* (See Case KO103/14, *The President of the Republic of Kosovo concerning the assessment of the compatibility of Article 84 (14) [Competencies of the President] with Article 95 [Election of the Government] of the Constitution of the Republic of Kosovo,* Judgment of 1 July 2014).

116. Therefore, the largest parliamentary group according to Article 67 (2) of the Constitution is to be considered the party, coalition, citizens' initiatives and independent candidates that have more seats in the Assembly, in the sense of Article 64 (1) of the Constitution, than any other party, coalition, citizens' initiatives and independent candidates that participated as such in the elections. This group is to propose the President of the Assembly

following the provisions of Article 67 (2) of the Constitution. This is what the Constitution envisages as parliamentary group and even more is *de facto* in accordance with the parliamentary practice in democratic states.

117. An additional argument is that a parliamentary group, in the strictest sense of the word (*in stricto sensu*) and according to the Rules of Procedure of the Assembly and its Annexes, can only be registered after the constitution of the Assembly, i.e. after the election of the President and Deputy Presidents of the Assembly.

118. At the moment of conveying the Constitutive Session of the Assembly, a parliamentary group is composed of the candidates that were elected as member of the Assembly on the ballot of the party, coalition, citizens' initiatives and independent candidates that were registered in the election, participated in them, passed the legal threshold and acquired seats in proportion to the number of valid votes received by them in the election to the Assembly.

119. In the current case, the Chairperson of the Constitutive Session rightly gave the possibility to the largest parliamentary group to propose a candidate for the President of the Assembly, since according to the list of the certified election results the party that was the first in order of ranking had 37 Deputies. Therefore, to have given the possibility to another party, coalition, citizens' initiatives and independent candidates would have been unconstitutional.

120. The Court observes that, according to the Transcript, after the suspension of the Constitutive Session due to a lack of quorum, a group of Deputies conveyed a meeting to table a motion to replace the Chairperson and they elected a President and Deputy Presidents of the Assembly.

121. The Court recalls that the Applicants challenge the constitutionality of this procedure and its outcome. Taking into account the above interpretation based on Articles 67 (2) in conjunction with 64 (1) and the Rules of Procedure of the Assembly, the Court finds that this challenged meeting is not in accordance with the constitutional requirements for a Constitutive Session to be considered as constitutional. Hence, this meeting is not to be considered as a Constitutive Session.

122. In these circumstances, the Court concludes that the decision as a result of this meeting does not correspond to a decision taken,

under Article 67 (2) of the Constitution, during a Constitutive Session and by the largest parliamentary group. Consequently, the Decision No. 05-V-001 voted by 83 Deputies of the Assembly on the election of Mr. Isa Mustafa as the President of the Assembly, dated 17 July 2014, is null and void.

123. The Court reiterates that the election of President of the Assembly and Deputies is a prerequisite for the Assembly to start functioning as a legislative body. This requires all Deputies to be present and vote in order to constitute the Assembly. In its Case KO29/11, the Court ruled 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."* (See, Case KO29/11, *Sabri Hamiti and other Deputies requesting Constitutional Review of the Decision of the Assembly of the Republic of Kosovo, No. 04-V-04, concerning the election of the President of the Republic of Kosovo, dated 22 February 2011,* Judgment of 30 March 2011).

124. Moreover, the Court reminds that voting in the Assembly can be carried out in different ways: voting for, against or abstain; by open ballot or secret ballot; or in any other ways(See paragraph 4 of Article 51 [Quorum and voting in the meetings of the Assembly] of the Rules of Procedure of the Assembly).

125. The Court considers that the different ways of voting are meant to secure the democratic and independent expression of the will of the Deputies and to ensure the rights of the Deputies and for the Deputies to comply with their duties.

126. The Court notes that nowhere in the Constitution it is provided that the failure to elect the President of the Assembly would trigger the holding of new parliamentary elections.

127. It is the right and duty of all Members of Assembly to find a way to elect President and Deputy Presidents of the Assembly in accordance with the constitutional provisions in conjunction with the relevant Rules of Procedure of the Assembly and make the Assembly functional.

128. When constituting the Assembly, all Deputies have to be present and vote the way they wish, openly or secretly, voting for, against or abstain and cannot be exempted from doing so.

129. The Court reiterates that its ruling is based on the subject matter of the Referral as mentioned in paragraphs 3 and 4 of this Judgment.

FOR THESE REASONS

The Constitutional Court pursuant to Article 113.5 of the Constitution, Articles 42 and 43 of the Law and Rule 56.1 of the Rules of Procedure, on 21 August 2014,

DECIDED

I. TO DECLARE, unanimously, the Referral admissible;

II. TO HOLD, by majority, that:

a. The meeting and procedure followed after adjournment of the Constitutive Session on 17 July 2014 by the Chairperson due to lack of quorum violated Article 67 (2) in conjunction with Article 64 (1) of the Constitution and Chapter III of the Rules of Procedure implementing these Articles;

b. The Decision No. 05-V-001 of 17 July 2014 is unconstitutional as regards the procedure followed and as well as in substance as it was not the largest parliamentary group that proposed the President of the Assembly and, therefore, is null and void;

c. The Constitutive Session of the Assembly, which started on 17 July 2014, has not been accomplished, namely by not electing President and Deputy Presidents of the Assembly. Therefore, the Assembly has to complete the Constitutive Session, by electing President and Deputy Presidents in accordance with Article 67 (2) in conjunction with Article 64 (1) of the Constitution and Chapter III of the Rules of Procedure implementing these Articles and this Judgment;

III. TO NOTIFY this Judgment to the Parties;

IV. TO PUBLISH this Judgment in the Official Gazette, in accordance with Article 20.4 of the Law;

V. TO DECLARE this Judgment effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Almiro Rodrigues	Prof. Dr. Enver Hasani

Case No. KO119/14
Applicants
Xhavit Haliti and 29 other deputies of the Assembly of the Republic of
Kosovo
Constitutional review of Decision No. 05-V-001 of the Assembly of the Republic of Kosovo on the election of the President of the Assembly of the Republic of Kosovo, dated 17 July 2014.

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
Arta Rama-Hajrizi, Judge

DISSENTING OPINION of JUDGE ROBERT CAROLAN

The conclusion and reasoning of the majority in this case is wrong because it misinterprets specific language of the Constitution. It also erroneously attempts to answer questions that, as a Constitutional Court, it does not have the authority to answer. In doing so, it reaches erroneous conclusions with respect to the facts of the case and the applicable law and rules and procedure of the Assembly of the Republic of Kosovo.

With respect to the election of the President of the Assembly on 17 July 2014 the Applicants ask this Court the following questions:

a. *Was the President elected by the Assembly proposed by the "largest parliamentary group" as prescribed by Article 67.2 of the Constitution of the Republic of Kosovo?*

b. *Who has the right to propose the candidate for President of the Assembly during the constitutive session of the Assembly? Is it the political party or coalition that won the most votes in the election for the Assembly of 8 June*

2014 or the largest group that has been formed during the registration of the deputies?

c. *Did the President of the Assembly from the previous legislative Assembly violate the Constitution during the preparatory meeting on 07.12.2014 for the constitutive session of the Assembly on 17 July 2014?*

d. *During the constitutive session of the Assembly of the Republic of Kosovo was there a violation of the Constitution and the Rules of Procedure of the Assembly?*

Assessment of Admissibilty

This referral is made pursuant to Article 113.5 of the Constitution. Article 113.5 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.*

The Constitution specifically limits what questions deputies of the Assembly may ask the Constitutional Court to interpret. Those questions are limited to either laws or decisions of the Assembly, not other actions in the Assembly or actions of individual deputies or officers in the Assembly.

Insofar as this referral challenges whether the decision of the Assembly electing Mr. Isa Mustafa as President of the Assembly complied with Article 67 of theConstitution, it is admissible, and this Court has the authority to answer that question. Because this part of the referral challenges a decision of the Assembly and asks this Court to interpret a term used in the Constitution, this referral is admissible under Article 113.5 of the Constitution.

Other issues raised in the referral challenge whether the President of the Assembly or the Chairperson of the Assembly acted in accordance with the Constitution in the procedural process ultimately resulting in the election of Mr. Mustafa as President of the Assembly. Because that aspect of the referral does not challenge a decision of the Assembly, but rather actions of an Assembly official, the Applicants do not have the authority under Article 113.5 of the Constitution to ask this Court to

interpret that question. See *Ardian Gjni and eleven other Deputies of the Assembly of the Republic of Kosovo*, KO115/13, 16 December 2013. Therefore, that part of the referral is inadmissible and the Court does not have the authority under the Constitution to answer that question.

The referral also challenges whether the action of certain members of the Assembly on 17 July 2014 complied with either applicable law or the Rules of Procedure of the Assembly. For example, the referral alleges that the Assembly was adjourned when Mr. Mustafa was elected President of the Assembly. The Responding Deputies allege that the Assembly was still properly and legally in session when Mr. Mustafa was elected and that the Chairperson of the Assembly at the time improperly and illegally attempted to adjourn the session of the Assembly. Because the Constitution does not discuss when and how sessions of the Assembly can be adjourned, this Court has no authority to decide both the factual and procedural issues in dispute between the parties on this issue. For example, Article 50(2) of the Rules of Procedure for the Assembly requires that motions to adjourn a session of the Assembly must be approved by at least one parliamentary group. There could be a question whether the chairperson followed that rule on 17 July 2014. That dispute is properly resolved either by the Assembly or a similar legal forum, not the Constitutional Court. Because these allegations are not constitutional challenges, the Court does not have the authority to answer that question. Therefore, that aspect of the referral is also inadmissible.

Assessment of the Merits of the Referral

During theconstitutive session of the Assembly on 17 July 2014 the Chairperson of the Assembly asked the largest political party in the Assembly, the Democratic Party of Kosovo (PDK), to propose a candidate to be elected as President of the Assembly. A representative of PDK then nominated Mr. Agim Aliu for that position. Mr. Aliu, however, was never elected President by a majority of all deputies of the Assembly.

Mr. Isa Mustafa was subsequently nominated by a group from the political parties Democratic League of Kosovo (LDK), Alliance for Future of Kosovo (AAK), Vetëvendosja (VV) and the political movement, NISMA for the position of President of the Assembly. When a vote was taken, Mr. Isa Mustafa was then elected by receiving 65 votes, more than the majority required to be elected as President of the Assembly.

Applicants' claim that their political party, with 37 members in the Assembly, is the "largest parliamentary group" in the Assembly because

their political party received the most popular votes in the election of 8 June 2014.

The responding deputies representing a coalition formed on 8 July 2014 consisting of 47 members in the Assembly allege that they are the "largest parliamentary group" in the Assembly.

Both the Applicants and the Responding Deputies agree that the President of the Assembly shall be proposed by the "largest parliamentary group." They also agree that the President of the Assembly must be elected by a majority vote of all deputies of the Assembly. Therefore, the constitutional issue presented by this referral is who is authorized to propose a candidate for President of the new Assembly when it is formed. The constitutional answer to that question depends on the constitutional meaning of "largest parliamentary group" as it is used in Article 67(2) of theConstitution.

Article 67(2) of the Constitution provides:

> *The President of the Assembly is proposed by the largest parliamentary group and is elected by a majority vote of all deputies of the Assembly.* (Emphasis added.)

When Article 67(2) of the Constitution was adopted on 9 April 2008, it is quite likely that the drafters of the Constitution were aware of Article 9.1.9 of the Constitutional Framework of Kosovo adopted approximately eight years earlier on 15 May 2001. It specifically provides:

> *President of the Assembly*
>
> *9.1.9 A member of the Presidency from the party or coalition having obtained the highest number of votes in the elections for the Assembly shall be the President of the Assembly.* (Emphasis added.)

The Constitutional Framework clearly provided that the President of the Assembly shall be a member of the party or coalition that obtained the highest number of votes in the elections for the Assembly. When the drafters of the Constitution drafted Article 67 they specifically rejected that provision of the Constitutional Framework by requiring that the candidate for President of the Assembly be proposed by the largest parliamentary group, not the party or coalition that received the most popular votes in the recent elections. Unlike the Constitutional Framework which merely designated that a member of the party or

coalition that had the greatest number of votes in the elections shall be the President of the Assembly, the drafters of the Constitution required that the President of the Assembly must also be elected by a majority vote of the members of the Assembly. Because the drafters of the Constitution specifically rejected the language in the Constitutional Framework and because the Constitution now requires that the candidate proposed to be the President of the Assembly must also be elected by a majority vote of the members of the Assembly it is clear that the drafters of the Constitution meant that the "largest parliamentary group" in the Assembly was not solely the party or coalition that received the largest number of popular votes in the previous election, but rather, the largest group in the Assembly that could successfully elect the President.

The constitutional issue in this referral is distinguishable from the constitutional question decided in this Court's judgment in *Inquiry of the President of the Republic, KO103/14,* 1 July 2014. In that case the Court interpreted a different Article of the Constitution and interpreted the constitutional meaning of the term "political party or coalition that won themajority in the Assembly". In this referral the Court is being asked to interpret the constitutional meaning of the term "largest parliamentary group", which is a different constitutional term. Unlike parties and coalitions, parliamentary groups do not run in political elections but can be formed independent of elections by individual members of the Assembly. The practice of forming a parliamentary group frequently occurs after, not before, elections. Unlike the referral in KO103/14, where this Court was asked to interpret what the "largest political party or coalition" meant in Articles 95 and 84 of the Constitution, the Court is asked in this referral to interpret a specifically different term and a specifically different article of the Constitution relating to the selection of a specifically different official in the government of Kosovo. If the drafters of the Constitution had intended that the term "largest parliamentary group" to mean the same as the term "political party or coalition" as used in Article 95 of the Constitution they could have used that same language in Article 67 of the Constitution. The fact that they did not clearly means that they intended a different meaning.

The fact that, unlike the previous Constitutional Framework, the drafters of Article 67 of the Constitution clearly provided that the candidate proposed to be President of the Assembly must also be elected by a majority vote of all deputies of the Assembly clearly demonstrates that they intended that the group in the Assembly that had the best chance of electing a person to be President, the largest parliamentary group, not the largest political party or coalition that may only consist of a minority of the members of the entire Assembly, would have the right and obligation to propose a candidate for President. Indeed, if the person

proposed to be President of the Assembly cannot receive the votes of at least a majority of the members of the Assembly, the Assembly would be forced to exist without an essential officer for it to conduct its official business such as setting the agenda for the Assembly, convening and chairing sessions of the Assembly and signing acts adopted by the Assembly. *See*Article 67.7 of the Constitution. Under those circumstances it is quite likely that the Government could be dissolved pursuant to Article 82 of the Constitution simply by a successful vote of "no confidence." Such a result could not have been intended by the drafters of Article 67 of the Constitution.

With respect to the facts of this referral it is undisputed that Mr. Agim Aliu was nominated by the largest political party in the Assembly of Kosovo to be President, but his election to that post failed because he never received the votes of the majority (61) of the members of the Assembly. Therefore, because Mr. Isa Mustafa was proposed by the largest parliamentary group in the Assembly, consisting of 47 members, to be elected President of the Assembly after another candidate was not elected by the Assembly, and because he was elected on 17 July 2014 by more than a majority of the members of the Assembly, the decision of the Assembly electing Mr. Mustafa as President of the Assembly complied with the Constitution.

Respectfully submitted,
Robert Carolan
Judge

KI75/14, Tefik Dedinca, Decision of 1 July 2014- Constitutional Review of unspecified decision of unspecified public authority

CaseKI75/14, Decision of 1 July 2014

Key words: Individual Referral, strike out of the referral

The Applicant's main allegation was that he is innocent neither without explaining why or by invoking any constitutional provision.

The Constitutional Court decided to strike out the referral because the Applicant had filed an unclear and unintelligible referral and because the Applicant had failed to clarify and specify his Referral, despite a request from the Court to do so.

DECISION TO STRIKE OUT THE REFERRAL
in
Case No. KI75/14
Applicant
Tefik Dedinca
Constitutional review of unspecified decision of unspecified public authority

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 and
Arta Rama-Hajrizi, Judge

Applicant

1. The Referral is submitted by Mr. Tefik Dedinca a national of the Republic of Albania who is serving a sentence in the prison of Dubrava (hereinafter, the Applicant).

Challenged decision

2. The Applicant does not challenge any decision of a public authority.

Subject matter

3. The Referral has no subject matter and is illegible and unclear.

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. 03/121 on the Constitutional Court of the Republic of Kosovo (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 22 April 2014, the Applicant submitted a referral with the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).

6. On 6 May 2014, the President of the Constitutional Court by Decision No.GJR. KI75/14, appointed Judge Ivan Čukalović as Judge Rapporteur. On the same date, the President of the Constitutional Court by Decision No. KSH. KI75/14 appointed a Review Panel composed of judges: Altay Suroy (presiding), Snezhana Botusharova and Arta Rama-Hajrizi.

7. On 27 May 2014, the Applicant was notified about the registration of the referral whereby he was asked to complete and clarify his referral.

8. On 3 June 2014, the Applicant was asked again to complete and clarify his referral.

9. On 6 and 16 June 2014, the Applicant replied by submitting with the Court the referral form.

10. On 1 July 2014, 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. It can be drawn from the referral that the Applicant is a national of the Republic of Albania and that he is currently serving a sentence in the prison of Dubrava.

12. On 6 and 16 June 2014, the Applicant replied by submitting the referral form which is largely illegible and incomprehensible and did not attach to it relevant documentation.

Applicant's allegations

13. Because the referral is illegible and unclear it is not possible to comprehend Applicant's allegations regarding the breach of the rights and freedoms guaranteed by the Constitution.

14. Few statements that can be read from the referral are: *"I'm innocent until death… physical and mental torture…"*

Assessment of admissibility

15. The Court observes that in order to be able to assess the Applicant's referral, it is necessary first to examine whether they have fulfilled the admissibility requirements laid down in the Constitution as further specified in the Law and the Rules of Procedure.

16. 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".*

17. The Court refers to Rule 29 [Filing of Referrals and Replies] of the Rules of Procedure which provide:

> *"(…)*
> *(2) The referral shall also include: (a) the name and address of the party filing the referral; (b) the name and address of representative for service, if any; (c) a power of Attorney for representative, if any; (d) the name and address for service of the opposing party or parties, if known; (e) a statement of the relief sought; (f) a succinct description of the facts; (g) the procedural and substantive justification of the referral; and (h) the supporting documentation and information.*
>
> *(3) Copies of any relevant documents submitted in support of the referral shall be attached to the referral when filed. If only parts of a document are relevant, only the relevant parts are necessary to be attached".*

18. The Court also takes into account Rule 32 (4) of the Rules of Procedure which provides:

> *(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.*

19. In the concrete case, the Court notes that the Applicant has submitted an illegible, unclear and incomprehensible referral and furthermore he has not taken any action in order to clarify and specify his referral in spite of the Court's request to do so.

20. In addition, a second letter was sent to the Applicant warning him that if no relevant information and documents are provided, the Court would understand that he was not anymore interested in further proceeding with his Referral. The Court further notes that the Applicant only submitted a largely illegible and incomprehensible referral form without attaching to it any relevant documentation.

21. In sum, the Court considers that the abovementioned "Referral" does not reach the minimum threshold to be considered a Referral. Moreover, the Court considers that it is legitimate to assume that the Applicant is not anymore interested in further proceedings with his Referral (see case KI143/13, Applicant *Nebih Sejdiu,* Decision to Strike Out the Referral of 24 April 2014, also *mutatis mutandis* see case *Starodub v. Ukraine,* No. 5483/02, ECtHR, Decision of 7 June 2005).

22. The Court considers that this referral does not present a case or controversy and must be declared inadmissible in accordance with Rule 32 (4) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113 (7) of the Constitution, Article 47 of the Law and Rule 32 (4) of the Rules of Procedure, on 1 July 2014, unanimously

DECIDES

I. TO STRIKE OUT the Referral;

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 **President of the Constitutional Court**

Ivan Čukalović Prof. Dr. Enver Hasani

KI47/14, Mustaf Zejnullahu, Resolution of 26 June 2014- Constitutional Review of Judgment Rev. no. 89/2013 of the Supreme Court of Kosovo of 8 October 2013

CaseKI47/14, Decison of 26 June 2014.

Key words: Individual referral, manifestly ill-founded

The Supreme Court of Kosovo by Judgment Rev. no. 89/2013 of 8 October 2013 rejected the Applicant's claim of ownership over a contested cadastral plot with the municipality of Ferizaj.

The Applicant alleged that regular courts in Kosovo have violated his rights as guaranteed by Article 31 [Right to Fair and Impartial Trial], Article 46 [Protection of Property] and Article 54 [Judicial Protection of Rights] of the Constitution.

The Constitutional Court declared the Referral inadmissible for being manifestly ill-founded because the Referral did not indicate that regular courts acted in an arbitrary or unfair manner. Moreover, the Constitutional Court deemed that decisions of the regular courts are well-reasoned because they addressed the main allegations raised by the Applicant.

RESOLUTION ON INADMISSIBILITY
in
Case KI47/14
Applicant
Mustaf Zejnullahu
Constitutional review of Judgment Rev. no. 89/2013 of the Supreme Court of Kosovo of 8 October 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 and
Arta Rama-Hajrizi, Judge

Applicant

1. The Referral is submitted by Mr. Mustaf Zejnullahu from Ferizaj (hereinafter, the Applicant).

Challenged decisions

2. The Applicant challenges Judgment Rev. no. 89/2013 of the Supreme Court of Kosovo of 8 October 2013 which was served upon him on 15 November 2013, in connection with Judgment Ac. no. 361/2011 of the District Court in Prishtina of 13 November 2011, and Judgment C. no. 305/02 of the Municipal Court in Ferizaj of 19 January 2011.

Subject matter

3. The subject matter is the constitutional review of Decisions of the regular courts of Kosovo which allegedly *"have violated the Applicant's right to fair and impartial trial and the right for protection of his property"*.

4. In this respect, the Applicant claims 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.

Legal basis

5. 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 Court

6. On 14 March 2014, the Applicant filed a Referral with the Constitutional Court of the Republic of Kosovo (hereinafter, Court).

7. On 1 April 2014, the President of the Court by Decision No. GJR. KI47/14, appointed Judge Ivan Čukalović as Judge Rapporteur. On the same date, the President of the Court by Decision No. KSH. KI47/14, appointed the Review Panel composed of Judges Altay Suroy (Presiding), Snezhana Botusharova and Arta Rama-Hajrizi.

8. On 8 May 2014, the Court notified the Applicant about the registration of the Referral. On the same date, a copy of the Referral was sent to the Supreme Court of Kosovo.

9. On 26 June 2014, 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 12 September 2008, the Municipality of Ferizaj filed a lawsuit with the Municipal Court in Ferizaj in order to oblige the Applicant to release and give back possession of immovability at a place called “Saraishte” to the Municipality of Ferizaj.

11. On 19 January 2011, the Municipal Court in Ferizaj by Judgment C. no. 305/02: i) approved the lawsuit of the Municipality of Ferizaj as lawful, ii) upheld that the Applicant illegally and without legal basis is exercising factual possession of an immovability (cadastral plot no. 486/4) property of Municipality of Ferizaj, iii) obliged the Applicant to give back possession of the said immovability to the Municipality of Ferizaj, and iv) rejected in its entirety the counterclaim of the Applicant claiming that he acquired the

possession over the immovability based on statutory limitation or the right of permanent use of immovability as an alternative request.

12. On 13 November 2012, the District Court in Prishtina by Judgment Ac.no.361/201 rendered the following:

> *"The appeal of respondents-counterclaimants TE "MODA" in Ferizaj owned by Mustafe Zejnullahu (Applicant) from Ferizaj is REJECTED as UNFOUNDED, and the Judgment of Municipal Court in Ferizaj C.no.305/02 of date 19.01.2011 is UPHELD".*

13. On 8 October 2013, the Supreme Court of Kosovo by Judgment Rev. no. 89/2013, determined:

> *"The respondent's-counterclaimant's (Applicant) Revision submitted against the Judgment of District Court in Prishtina Ac.no.361/2011 of date 13.11.2012 is REJECTED as unfounded".*

14. In the abovementioned Judgment, the Supreme Court of Kosovo further reasoned:

> *From the case file it is found that the claimant-counter respondent seeks with the claim the handover of the immovable properties is registered as cadastral plot 486/4 and 586/1, which in 1983 where transferred in permanent use to the Contracting Organization "Univerzal" (hereinafter: CO "Univerzal) in Ferizaj for the purpose of exercising the textile activities, whereas starting from 1990 until NATO forces entered in Kosovo, the same were used by the Serbian regime to shelter Serb refugees. After the war in Kosovo ended the respondent Mustafe Zejnullahu entered in the possession of this immovable property. The respondent's-counterclaimant's owner Mustafe Zejnullahu claims that he has received these immovable properties in use and possession and pursuant to adverse possession he has acquired the right of property over the same.*
>
> *Considering this confirmed factual situation the lower instance courts have correctly applied the material right upon approving the statement of claim of claimant-counter respondent and rejected the respondent's-counterclaimant's claim in the counterclaim. This because the right to permanently use the contested plots was transferred by Ferizaj*

Municipality to the Contracting Organization "Univerzal" for the purpose of exercising the activities of the mentioned contracting organization. In the period between 1990 until the end of the war in Kosovo, the same were used by the Serbian regime to shelter Serb refugees. After the war in Kosovo ended the owner of the respondent-counterclaimant Mustafe Zejnullahu entered in the possession of this immovable property, where TE "Moda" exercises its activity. This immovable property is registered in the cadastral evidence as public property under the claimant's name. Pursuant to Article 20 of the Law on Basic Property Relationships it is specified that the ground for acquiring the ownership is the law, legal affair and inheritance. Pursuant to the Special Chamber of the Supreme Court of Kosovo (hereinafter: SCSCK) the respondent-counterclaimant have none of these grounds for acquiring the ownership of the contested immovable property.

The contested immovable property was given in permanent use to CO "Univerzal" and not TE "Moda", therefore the assessment of the lower instance courts that there is no legal continuity between the CO "Univerzal" and TE "Moda" and that the later is a new legal entity is correct.

The claims in the respondent's-counterclaimant's (Applicant) Revision that the claimant performed all the changes in the cadastre in relation to the contested immovable properties on the ground of the Board of Directors and the same was annulled by the Supreme Court, have no impact in rendering a different decision in this legal matter, because the alienation of the immovable property from public ownership is done through a public auction and pursuant to Article 9 of the Law on the Circulation of Immovable Properties of Kosovo ("Official Gazette SAPK 45/81, 29/86 and 28/88) it is specified that the contract on the alienation of the contested immovable property from public ownership against this particular provision is void. The right of property over the contested immovable property has not been transferred pursuant to any legal ground but only the right of use, and it was transferred to CO "Univerzal" that no longer exists as a legal entity.

Applicant's allegations

15. The Applicant alleges that regular courts have violated the principle of equality of arms, the proceedings were delayed, and that his main allegations were disregarded.

16. The Applicant has also attached the following decisions: Decision of the Commercial District Court St.br. 1/88 of 24 December 1991, Decision of the Commercial District Court SA. br. 1/88 of 29 September 1988, Decision of the Supreme Court of Kosovo Pr.br. 414/88 of 29 July 1988, Decision of the Supreme Court of Kosovo Pr.br. 571/89 of 7 June 1989, Decision of the Supreme Court of Kosovo A. nr. 251/2002 of 16 December 2004, Judgment A.nr.1336/89 of the Supreme Court of Kosovo of 15 March 1990, Decision 01.nr.463-22 of the Municipality of Ferizaj of 28 September 1983, Decision 04 br. 464-12/84 of the Municipality of Ferizaj of 21 December 1984, Decision 05 br. 351-436-83 of Municipality of Ferizaj of 26 December 1984.

17. The Applicant alleges that regular courts in Kosovo have violated Article 31 [Right to Fair and Impartial Trial], Article 46 [Protection of Property], Article 54 [Judicial Protection of Rights] of the Constitution, Article 6 (Right to a fair trial), Article 1 of Protocol 1 (Protection of property) of the European Convention on Human Rights (hereinafter, the Convention), and Article 7 (Equality before the law), Article 10 (Right to a fair trial) and 17 (Protection of property) of the Universal Declaration of Human Rights.

Assessment of admissibility

18. The Court observes that, in order to be able 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.

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 exhaustion of all legal remedies provided by law".*

20. Furthermore, 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".

21. In the concrete case, the Court notes that the Applicant has exhausted all legal remedies in accordance with Article 113.7 of the Constitution and has submitted the referral within the legal deadlines as provided for in Article 49 of the Law.

22. 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".

23. In the concrete case, the Court notes that the regular courts have provided: i) coherent explanations in relation to legal continuity of legal persons, ii) legal basis for acquisition of property, and iii) replied to central issues of the legal matter before them which render Applicant's allegations unsubstantiated.

24. Furthermore, the Court notes that Applicant's allegations concerning the breach of the equality of arms, delay of proceedings are raised by him for the first time before this Court and not before the regular courts. Moreover, the Court considers that a period of three years for development and conclusion of judicial proceedings in three instances of regular court jurisdiction does not render them excessive and as such it does not give rise to a breach of paragraph 1 of Article 6 of the Convention.

25. As to other decisions attached by the Applicant, the Court notes that they were rendered under different legal system in different circumstances and at a time when the Court had no temporal jurisdiction and are as such *ratione temporis* incompatible with the Constitution which entered into force on 15 June 2008.

26. 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 case, *Akdivar v. Turkey*, No. 21893/93, ECtHR, Judgment of 16 September 1996, para. 65, also *mutatis mutandis* see case KI86/11, *Applicant Milaim Berisha*, Resolution on Inadmissibility of 5 April 2012).

27. 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 case *Edwards v. United Kingdom*, No. 13071/87, Report of the European Commission of Human Rights of 10 July 1991).

28. The fact that the Applicant disagrees with the outcome of the case cannot of itself raise an arguable claim of a breach of Articles 31 [Right to Fair and Impartial Trial] and 46 [Protection of Property] of the Constitution (See case *Mezotur-Tiszazugi Tarsulat v. Hungary*, No. 5503/02, ECtHR, Judgment of 26 July 2005).

29. In these circumstances, the Applicant has not substantiated his allegation for violation of Articles 31 [Right to Fair and Impartial Trial] and 46 [Protection of Property] of the Constitution, because the facts presented by him do not show in any way that the regular courts have denied him the rights guaranteed by the Constitution.

30. Consequently, the Referral is manifestly ill-founded and should be declared 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 47 of the Law and Rules 36 (1) c) of the Rules of Procedure, on 26 June 2014, unanimously

DECIDES

I. TO DECLARE the Referral 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	**President of the Constitutional Court**
Ivan Čukalović	Prof. Dr. Enver Hasani

KI40/14, Valon Haskaj, Resolution of 26 June 2014- Constitutional Review of the Judgment, KZZ. No. 187/2013 of the Supreme Court of Kosovo, of 8 November 2013

Case KI40/14, Decision of 26 June 2014.

Key words: Individual Referral, principal of legality and proportionality in criminal cases, right to a fair and impartial trial, judicial protection of rights, manifestly ill-founded.

By Judgment of the Supreme Court of 8 November 2013 it was decided to amend the Judgment of the District Court in Prishtina and to impose a more severe imprisonment sentence for the Applicant.

The Applicant alleges that the Judgments of the Supreme Court violated his rights guaranteed by Article 31 [Right to Fair and Impartial Trial], Article 33 [The Principle of Legality and Proportionality in Criminal Cases], Article 54 [Judicial Protection of Rights] of the Constitution and Article 8 [Right to Effective Remedy] and Article 10 [Right to a Fair and Public Hearing] of the Universal Declaration of Human Rights and Article 6 [Right to a fair Trial] of the European Convention on Human Rights. The Applicant did not explain how and why the aforementioned articles were violated by the Judgment of the Supreme Court. He further alleges violation of the provisions of the criminal law.

The Constitutional Court held that the justification provided by the Judgment of the Supreme Court in answering all of the allegations made by the Applicant is clear and well reasoned and it covered the allegations made by the Applicant on the basis of the Criminal and Criminal Procedure Codes.

The Constitutional Court declared the Referral as inadmissible for being manifestly ill-founded because the facts presented by the Applicant do not in any way justify the alleged violation of the constitutional rights invoked by him and he has not sufficiently substantiated his allegation.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI40/14
Applicant
Valon Haskaj
Constitutional Review of the Judgment, KZZ. No. 187/2013 of the Supreme Court of Kosovo dated 8 November 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 and
Arta Rama-Hajrizi, Judge

Applicant

1. The Applicant is Mr. Valon Haskaj (hereinafter: the Applicant), who is serving a sentence in Dubrava prison near Istog. The Applicant is represented by Mr. Živojin Jokanović, a practicing lawyer from Prishtina.

Challenged decisions

2. The Applicant challenges the Judgment of the Supreme Court, KZZ. No. 187/2013 of 8 November 2013. The Applicant did not declare when the last Judgment of the Supreme Court (KZZ. No. 187/2013 of 8 November 2013) was served on him.

Subject matter

3. The subject matter of the Referral is the constitutional review of the Judgment of the Supreme Court, KZZ. No. 187/2013 dated 8 November 2013. By Judgment, Kz. No. 328/2012 dated 17 October 2012, the Supreme Court decided to amend the Judgment of the District Court in Prishtina and impose a more severe imprisonment sentence for the Applicant, whereas by Judgment, KZZ. No. 187/2013 dated 8 November 2013, the Supreme Court

rejected the Applicant's request for protection of legality as ungrounded.

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 (hereinafter: the Law), and Rule 56 of the Rules of Procedure (hereinafter: the Rules).

Proceedings before the Constitutional Court

5. On 4 March 2014 the Applicant filed the Referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the "Court").

6. On 1 April 2014 by Decision GJR. KI40/14, the President appointed Judge Ivan Čukalović as Judge Rapporteur. On the same date, by Decision KSH. KI40/14, the President appointed the Review Panel composed of Judges, Altay Suroy (presiding), Snezhana Botusharova and Arta Rama-Hajrizi.

7. On 25 April 2014 the Court informed the Applicant of the registration of the Referral.

8. On 14 May 2014 the Court sent a copy of the Referral to the Supreme Court.

9. On 26 June 2014 Judge Kadri Kryeziu notified in writing the Court for his exclusion from the deliberations for the period June-July 2014 until the Court decides regarding certain allegations raised against him.

10. On 26 June 2014, 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 Case

11. Pursuant to Indictment filed by the District Prosecution in Prishtina (Kt. No. 154-1/2011 of 7 June 2011), the Applicant was charged for having committed the following criminal offences:

kidnapping, extortion and unauthorized ownership, control or possession of weapons.

12. On 24 February 2012, the District Court in Prishtina (Judgment, K. no. 313/2011) found the Applicant guilty and sentenced him to a total of 7 (seven) years imprisonment.

13. Against the Judgment of the District Court, the District Public Prosecutor and the Applicant filed an appeal with the Supreme Court. The District Public Prosecutor proposed to the Supreme Court to amend the Judgment of the District Court and impose a more severe imprisonment sentence for the Applicant. Whereas, the Applicant in his appeal, alleged essential violations of the provisions of the Criminal Procedure Code of Kosovo (hereinafter: CPCK) and erroneous and incomplete determination of the factual situation.

14. On 17 October 2012 the Supreme Court (Judgment, Kz. No. 328/2012) approved the appeal of the District Public Prosecutor and rejected the Applicant's appeal as ungrounded.

15. The Supreme Court with its aforementioned Judgment further decided to amend the Judgment of the District Court in Prishtina and sentenced the Applicant to a total of 10 (years) imprisonment.

16. The Supreme Court, reasoned its Decision to approve the District Prosecutor's appeal as following:

> *"[...] this court finds that the appeal claims of the DPP in Prishtina are grounded and that the punishments imposed against the accused are too lenient. By individualizing the punishment against a specific perpetrator of the offense, through the process of assessing the punishment, the severity of the criminal offense is toned down thus in this case it must be considered that the harshness of the punishment achieves the purpose of the punishment, which pursuant to the legal intentions must express a balance between the demand to enable the re-socializing of the accused through correction and the demand of the public that such a punishment with its weight has a general character of refraining from perpetrating criminal offenses.*

17. The Applicant submitted to the Supreme Court a request for protection of legality, alleging violation of the provisions of the Criminal Code of Kosovo (hereinafter: CCK) and essential violation

of the provision of the criminal procedure. In his request, the Applicant proposed the Supreme Court to amend the Judgment of the second instance court and impose a more lenient punishment.

18. On 29 October 2013 the State Prosecutor, pursuant to Submission KMPL. II No. 134/2013 proposed that the request for protection of legality had to be rejected as ungrounded.

19. On 8 November 2013, the Supreme Court, upon review of the Applicant's allegations and response of the State Prosecutor, with its Judgment KZZ. No. 187/2013 decided to reject the request for protection of legality as unfounded.

Applicant's allegations

20. The Applicant alleges that the Judgments of the Supreme Court violated his rights guaranteed by Article 31 [Right to Fair and Impartial Trial], Article 33 [The Principle of Legality and Proportionality in Criminal Cases], Article 54 [Judicial Protection of Rights] of the Constitution and Article 8 [Right to Effective Remedy] and Article 10 [Right to a Fair and Public Hearing] of the Universal Declaration of Human Rights (hereinafter: the UDHR), and Article 6 [Right to a fair Trial] of the European Convention on Human Rights (hereinafter: the ECHR). The Applicant does not explain how and why the aforementioned articles were violated by the Judgments of the Supreme Court. He further alleges violation of the provisions of the criminal law.

21. The Applicantaddresses the Court as following:

> *"The essence of the Referral is to review the constitutionality and legality of the specified Judgments, and in particular the Judgment of the Supreme Court of Kosovo, which also changed the first instance's Judgment in the part pertaining to the punishment by rendering a harsher punishment. Through this Referral it is sought the confirmation by the Court that in this specific case the constitutional rights, the international agreements, whose direct applicability is recognized by the Constitution, and CCK applicable at the time the offense was perpetrated have been seriously violated against the convict.*
> *Thus we seek that the Court rescinds the challenged Judgments and orders a retrial, and also suspends the execution of the same until a new decision is rendered by the regular courts.*

This Referral does not cover the criminal offense of unauthorized ownership, control or possession of weapons pursuant to Article 328, since that offense has been pardoned.“

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 examinewhether the Applicant has met 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, 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.”

24. 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.”*

25. In the present case, the Court notes that the Applicant has made use of all legal remedies available under the law. The Court also notes that the challenged Decision was rendered on 8 November 2013, and the Applicant filed his Referral with the Court on 4 March 2014.

26. However, the Court refers to Rule 36 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:

[…], or

(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".

27. The Applicant, as said above, challenged the Judgments of the first and second instance courts, before the Supreme Court for violation of the criminal law and essential violation of the provisions of the criminal procedure.

28. Whereas in his Referral before the Court, the Applicant also alleges that the Judgments of the Supreme Court violated his rights guaranteed by Article 31 [Right to Fair and Impartial Trial], Article 33 [The Principle of Legality and Proportionality in Criminal Cases], Article 54 [Judicial Protection of Rights] of the Constitution and Article 8 [Right to Effective Remedy] and Article 10 [Right to a Fair and Public Hearing] of the UDHR, and Article 6 [Right to A fair Trial] of the ECHR and as well the provisions of the CCK and CPCK.

29. However, the Applicant does not explain how and why the aforementioned rights guaranteed by the Constitution and international instruments were violated by the Judgments of the Supreme Court.

30. In fact, the Applicant challenges the Judgments of the Supreme Court by referring to the provisions of the Criminal Code of Kosovo and concluding as following:

"[…] in no way does not try to challenge the authorization of the Supreme Court of Kosovo to provide their comprehension, legal interpretations and similar in all cases of the application of the law, but really in this case, the court probably lead by the importance of the of the protected value in any case with too harsh Judgment and qualification deviated from the strict application of the law."

31. Thus, the Court finds that what the Applicant raises is a question of legality and not of constitutionality.

32. In this relation, 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).

33. The Constitutional Court further 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.The role of the regular courts is to interpret and apply the pertinent rules of both procedural and substantive law. (See Case *Garcia Ruiz vs. Spain*, No. 30544/96, ECHR, Judgment of 21 January 1999; see also case KI70/11 of the Applicants *Faik Hima, Magbule Hima and Bestar Hima*, Constitutional Court, Resolution on Inadmissibility of 16 December 2011). The mere fact that the Applicant is not satisfied with the outcome of the proceedings in his case do not give rise to an arguable claim of a violation of his rights as protected by the Constitution. The Court notes that the Applicant had ample opportunity to present his case before the regular courts.

34. Furthermore, as mentioned above, the Court notes that the reasoning in the challenged Judgment of the Supreme Court is clear and, after having reviewed all the proceedings, the Court has also found that the proceedings before the District Court in Prishtina and the Supreme Court have not been unfair or arbitrary (See Case *Shub vs. Lithuania*, no. 17064/06, ECHR, Decision of 30 June 2009).

35. Moreover, the Court notes that the justification provided by the Judgment of the Supreme Court in answering all of 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.

36. For the foregoing reasons, the Court considers that the facts presented by the Applicant do not in any way justify the alleged violation of the constitutional rights invoked by the Applicant and he has not sufficiently substantiated his allegation.

37. Hence, the Courtconcludes that the Referral is manifestly ill-founded.

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 26 June 2014, unanimously:

DECIDES

I. TO DECLARE 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

KI95/14, N.P.P. Adriatik Commerce, Resolution of 3 July 2014- Constitutional Review of the Judgment E. Rev. no. 30/2013, of the Supreme Court, of 9 December 2013

Case KI95/14, Decision of 3 July 2014.

Key words: individual referral (legal person), civil contest, right to fair and impartial trial, manifestly ill-founded referral.

In the present case, the applicant alleged that the Supreme Court violated its rights, guaranteed by the Constitution, because it did not summon its representative to participate in the hearing, when reviewing the extraordinary legal remedy (revision). The Applicant also claimed that it has not been summoned either by the Court of Appeal to participate in the hearing session, when reviewing the appeal filed against the first instance court judgment, in order to have an opportunity to comment on the facts and evidence, presented in this civil case. The Applicant alleges that by this, the principle of equality of arms has been violated in the proceedings, before these courts.

After having considered the case in entirety , the Court found that the Applicant's allegations for violation of the right to fair trial by the Supreme Court were not grounded, because the Applicant could not has not substantiated by evidence, how and why, the Supreme Court has violated his right to fair trial. As regards to the Applicant's allegation that the present case is similar to its Judgment, in case KI108/10, the Court considered that the factual and procedural circumstances of the Applicant's case differ significantly from the case the Applicant is referred to.

In the present case, the Court did not consider that the proceedings before the Supreme Court, which decision is challenged, were partial or in any way unfair or arbitrary. In this respect, the Court mutatis mutandis referred to the case Shub vs. Lithuania, ECHR Decision as to the Admissibility of Application Nr. 17064/06, of 30 June 2009).

In sum, the Court concluded that the Applicant's Referral, pursuant to Article 48 of the Law and Rule 36 (1) c) of the Rules of Procedure is manifestly ill-founded.

RESOLUTION ON INADMISSIBILITY
in
Case no. KI95/14
Applicant
N.P.P. "Adriatik - Commerce"
Constitutional review of the Judgment of the Supreme Court, E. Rev. no. 30/2013, of 9 December 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 and
Arta Rama-Hajrizi, Judge

Applicant

1. The Applicant is N.P.P. "Adriatik - Commerce", with its seat in the village Velekinca, Municipality of Gjilani, which is represented by Mr. Muhamet Shala, lawyer from Prishtina.

Challenged decision

2. The Applicant challenges the Judgment of the Supreme Court, E. Rev. no. 30/2013, of 9 December 2013, which allegedly was served on the Applicant on 3 February 2014.

Subject matter

3. The subject matter of this Referral is the constitutional review of the Judgment of the Supreme Court, E. Rev. no. 30/2013, of 9 December 2013, by which the Applicant alleges that its rights guaranteed by Article 21 [General Principles], Article 31 [Right to Fair and Impartial Trial], Article 53 [Interpretation of Human Rights Provisions], as well as by Article 6.1 [Right to a Fair Trial] of ECHR.

Legal basis

4. The legal basis of this Referral are Articles 113.7 and 21.4 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) and Articles 20 and 47 of the Law on the Constitutional Court of the Republic of Kosovo, no. 03/L-121 (hereinafter: the Law).

Proceedings before the Constitutional Court

5. On 26 May 2014, the Applicant filed the Referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 10 June 2014, the President of the Court, by Decision No. GJR. KI95/14, appointed Judge Snezhana Botusharova as Judge Rapporteur, and by Decision no. KSH. KI95/14, appointed the Review Panel, composed of Judges: Robert Carolan (Presiding), Almiro Rodrigues (member) and Prof. Dr. Enver Hasani (member).

7. On 10 June 2014, the Court notified the Applicant and the Supreme Court of the registration of Referral.

8. On 26 June 2014 Judge Kadri Kryeziu notified in writing the Court for his exemption from the deliberations for the period June-July 2014 until the Court decides regarding the allegations raised against him.

9. On 3 July 2014, the Review Panel considered the report of the Judge Rapporteur and recommended to the Court the inadmissibility of the Referral.

Summary of facts

10. The Applicant was in the obligational relationship with the insurance company "Siguria" in Prishtina (insurance policy 1500047, serial no. 00059, 5 January 2007), for property insurance from fire and other risks.

11. On 10 June 2007, the Applicant's property, the sponge factory, was caught on fire, which caused material damage in two of five sectors of this factory.

12. On 4 January 2008, the Applicant addressed the insurance company "Siguria", by a written request, for compensation of damage caused by the fire. The Applicant's request for compensation of material damage was filed based on the insurance policy no. 1500047, with serial no. 00059, of 5 January 2007. However, according to the claims of the Applicant's authorized representative, the insurance company "Siguria" did not fulfill its obligation for compensation of damage.

13. On 4 February 2008, the Applicant filed a statement of claim with the Municipal Court in Gjilan, but the court declared itself incompetent regarding the subject matter jurisdiction and remanded the case to the District Commercial Court in Prishtina.

14. On 19 November 2009, the Commercial District Court in Prishtina, by Judgment II. C. no. 127/2008 rejected the Applicant's statement of claim as ungrounded, by which he requested the compensation of the material damage by requesting the application of legal interest, from the day of filing the claim, until the final payment of the amount of the caused damage.

15. Against the Judgment of the District Commercial Court in Prishtina, the Applicant filed an appeal with the Court of Appeal of the Republic of Kosovo, (hereinafter: the Court of Appeal), due to substantial violations of the procedural provisions, erroneous determination of factual situation and erroneous application of the material law.

16. On 8 May 2013, the Court of Appeal rendered Judgment Ac. no. 85 /2012, by which rejected the Applicant's appeal as ungrounded and upheld the Judgment of the District Commercial Court in Prishtina, II. C. no. 127/2008, of 19 November 2009.

17. Furthermore, the reasoning of the rejection of the Applicant' statement of claim by the Court of Appeal is as follows:

> *"Due to the fact that no evidence was presented to determine what caused the fire in the claimant's business premises, there is no legal ground to compensate the material damage and the lost profit. The claimant was obliged, after the fire broke out, to obtain relevant evidence, through the competent court, to engage a respective expert and based on that evidence to confirm beyond any doubt the factual situation. The claimant did not provide any evidence during the first instance*

procedure or the appeal procedure which would make credible its statement of claim. Pursuant to provision of Article 221 of the LCP, it is provided that if the court on the ground of administered evidence cannot determine a fact with certainty, it will conclude by applying the rules of the burden of proof, and in present case the claimant has the burden of proof for the ground of the claim".

18. The Applicant filed a revision with the Supreme Court, against Judgment of the Court of Appeal, Ac. no. 85 /2012, by requesting again the compensation of material damage and compensation of the lost profit, caused by the fire in the sponge factory.

19. On 9 December 2013, the Supreme Court rendered Judgment E. Rev. no. 30/2013, by which it rejected in entirety the revision filed by the Applicant.

20. In addition, the Supreme Court reasoned the rejection of revision as it follows:

"Setting from such a situation of the case, the Supreme Court of Kosovo finds that the second instance court acted correctly when it found that the claimant's appeal is not grounded and rejected it as such and upheld the first instance court's Judgment. In the said Judgment it also provided sufficient reasons for the decisive facts, which this court recognizes as well.

The claims in the revision that the court had violated the provisions of the contested procedure since the enacting clause of the judgment is in contradiction to the reasoning, that the legal-civil rules have not been applied and that the relevant arguments and evidence, which impacted the court to render an ungrounded judgment without legal ground had not been determined correctly, the Supreme Court found them ungrounded, because in the revision it was not specified which part of the Judgment is alleged that the enacting clause is contrary to the reasoning. With regards to the assessment of the evidence, the Supreme Court of Kosovo found that the lower instance courts had correctly assessed the fact that the fire was not caused by a light bulb, as alleged by the claimant, which was the conclusion of the electro-technician expert M.V. who excluded the possibility that the cause of the fire was the heat emitted by the light bulb, who also grounded his opinion on the proven experiment.

The fact mentioned in the revision that the court did not take into account the Report of the Directorate for Public Safety and Emergencies – Sector on Fire Prevention and Detection, who concluded that in the present case there are no purposeful elements, excluding the human factor, the Supreme Court of Kosovo assessed it, but the latter had no impact on rendering a different decision, as it did not confirm what was the cause of the fire in the claimant's business premises. Pursuant to Article 319, paragraph1 of the LCP, each litigating party is obliged to prove the facts on which it grounds its demands and claims, and pursuant to paragraph 2 of the same Article it is provided that the proof includes all important facts in rendering the decision. The fire broke out on 10.6.2007, whereas the claim was submitted to the Municipal Court in Gjilan on 22.2.2008, while the District Commercial Court received the claim on 11.4.2008, thus providing the evidence was necessary, because pursuant to Article 379 of the LCP, it is provided that such a possibility in cases when the obtaining of any evidence risks of getting lost or it becomes difficult, and the claimant did not use this opportunity. Therefore, the Supreme Court of Kosovo finds that the legal stance of the lower instance courts, that the claimant's statement of claim is not grounded, is correct and based on law, therefore the claims in the revision that the material law was erroneously applied, was found as ungrounded".

Applicant's allegations

21. The Applicant alleges that the Supreme Court has violated its rights, guaranteed by the Constitution, because it has not summoned its representative to participate in the hearing, when reviewing the extraordinary legal remedy (revision). The Applicant also claims that it has not been summoned either by the Court of Appeal to participate in the hearing session, when reviewing the appeal filed against the first instance court judgment, in order to have an opportunity to comment on the facts and evidence, presented in this civil case. The Applicant alleges that by this, the principle of equality of arms has been violated in the proceedings, before these courts.

22. The Applicant alleges that the Court may apply its Judgment, in case KI108/10, *Fadil Selmanaj*, of 6 October 2011.

Admissibility of the Referral

23. The Court examines beforehand whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution and further specified in the Law and the Rules of Procedure.

24. In the present case, 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. In addition, Rule 36 (1) c) and 36 (2) d) of the Rules of Procedure, provides:

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:
[...]
b) when the presented facts do not in any way justify the allegation of a violation of the constitutional rights;
[...]
d) when the Applicant does not sufficiently substantiate his claim.

26. The Applicant in this case alleges that Judgment of the Supreme Court, E. Rev. no. 30/2013, of 9 December 2013, has violated its constitutional right, guaranteed by Article 21 [General Principles]; Article 31 [Right to Fair and Impartial Trial]; Article 53 [Interpretation of Human Rights Provisions] as well as Article 6.1 [Right to a Fair Trial] of the ECHR.

27. As to the Applicants' allegation for violation of Article 31 of the Constitution [Right to Fair and Impartial Trial], the Court considers that the Applicant in the constitutional aspect has not substantiated by evidence, how and why, the Supreme Court has violated this specific provision of the Constitution.

28. The Supreme Court has reasoned its decision in a comprehensive manner, by responding to the Applicant's appeal in all issues raised before it (see the reasoning of Judgment of the Supreme Court, E. Rev. no. 30/2013, in paragraph 17, of this document).

29. As regards to the Applicant's allegation that the present case is similar to its Judgment, in case KI108/10, the Court considers that the factual and procedural circumstances of the Applicant's case differ significantly from the case the Applicant is referred to. In the present case, we have to do with a civil case, which was solved by the District Commercial Court. The latter summoned the litigating parties to provide their evidence, during the main hearing of the case, and heard them. However, the Applicant, unsatisfied with the outcome of the decision, used ordinary legal remedy, the right to appeal in the Court of Appeal, which upheld in entirety the decision of the first instance court. Against the decision of the Court of Appeal, the Applicant used also the extraordinary legal remedy (revision), but the Supreme Court by revision rejected its statement of claim.

30. In its Judgment, KI108/10, the Applicant was a party, according to administrative proceedings and won the case in the IOBK. The Municipality of Mitrovica initiated administrative conflict with the Supreme Court, the latter decided in favour of the Municipality of Mitrovica, by modifying the Decision No. 02 (285) 2008,of the IOBK, without notifying the interested party, which was directly affected by the Decision of the Supreme Court.

31. In addition, in the paragraph extracted from its Judgment, in case KI108/10, it is stated: *"In fact, the Municipality of Mitrovica filed a petition with the Supreme Court in the file case where the Applicant was already a party. Thus, the Applicant was a stranger to that petition, in spite of the fact that the petition impacted substantially on the determination of his civil rights. That conclusion is corroborated by Article 16 of the Law on administrative conflict which prescribes that the "the third person to whom the nullification of the challenged act would be in direct damage (interested party) has in the dispute the position of the party"*

32. As it can be seen, we are dealing with cases with completely different factual and procedural circumstances. Since the very beginning and up to the end, the Applicant had the capacity of the claiming party, in the regular proceedings, while the insurance

company "Siguria", had the capacity of the responding party. Therefore, the Applicant's allegations that the Court of Appeal and the Supreme Court rendered the decisions denying the Applicant the opportunity to comment on facts and evidence, attached to the appeal and revision, cannot be considered as a violation of the right to a fair trial and equality of arms, as long as the Applicant has been provided many opportunities for challenging the responses to appeal, filed by the responding party, the insurance company "Siguria".

33. Furthermore, in the present case, the Court cannot act a court of fourth instance, regarding the judgment rendered by the Supreme Court. 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).

34. In the present case, the Court cannot consider that the proceedings in the Supreme Court, which decision is challenged, were partial or in any way unfair or arbitrary (See, *mutatis mutandis, Shub vs. Lithuania*, ECHR Decision as to the Admissibility of Application Nr. 17064/06, of 30 June 2009).

35. Therefore, the Court finds that the Applicant has not substantiated and justified its allegation for violation of the right to fair and impartial trial.

36. Consequently, there is no logical and practical need to further review the other alleged violations, as summarized and included in the allegation for violation of the right to fair and impartial trial.

37. In sum, the Court concludes that the Applicant's Referral, pursuant to Article 48 of the Law and Rule 36 (1) c) of the Rules of Procedure is manifestly ill-founded.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, in compliance with Rule 36 (2) b) and d) and Rule 56 (2) of the Rules of Procedure, on 3 July 2014, unanimously

DECIDES

I. TO DECLARE the Referral 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	**President of the Constitutional Court**
Snezhana Botusharova	Prof. Dr. Enver Hasani

KI67/14, Muharrem Sopa, Resolution of 1 July 2014- Constitutional Review of Judgment Rev. no. 59/2013, of the Supreme Court of Kosovo, of 23 October 2013

CaseKI67/14, Decision of 1 July 2014.

Key words:Individual Referral,manifestly ill-founded

The Applicant alleges that the Judgment of the Supreme Court has violated the rights guaranteed by the Constitution, pursuant to Article 31 [Right to Fair and Impartial Trial] by emphasizing that this right is also protected by the European Convention of Human Rights.

The Applicant requested from the Court to annul all decisions of the regular courts and to approve his Referral as grounded.

The Court finds that the facts presented by the Applicant do not in any way justify the allegation for violation of a constitutional right, and it cannot be concluded that the Referral is grounded and, therefore, in accordance with Rule 36, paragraph 2, item b, it found that the Referral should be rejected as manifestly ill-founded and be declared inadmissible.

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 20 of the Law and Rule 56 of the Rules of Procedure, on 1 July 2014, unanimously declares the Referral inadmissible as manifestly ill-founded.

RESOLUTION ON INADMISSIBILITY
in
Case no. KI67/14
Applicant
Muharrem Sopa
Request for constitutional review of Judgment of the Supreme Court of Kosovo, Rev. no. 59/2013, of 23 October 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, and
Arta Rama-Hajrizi, Judge

Applicant

1. The Applicant is Mr. Muharrem Sopa from Suhareka.

Challenged decision

2. The challenged decision is the Judgment of the Supreme Court of Kosovo, Rev. no. 59/2013, of 23 October 2013,which was served on the Applicant on 5 December 2013.

Subject matter

3. The subject matter is the constitutional review of the challenged Judgment of the Supreme Court, which according to the Applicant, has allegedly violated the rights guaranteed by the Constitution of Kosovo, under Article 31 [Right to Fair and Impartial Trial].

Legal basis

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

Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 2 April 2014, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 6 April 2014, by Decision GJR. KI67/14, the President of the Court appointed Judge Snezhana Botusharova as Judge Rapporteur, and on the same date appointed the Review Panel, composed of Judges: Robert Carolan (Presiding), Almiro Rodrigues and Enver Hasani.

7. On 23 May 2014, the Court requested from the Applicant the power of attorney for his representative and the court decisions missing in the documentation submitted by the Applicant. The Court has not received any reply from the Applicant within required time limit.

8. On 23 May 2014, the Supreme Court was notified on the registration of the Referral and was served with a copy of the Referral.

9. On 23 May 2014, the Court sent to the Basic Court in Prizren, Branch in Suhareka, the notification on the registration of the Referral, thereby requesting also the additional documents regarding this case.

10. On 28 May 2014, the Court received from the Basic Court in Prizren, Branch in Suhareka, the requested additional documents, based on which it was confirmed the date when the Judgment of the Supreme Court was served on the Applicant.

11. On 26 June 2014, Judge Kadri Kryeziu notified the Court in writing of his not taking part in the deliberations for the period June-July 2014 awaiting the Court's decision regarding certain allegations raised against him.

12. On 1 July 2014, the Review Panel considered the report of Judge Rapproteur and recommended to the Court the inadmissibility of the Referral.

Summary of facts

13. On 13 October 2000, the Municipal Court in Suhareka rendered the Judgment C. no. 85/2000, by which the Applicant's claim, filed together with his work colleague J. B., for reinstatement to his working place as a pedagogical advisor in the Municipality of Suhareka, was rejected as ungrounded.

14. On 2 April 2001, the District Court in Prizren rendered the Judgment Ac. no. 100/2000, by which approved as grounded the appeal of the Applicant and of his work colleague J. B., quashed the Judgment of the Municipal Court in Suhareka C. no. 85/2000 and remanded the case for reconsideration to the first instance court.

15. On 14 May 2002, the Municipal Court in Suhareka once more, by Judgment C. no. 205/202, rejected as ungrounded the Applicant's claim with the reasoning of the lack of passive legitimacy of the responding party – the Municipality of Suhareka.

16. On 18 December 2003, the District Court in Prizren approved again the appeal of the Applicant's representative and quashed the Judgment of the Municipal Court in Suhareka, C. no. 205/2002, by remanding the case for retrial to the first instance court.

17. On 25 October 2011, the Municipal Court in Suhareka rendered the Judgment C. no. 153/06, by which rejected as ungrounded the claim filed by the Applicant and second claimant, J. B., for reinstatement to work with the Directorate of Education of the Municipality of Suhareka.

18. In the reasoning of this Judgment, in the part dedicated to the Applicant, the Municipal Court stated: "*Based on the administered evidence, the Court found that the statement of claim of the first claimant must be rejected as ungrounded and that the decision of the respondent on the termination of the employment relationship is not unlawful because the requirements of Article 75 par. 2 item 3 of the LawonFundamentalRightsofEmployment Relationship (applicable pursuant to UNMIK Regulation) were met, where is stated that the employment relationship is terminated to employee without his consent if he was absent from work over 5 consecutive days".*

19. On 5 November 2012, the District Court in Prizren, by Judgment Ac. no. 528/2011 rejected as ungrounded the joint appeal of the Applicant and of J. B. and upheld the Judgment of the Municipal Court in Suhareka C .no. 153/06 of 25 October 2011 by "*recognizing in entirety the factual conclusions and legal stance of the first instance court when deciding upon the claimants' appeal*".

20. Against this Judgment, the Applicant timely filed revision with the Supreme Court of Kosovo, due to violation of the civil procedure provisions and erroneous application of the material law.

21. On 22 October 2013, the Supreme Court of Kosovo, deciding upon the request for revision, rendered the Judgment Rev. no. 59/2013, by which rejected as ungrounded the revision filed by the Applicant, stating among the other in the reasoning of the Judgment that "*the lower instance courts, based on the factual situation determined correctly and completely, have applied correctly the provisions of the contested procedure and the substantive law, when finding that the statement of claim of the claimant is ungrounded, because the Municipal Education Directorate of the Municipality of Suhareka is established based on UNMIK Regulation 2000/45 and the latter does not have a legal basis to transfer the obligations of the Pedagogical Institute, because the same body does not exist in this new educational system and nor the working position of the pedagogical advisor in this directorate*".

Applicant's allegations

22. The Applicant alleges that the Judgment of the Supreme Court has violated the rights guaranteed by the Constitution, pursuant to Article 31 [Right to Fair and Impartial Trial] by emphasizing that this right is also protected by the European Convention of Human Rights.

23. The Applicant requested from the Court to annul all decisions of the regular courts and to approve his Referral as grounded.

Admissibility of the Referral

24. To adjudicate the Applicant's Referral, the Court needs to examine beforehand whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution and further specified in the Law and the Rules of Procedure.

25. 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".*

26. The Court concludes that the last decision regarding this case is the Judgment of the Supreme Court, Rev. no. 59/2013, of 22 October 2013, which was served on the Applicant on 5 December 2013, while the Applicant submitted his Referral to the Court via mail on 2 April 2014, meaning that he submitted his Referral to the Court, in compliance with the requirements of Article 113.7 of the Constitution and within the time limit, provided by Article 49 of the Law.

27. The Court notes that the Applicant alleges that the Decision of the Supreme Court, Rev. no. 59/2013 of 22 October 2013, by which the request for revision, filed against Decision Ac. no. 528/2011, of the District Court in Prishtina, of 5 November 2012, has been rejected as ungrounded, and at the same time he has requested from the Court the annulment of all other court decisions, rendered before this Judgment.

28. As regards to the Applicant's allegations for violation of Article 31 of the Constitution, the Court recalls that Article 31 of the Constitution[Right to Fair and Impartial Trial]provides:

> *"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".*
> *[…]*

29. In respect to the above, the Court notes that the Applicant only stated the violation of this constitutional provision, without providing any evidence of the way and nature of that violation. The Court notes that the simple description of the provisions of the

Constitution and the conclusion that they have been violated, without presenting evidence of the way they were violated, without specifying the circumstances, without specifying actions of the public authority that are contrary to fair and impartial trial, do not constitute sufficient ground to convince the Court that there has been a violation of the Constitution or of the Convention regarding a fair and impartial trial.

30. Having considered the Applicant's Referral and the facts presented in it, the Court finds that in all court procedural stages, the appeals of the Applicant have been of the legal character, not of the constitutional nature or of the possible violation of human rights protected by the Constitution, which have been for the first time referred with the Constitutional Court, lead the Court to conclusion that the Applicant is in fact unsatisfied with the final outcome of the adjudication of his case.

31. The Court further holds that it is not a fact finding court, it does not adjudicate as a court of fourth instance, and it is not merely a higher instance court. The Court, in principle does not consider the fact whether the regular courts have correctly and completely determined factual situation, or, whether as in the case at issue, the employment of the Applicant was terminated on legal ground or not, because this is a jurisdiction of a regular court. It is essential for the Court the issues on which existence depends the assessment of possible violations of the constitutional rights and not clearly legal issues, which were mainly the facts presented by the Applicant (See, *mutatis mutandis, i.a., Akdivar v. Turkey*, 16 September 1996, R.J.D, 1996-IV, para. 65).

32. However, the Court notes that regarding the Applicant's allegations, the Supreme Court in its Judgment had clearly stated that, *"the statement of claim of the claimants is ungrounded, because the Municipal Education Directorate of Suhareka is established based on the UNMIK Regulation 2000/45 and the same does not have a legal base to bear the obligations of the Pedagogical Institute"*. Under these circumstances, the Court concluded that the Judgment is well reasoned and there is no question of arbitrariness.

33. The Court recalls that the mere fact that the Applicants are dissatisfied with the outcome of the case cannot of itself raise an arguable claim of a breach of the provisions of the Constitution (see *mutatis mutandis*, Judgment ECHR Appl. No. 5503/02, *Mezotur Tizsazugi Tarsulat v. Hungary*, or the Resolution of the

Constitutional Court, Case KI128/12 of 12 July 2013, *the Applicant Shaban Hoxha* in the request for constitutional review of the Judgment of the Supreme Court of Kosovo, Rev. no. 316/2011).

34. In these circumstances, the Court finds that the facts presented by the Applicant do not in any way justify the allegation for violation of a constitutional right, and it cannot be concluded that the Referral is grounded and, therefore, in accordance with Rule 36, paragraph 2, item b, it found that the Referral should be rejected as manifestly ill-founded and be declared inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 20 of the Law and Rule 56 of the Rules of Procedure, on 1 July 2014, unanimously

DECIDES

I. TO DECLARE the Referral Inadmissible;

II. To notify this Decision to the parties and to publish this Decision 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

KI06/14, Olga Petrović, Svetolik Patrnogić, Vesna Dejanović and Miroslava Ivanćić, Resolution of 4 July 2014- Constitutional Review of the Judgment Pc. No. 559/10, of the Basic Court in Ferizaj, of 18 September 2013

Case KI06/14, Decision of 4 July 2014.

Key words: Individual referral, request for interim measures, non-exhaustion of legal remedies, unauthorized party

The Applicants allege that the challenged judgment was adopted in violation of their rights guaranteed by the Constitution of the Republic of Kosovo (hereinafter: the Constitution), in particular Article 31 [Right to Fair and Impartial Trial] and Article 46 [Protection of Property] of the Constitution. The Applicants also claim that their rights guaranteed by the Article 6 of the European Convention on Human Rights have been violated.

In addition, the Applicants requested the Constitutional Court of the Republic of Kosovo to impose Interim Measure.

The Constitutional Court pursuant to Article 113 .7 of the Constitution, Article 48 of the Law and Rule 36 (1.) a) and Rule 36 (3) c) of the Rules of the Procedure decided to declare the referral of the first three Applicants as inadmissible because of non-exhaustion of all legal remedies provided by law as well as to declare the referral of the fourth Applicant as inadmissible because of it was lodged by an unauthorized party.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI 06/14
Applicants
Olga Petrović, Svetolik Patrnogić, Vesna Dejanović and Miroslava Ivanćić
Constitutional Review
of the Judgment of the Basic Court in Ferizaj, Pc. No. 559/10 of 18 September 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
Arta Rama-Hajrizi, Judge

Applicants

1. The Applicants are Olga Petrović, Svetolik Patrnogić, Vesna Dejanović, with residence in Kragujevac, Republic of Serbia, and Miroslava Ivanović with residence in Roscoe, the United States of America.

2. The first Applicant (Ms. Olga Petrović), based on authorisation latter to sell property owned by the fourth Applicant (Ms. Miroslava Ivanović) claimed to be the fourth applicant's legal representative.

Challenged decision

3. The Applicants challenge the Judgment of the Basic Court in Ferizaj, Pc. No. 559/10 of 18 September 2013, which allegedly was served to the Applicant's temporary representative appointed *ex officio* by the Basic Court in Ferizaj on unspecified date.

Subject matter

4. The subject matter is the request for constitutional review of the Judgment of the Basic Court in Ferizaj, Pc. No. 559/10 of 18 September 2013.

5. The Applicants allege that the challenged judgment was adopted in violation of their rights guaranteed by the Constitution of the Republic of Kosovo (hereinafter: the Constitution), in particular Article 31 [Right to Fair and Impartial Trial] and Article 46 [Protection of Property] of the Constitution. The Applicants also claim that their rights guaranteed by the Article 6 of the European Convention on Human Rights have been violated.

6. In addition, the Applicants requested the Constitutional Court of the Republic of Kosovo (hereinafter, "the Court") to impose interim measures, "*ordering the Municipal Cadastral Office in Ferizaj to revoke ownership of I. B. on cadastral parcel P-72217092-02323-0 MC Ferizaj in total surface area of 1917 m2 and reinstate previous state, respectively, carry out registration od property rights to Julijana Patrnogić.*"

Legal basis

7. 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"), 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

8. On 20 January 2014 the Applicants submitted the Referral to the Court.

9. On 31 January 2014 the President of the Court based on Decision GJR. KI06/14 appointed Judge Kadri Kryeziu as Judge Rapporteur.

10. On 31 January 2014 the President of the Court based on Decision KSH. KI06/14 appointed the Review Panel composed of Judges, Robert Carolan (Presiding), Almiro Rodrigues and Ivan Čukalović.

11. On 10 February 2014 the Constitutional Court informed the Applicants of the Referral's registration. In the same letter, the Applicants were asked to submit to the Court the filled referral form and the challenged judgement. Furthermore, the Court asked the first Applicant (Ms. Olga Petrović) to submit authorization to represent the fourth Applicant (Ms. Miroslava Ivančić) before the Constitutional Court.

12. On the same date the Court also notified the Municipal Court in Ferizaj on the Referral.

13. Also on 10 February 2014, 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. On the same date, the Court, pursuant to Article 27 of the Law, and in accordance with Rules 55 (4) and 56 (3) of the Rules of Procedure, decided to reject the request for interim measures.

14. On 5 March 2014, the Applicants Ms. Olga Petrović, Mr. Svetolik Patrnogić, Ms. Vesna Dejanović submitted the filled referral forms and a copy of the challenged judgment. However, the first Applicant (Ms. Olga Petrović) failed to submit the authorisation letter for the fourth Applicant (Ms. Miroslava Ivančić).

15. On 19 May 2014, after having considered the Report of the Judge Rapporteur, the Review Panel took the unanimous decision to postpone deliberation and to ask the Basic Court in Ferizaj to submit the Court the case file Pc. Mo 599/10.

16. On 2 June 2014, the Court received the case file Pc. Mo 599/10 from the Basic Court in Ferizaj.

17. On 26 June 2014, Judge Kadri Kryeziu notified the Court in writing about his exclusion from the deliberations, for the period June to July 2014 until the Court decided on the allegations raised against him.
18. On 1 July 2014, the President of the Court, by Decision no. KSh. 06/14, replaced Judge Kadri Kryeziu as Judge Rapporteur, appointing Judge Snezhana Botusharova in his place.
19. On 4 July 2014, 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

20. On 23 October 2000 the Applicants' predecessor Julijana Patrnogić reached an agreement with B. I. on the purchase price for the immovable property registered in the cadastral plot (No- P 72217092-02323-0) in Ferizaj.

21. On 5 February 2008 the Applicants' predecessor Julijana Patrnogić signed an authorisation in the notary office in Tetovo, Republic of Macedonia, authorising A. I. to use, sell and transfer the immovable property to third parties.

22. On 26 April 2011 the Basic Court in Kragujevac, Serbia issued Decision no. 0-517/10 and 0-518/10 and confirmed, *inter alia*, that the inheritance of the late Julijana Patrnogić consists of the real estate in Ferizaj in the surface area of 1, 46.71 ha. By the same decision 22 relatives, including the four Applicants, were declared as the successors of the late Julijana Patrnogić. In this decision, the postal addresses of all 22 heirs of the late Julijana Patrnogić, including the four Applicants were clearly listed.

23. On an unspecified date B. I. submitted a statement of claim to the Municipal Court in Ferizaj requesting recognition of the immovable property registered in the cadastral plot (No- P 72217092-02323-0) in Ferizaj with an area of 00.19,17 are that allegedly he bought from Julijana Patrnogić in March 1992. The respondent parties in this property related proceedings were all 22 heirs of the late Julijana Patrnogić, including the four Applicants.

24. On 29 July 2013 the Basic Court in Ferizaj issued Decision C. no. 559/10 on the appointment of the temporary representative Ilmi Prima, due to the alleged lack of postal addresses of all 22 heirs of the late Julijana Patrnogić, including the four Applicants.

25. On 18 September 2013 the main public hearing was held in the presence of the temporary representative, an attorney from Ferizaj.

26. On the same date the Basic Court in Ferizaj issued the challenged Judgment (C.No.559/10) and approved the statement of claim for recognition of property by B. I. The Applicants and the other 18

heirs of late Julijana Patrnogić were obliged to permit B. I. to register the ownership in the respective cadastral books in Ferizaj.

27. It was stated in the reasoning of the challenged judgement that "*the court confirmed the fact that since sales/purchase of the immovable property ... in 1992, until now there have been no contesting facts between litigating parties, the claimant has paid in full to the respondents' predecessor in the same year and handed over in the claimant's possession and free use the immovable property of the matter, which the latter had in continuous peaceful possession and that the legal conditions confirm the right of the property based on adverse possession pursuant to Article 28.4 of the Basic Law on Fundamental Property Relationship ....*"

28. In the reasoning of the challenged judgement it was stated that the temporary representative was "*appointed to the respondents due to the lack of the address of the same, he initially stated that he challenges the claim and the statement of claim whereas after the evidences administrated in his closing statement he stated that pursuant to all the administrated written evidences I believe that the entire sales/purchase agreement was concluded in 2008 when the price for immovable property was paid.*"

29. On 27 November 2013 the Notary Nexhat Sh. Qorroli informed the attorney Miloš Petković from Štrpce as the authorized representative of the legal heirs of the late Julijana Patrnogić, of the following: *"addressing to civil proceedings is necessary, considering that the notary found that the real estate subject to this matter is undergoing civil proceedings and the Court rendered a Judgment that recognizes the right of property of B. I. from village Grebno on the cadastral parcel number P-72217092-02323-0 MC Ferizaj in total surface area of 1917 m2. Pursuant to the Court judgment, changes were conducted in the cadastral registry on the Municipality in Ferizaj."*

Applicant's allegations

30. The Applicants allege that *"the procedure that was conducted and concluded ...by the Basic court in Ferizaj violated the rules of procedure because it did not service the claim to the respondent for an answer nor did it service summons for the review before the court, but without respecting the procedure appointed an interim representative although it is clear that the claimant had*

all the data of respondents, and consequently the data on their addresses."

31. The Applicants claim that their postal addresses were listed in the Ruling of the Basic Court in Kragujevac to which the challenged judgement refereed *"thus it is clear that the actions of the claimant, interim representative and the court were illegal with the aim of preventing the Applicants and the other heirs to defend their property rights and interest before the court."*

32. The Applicants further allege that they could not establish the contact with the temporary representative who did not reply to their phone calls and an electronic message.

33. Accordingly, the Applicants consider that their right to fair and impartial trial and with their property rights guaranteed by Article 31 of the Constitution as well as their property rights guaranteed by Article 46 of the Constitution have been violated.

Assessment of admissibility of the Referral

34. The Court observes that, in order to be able to adjudicate the Applicants' complaints, it is necessary to examine whether they have fulfilled the admissibility requirements laid down in the Constitution as further specified in the Law and the Rules of Procedure.

35. As to the present Referral the Court recalls that while the first three Applicants (Ms. Olga Petrović, Mr. Svetolik Patrnogić and Ms. Vesna Dejanović) submitted the filled referral forms and a copy of the challenged judgment to the Court, the first Applicant (Ms. Olga Petrović) failed to submit to the Court the authorisation letter for the fourth Applicant (Ms. Miroslava Ivančić).

a) Assessment of admissibility of the Referral submitted by the first three Applicants

36. As regards the first three Applicants (Ms. Olga Petrović, Mr. Svetolik Patrnogić and Ms. Vesna Dejanović), the Court notes that, pursuant to Article 232 of the Law on Contested Procedure of the Republic of Kosovo (2009/03-L-006 of 29 July 2008) they were entitled to submit the request for Repeating Procedures. Article 232.1 of the Law on Contested Procedure reads as follows:

> *"Finalized procedure with an absolute decree can be repeated based on the proposal party:*
> *a) if the party with an illegal act, especially in the case of not being invited to the session, the party is not given the opportunity to part take in the examination of the main issue;"*

37. 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."*

38. The Court also refers to 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".*

39. Furthermore, the Court also refers to Rule 36 (1) a) of the Rules of Procedures which 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"*

40. 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: *AAB-RIINVEST University L.L.C., Prishtina vs. the Government of the Republic of Kosovo*, KI41/09, of 21 January 2010, and see *mutatis mutandis*, ECHR, *Selmouni vs. France*, no. 25803/94, Decision of 28 July 1999).

41. The Court also recalls that in accordance with the principle of subsidiarity, the Applicants are under the obligation to exhaust all legal remedies provided by law, as stipulated by Article 113(7) and the other legal provisions, as mentioned above. Therefore, the Applicants should have filed a request specified above.

42. Thus, the Applicants in failing to proceed further with the request within the foreseen deadline is liable to have their case declared inadmissible, as it shall be understood as a waiver of the right to further proceedings on objecting the violation of constitutional rights (See Case KI16/12, Applicant *Gazmend Tahiraj,* Constitutional Court, Resolution on Inadmissibility of 22 May 2012).

43. The Court also considers that a mere suspicion on the perspective of the matter is not sufficient to exclude an applicant from her obligations to appeal before the competent bodies in due time (See Whiteside v the United Kingdom, decision of 7 March 1994, Application no. 20357/92, DR 76, p.80 and Case KI 16/12, Applicant *Gazmend Tahiraj*, Constitutional Court, Resolution on Inadmissibility of 22 May 2012)).

44. In the present case, the Court finds that the first three Applicants have not exhausted all effective remedies under Kosovo law, in order for the Court to proceed with their allegation about the constitutionality of the Judgement of the Basic Court in Ferizaj.

b) Assessment of admissibility of the Referral submitted by the first Applicant on behalf of the fourth Applicant

45. As regards to the Referral submitted by the first Applicant (Ms. Olga Petrović) on behalf the fourth Applicant (Ms. Miroslava Ivančić) the Court recalls Rule 36 (3) c) that reads as follows:

> *"A Referral may also be deemed inadmissible in any of the following cases:*
> *c) the Referral was lodged by an unauthorised person;"*

46. The Court notes that Ms. Miroslava Ivanćić authorized the first Applicant (Ms. Olga Petrović) to "*sell my 1/6 part –owned share of the real estate inscribed in the extract form the Land Registry number 491 KO Uroševac….*" However, Ms. Ivančić did not authorize the first Applicant (Ms. Olga Petrović) to represent her before the Constitutional Court.

47. Consequently, as regards the fourth Applicant (Ms. Ivančić), the referral was lodged by an unauthorized party.

FOR THESE REASONS

The Constitutional Court pursuant to Article 113 .7 of the Constitution, Article 48 of the Law and Rule 36 (1.) a) and Rule 36 (3) c) of the Rules of the Procedure, in its session held on 4 July 2014, unanimously:

DECIDES

I. TO REJECT the Referral of the first three Applicants (Ms. Olga Petrović, Mr. Svetolik Patrnogić and Ms. Vesna Dejanović) as Inadmissible becouse of non-exhaustion of all legal remedies provided by law;

II. TO REJECT the Referral of the fourt Applicant (Miroslava Ivančić) as Inadmissible becouse of it was lodged by an unauthorised party.

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. TO DECLARE this Decision immediately effective.

Judge Rapporteur
Snezhana Botusharova

President of the Constitutional Court
Prof. Dr. Enver Hasani

KI31/14, Luan Ramadani, Resolution of 3 July 2014- Constitutional Review of the Judgment Pml. No. 222/2013 of the Supreme Court, of 24 December 2013

Case KI31/14, Decision of 3 July 2014.

Key words: Individual referral, manifestly ill-founded

The Applicant alleges that the challenged judgment violated his right to a fair trial guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo (hereinafter, the Constitution) and by Article 6 [Right to a Fair Trial] of the European Convention on Human Rights.

The Applicant alleges that there was unequal treatment of parties in judicial procedure since the evidence proposed by him was not taken into account. He further argues that there has been a violation of his human rights since the more favourable law was not applied in his case in contradiction with Article 3 of the Criminal Code.

The Court notes that the Applicant merely disputes whether the regular courts correctly applied the more favourable applicable criminal law in his case, which is a matter of legality.

The Court considers that the Applicant has not accurately explained and showed how and why his rights guaranteed by the Constitution were violated.

Therefore, the Court considers that there is nothing in the Referral which indicates that the case lacked impartiality or that the proceedings were otherwise unfair.

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 48 of the Law and Rule 36 1. c) of the Rules of the Procedure, in its session held on 3 July 2014, unanimously declares the Referral as manifestly ill-founded.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI31/14
Applicant
Luan Ramadani
Constitutional Review of the Judgment Pml. No. 222/2013 of the Supreme Court, dated 24 December 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
Arta Rama-Hajrizi, Judge.

Applicant

1. The Applicant is Mr. Luan Ramadani residing in Lipjan.

Challenged decision

2. The Applicant challenges the Judgment Pml. No 222/2013 of the Supreme Court, dated of 24 December 2013, which was served on the Applicant on 8 January 2014.

Subject matter

3. The Applicant alleges that the challenged judgment violated his right to a fair trial guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo (hereinafter, the Constitution) and by Article 6 [Right to a Fair Trial] of the European Convention on Human Rights (hereinafter, the Convention).

Legal basis

4. The referral is based on Article 113.7 of the Constitution and Article 47 of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter,: the Law).

Proceedings before the Constitutional Court

5. On 13 February 2014, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).

6. On 6 March 2014, the President of the Court appointed Judge Almiro Rodrigues as Judge Rapporteur and the Review Panel consisting of Judges Altay Suroy (Presiding), Kadri Kryeziu and Arta Rama-Hajrizi.

7. On 13 March 2014, the Court notified the Applicant of the registration of the Referral and requested him to submit a copy of the Judgment PA1 No. 712/2012 of the Court of Appeal in Pristine, of 19 April 2013. However, the Applicant has not complied with the request.

8. Also on 13 March 2014, the Court sent a copy of the Referral to the Supreme Court.

9. On 26 June 2014, Judge Kadri Kryeziu notified in writing the Court for his exclusion from the deliberations for the period June-July 2014 until the Court decides regarding the allegations raised against him.

10. On 3 July 2014, the President of the Court replaced Judge Kadri Kryeziu with Judge Ivan Cukalovic as a member of the Review Panel.

11. On 3 July 2014, 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

12. On 11 March 2011, the Municipal Court in Lipjan (Judgment P. no. 102/2010) found the Applicant guilty of having committed the criminal offence of endangering workplace safety, foreseen by

Article 186 para.2 in conjunction with para 3 and 4 of the Provisional Criminal Code of Kosovo (hereinafter, PCCK), and sentenced him with one (1) year of imprisonment.

13. On an unspecified date, the Applicant appealed the aforementioned judgment

14. On 19 April 2013, the Court of Appeal of Kosovo (Judgment PA1 No. 712/2012) rejected the Applicant's appeal and confirmed the judgment of the Municipal Court.

15. The Applicant filed a request for protection of legality against the first and second instance judgments, due to a violation of criminal law. The Applicant claimed, *inter alia* that a *"violation of criminal law is also committed by applying Article 186 of the previous Criminal Code, by applying it at time when this action does not constitute a criminal offence."*

16. On 24 December 2013, the Supreme Court (challenged judgment Pml no 222/2013) rejected as ungrounded the Applicant's request for protection of legality.

17. In the reasoning of that judgment, it was mentioned, *inter alia*, that "*... allegations of defense counsel that according to provisions of the new criminal code, the criminal offence does not exist, do not stand due to the fact that this criminal offence is not decriminalized due to the fact that according to old provisions was included in Chapter XVII whereby are included criminal offences against the rights in employment relationship, whereas in the new criminal code, this offence is placed to chapter XXIX whereby are included criminal offences against general safety of people and property and is incriminated pursuant to Article 367 of PCCK*".

18. The Supreme Court further stated that "*The Criminal Code, which was applicable at the time of commission of criminal offence, respectively para.4 of Article 186 of PCCK, provides that 'if the criminal offense pursuant to paras 1 and 2 of this article caused serious injuries of one or more persons for offence pursuant to paras. 1 and 2 the perpetrator is punished with imprisonment up to five years whereas for criminal offence pursuant to para.3 is punished with imprisonment up to three years.' Whereas, para 5 of Article 367 of the new criminal code, provides that 'if the criminal offence pursuant to para.3 of this Article results with*

serious injury of one or more persons or with property substantial damage, the preparatory is punished with imprisonment up to 5 years".

19. Consequently, the Supreme Court found that in the Applicant's criminal case *"there is no doubt that in the present case the first and the second instance court have correctly applied the applicable law, and which is more favorable for the adjudicated, because as it was stated above the new law for this offence provides more severe punishment…"*.

Applicant's allegations

20. The Applicant claims that his right to a fair and impartial trial guaranteed by Article 31 of the Constitution and Article 6 of the Convention has been violated. He alleges that there was unequal treatment of parties in judicial procedure since the evidence proposed by him was not taken into account. He further argues that there has been a violation of his human rights since the more favourable law was not applied in his case in contradiction with Article 3 of the Criminal Code.

21. In support of his allegation, the Applicant submitted an extract of the judgment of the Supreme Court (Pkl. nr. 11/2004) of 10 December 2004, whereby the Supreme Court approved a request for protection of legality, confirming that in the event of change of the law applicable to a given case, the law most favourable to the perpetrator shall apply. Consequently in that particular case the Supreme Court changed the legal qualification.

Admissibility of the Referral

22. The Court first examines whether the Applicant has fulfilled the admissibility requirements as laid down in the Constitution and as further specified in the Law and the Rules of Procedure.

23. In this respect 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."

24. The Court also refers to Rule 36 1. c) of the Rules of Procedure:
"The Court may only deal with Referrals if:
…

(c) the Referral is not manifestly ill-founded."

25. The Court notes that the Applicant merely disputes whether the regular courts correctly applied the more favourable applicable criminal law in his case, which is a matter of legality.

26. The Court emphasizes that it is not the task of the 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).

27. The Court considers that the Applicant has not accurately explained and showed how and why his rights guaranteed by the Constitution were violated.

28. In this connection, the Court reiterates that it 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).

29. The Constitutional Court notes that the Applicant has used all the legal remedies prescribed by the Criminal Procedure Law, by submitting the appeal against first instance judgment and request for protection of legality against the second instance judgment.

30. Furthermore, the Court considers that the Supreme Court took the Applicant's arguments into due account and indeed clearly answered his appeals on the contested points of law.

31. Therefore, the Court considers that there is nothing in the Referral which indicates that the case lacked impartiality or that the proceedings were otherwise unfair (see, *mutatis mutandis*, *Shub v. Lithuania,* ECHR Decision on Admissibility of Application No. 17064/06 of 30 June 2009).

32. Accordingly, pursuant to Rule 36 (1) c) of the Rules of Procedure, the Court finds that the Referral is manifestly ill-founded.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113 .7 of the Constitution, Article 48 of the Law and Rule 36 1. c) of the Rules of the Procedure, in its session held on 3 July 2014, 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

KI54/12, Mustafë Xhekaj, Resolution of 11 March 2014- Constitutional Review of the Decision of the Supreme Court of the Republic of Kosovo Ap. nr. 376/2009, of 23 February 2011

Case KI54/12, Decision of 11 March 2014.

Key words: individual referral, violation of constitutional rights and freedoms, request for non-disclosure of identity, out of time referral.

The Applicant filed his Referral based on Article 113.7 of the Constitution of Kosovo, claiming that his constitutional rights and freedoms have been violated by the judgments of regular courts of all instances. On 14 January 2008, the District Court in Mitrovica by Judgment P. no. 94/2006 found the Applicant guilty of the criminal offence of aggravated murder in co-perpetration under Article 147 in relation to Article 23 of the Criminal Code of Kosovo. The court sentenced the Applicant to 18 years imprisonment, including time spent in detention. The applicant submitted an appeal against the above mentioned Judgment to the Supreme Court. The Supreme Court evaluated that the first instance court has rightly and completely concluded and evaluated all circumstances pursuant to Article 64 od the CCK, which have an impact on the type and height of punishment. The Applicant alleges that an injustice was done to him by the "*Kosovo Judiciary*' as that he is *'innocent'* and was convicted based in an unfair and unjust trial. The Applicant requests from the Constitutional Court of the Republic of Kosovo not to disclose his identity.

The Court notes that the Judgment that is challenged by the Applicant is dated 23 February 2011, whereas the Referral was submitted on 11June 2012. The Applicant's Referral is not in compliance with Article 49 of the Law and Rule 36 (1) (b) of the Rules of Procedure as it was submitted more than 1year after the date of the challenged decision. The Court recalls that the object of the four (4)-month legal deadline under Article 49 of the Law and Rule 36 (1) (b) of the Rules of Procedure is to promote legal certainty, by ensuring that cases raising issues under the Constitution are dealt within a reasonable time and that past decisions are not continually open to challenge. It results that the Applicant's Referral is out of time. In addition, the Applicant has not provided supporting grounds and evidence substantiating the request on the Applicant not having his identity disclosed. Therefore, the Court rejects as ungrounded the request not to disclose his identity.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI54/12
Applicant
Mustafë Xhekaj
Constitutional review of the Decision of the Supreme Court of the Republic of Kosovo Ap. nr. 376/2009 dated 23 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
Arta Rama-Hajrizi, Judge

Applicant

1. The Referral was submitted by Mr. Mustafë Xhekaj (hereinafter: the "Applicant") residing in Drenas.

Challenged decision

2. The Applicant challenges Judgment Ap. no. 376/2009 of the Supreme Court of the Republic of Kosovo (hereinafter, Supreme Court), dated 23 February 2011, which was served on him on an unspecified date.

Subject matter

3. The subject matter is the constitutional review of the challenged Decision which allegedly is *"unfair"*.

4. Furthermore, the Applicant requests from the Constitutional Court of the Republic of Kosovo (hereinafter: the "Court") not to disclose his identity.

Legal basis

5. 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 (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 11 June 2012, the Applicant submitted the Referral to the Constitutional Court.

7. On 4 July 2012, the President of the Court, with Decision No. GJR. KI54/12, appointed Judge Kadri Kryeziu as Judge Rapporteur. On the same date, the President of the Constitutional Court, with Decision No. KSH. KI54/12, appointed the Review Panel composed of Judges Robert Carolan (Presiding), Altay Suroy and Enver Hasani.

8. On 11 September 2012, the Supreme Court was notified of the Referral.

9. On 11 March 2014, 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 14 January 2008, the District Court in Mitrovica (Judgment P. no. 94/2006) found that the Applicant guilty of the criminal offence of aggravated murder in co-perpetration under Article 147 in relation to Article 23 of the Criminal Code of Kosovo. The court sentenced the Applicant to 18 years imprisonment, including time spent in detention. The applicant submitted an appeal against the above mentioned Judgment to the Supreme Court.

11. On 23 February 2011, the Supreme Court (Judgment Ap. no. 376/2009) rejected as ungrounded the appeal submitted by the Applicant against the Judgment of the District Court in Mitrovica dated 14 of January 2008 holding that *"that the first instance court determined in a right and complete manner the factual situation in this criminal matter and based on the factual*

situation has applied in a right manner the criminal law and thus by evaluating the judgment related to the decision on punishment, the Supreme Court evaluated that the first instance court has rightly and completely concluded and evaluated all circumstances pursuant to Article 64 od the CCK, which have an impact on the type and height of punishment".

Applicant's allegation

12. The Applicant alleges that an injustice was done to him by the *"Kosovo Judiciary'* as *that he is 'innocent' and was convicted based 'in an unfair and unjust trial".*

Assessment of the admissibility

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

14. 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 (...)".*

15. The Court also takes into consideration 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 ...".*

16. Under these circumstances, the Court notes that the Judgment that is challenged by the Applicant is dated 23 February 2011, whereas the Referral was submitted on 11 June 2012. The Applicant's Referral is not in compliance with Article 49 of the Law and Rule 36 (1) (b) of the Rules of Procedure as it was submitted more than 1 year after the date of the challenged decision.

17. The Court recalls that the object of the four month legal deadline under Article 49 of the Law and Rule 36 (1) (b) of the Rules of Procedure is to promote legal certainty, by ensuring that cases raising issues under the Constitution are dealt within a reasonable time and that past decisions are not continually open to challenge (see case O'Loughlin and Others v United Kingdon, No. 23274/04, ECtHR, Decision of 25 August 2005).

18. It results that the Applicant's Referral is out of time.

19. In addition, the Applicant has not provided supporting grounds and evidence substantiating the request on the Applicant not having his identity disclosed.

20. Therefore, the Court rejects as ungrounded the request not to disclose his identity.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 49 the Law, Rules 36 (1) b) and 56 (2) of the Rules of Procedure, on 11 March 2014, unanimously

DECIDES

I. TO REJECT the Referral as Inadmissible;

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

III. This Decision is effective immediately.

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

KI65/14, Bajram Santuri, Resolution of 1 July 2014- Constitutional Review of the Decision of the Court of Appeal of Kosovo, CA. no. 791/13, Of23 September 2013; of the Decision of the Municipal Court in Gjilan, P. no. 43/10, of31 October 2012; of the Decision of the Municipal Court in Prizren, C. no. 47/2000, of 2 September 2012; of the Decision of the Municipal Court in Prizren, C. no. 247/08, of is February 2010; of the Notification of the Office of the Disciplinary Counsel, ZDP/12/ZP/910, Of29 November 2012; and of the Notification of the Ministry of Labor and Social Welfare, of 21 January 2011

Case KI65/14, Decision of 1 July 2014.

Key words: Individual Referral, non-exhaustion, out of time, unauthorized person

The Applicant alleged violation of the right to property, the right to a fair trial within a reasonable time and the right to pension benefits though without invoking any constitutional provision in particular.

The Constitutional Court declared the referral inadmissible on three procedural grounds of non-exhaustion of legal remedies, out of time and unauthorized person depending on different proceedings which were developed before the public authorities of the Republic of Kosovo.

RESOLUTION ON INADMISSIBILITY
in
Case no. KI65/14
Applicant
Bajram Santuri
Constitutional review of the Decision of the Court of Appeal of Kosovo, CA. no. 791/13, of 23 September 2013; of the Decision of the Municipal Court in Gjilan, P. no. 43/10, of 31 October 2012; of the Decision of the Municipal Court in Prizren, C. no. 47/2000, of 25 September 2012; of the Decision of the Municipal Court in Prizren, C. no. 247/08, of 15 February 2010; of the Notification of the Office of the Disciplinary Counsel, ZDP/12/zp/910, of 29 November 2012; and of the Notification of the Ministry of Labor and Social Welfare, of 21 January 2011

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 and
Arta Rama-Hajrizi, Judge

Applicant

1. The Referral was submitted by Mr. Bajram Santuri from Prizren (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges the Decision of the Court of Appeal of Kosovo, CA. no. 791/13, of 23 September 2013; the Decision of the Municipal Court in Gjilan, P. no. 43/10, of 31 October 2012; the Decision of the Municipal Court in Prizren, C. no. 47/2000, of 25 September 2012; the Decision of the Municipal Court in Prizren, C. no. 247/08, of 15 February 2010; of the Notification of the Office of the Disciplinary Counsel, ZDP/12/zp/910, of 29 November 2012; and the Notification of the Ministry of Labor and Social Welfare, of 21 January 2011.

Subject matter

3. The subject matter is the constitutional review of the challenged decisions, which are *"allegedly unfair because they have denied to Applicant the property right"*.

4. In this respect, it is not referred to any specific constitutional provision.

Legal basis

5. The Referral is based on Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), Article 47 of the Law on the Constitutional Court of the Republic of Kosovo, no. 03/L-121 (hereinafter: the Law) and Rule 56 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

6. On 1 April 2014, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

7. On 11 and 24 April 2014, the Applicant submitted the additional documents to the Court.

8. On 6 May 2014, the President of the Court, by Decision No. GJR. KI65/14, appointed Judge Altay Suroy as Judge Rapporteur. On the same date, the President of the Court, by Decision No. KSH. KI65/14, appointed the Review Panel, composed of Judges: Robert Carolan (Presiding), Ivan Čukalović and Enver Hasani (members).

9. On 22 May 2014, the Applicant was notified of the registration of Referral. On the same date, a copy of the Referral was sent to the Basic Court in Prizren, to the Basic Court in Gjilan, to the Court of Appeal of Kosovo, to the Office of the Disciplinary Counsel and to the Ministry of Labor and Social Welfare.

10. On 1 July 2014, the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

11. In this Referral, the Applicant raises different issues related to the property right, disciplinary investigation against the judges, the claim for obstruction to possession, subsidiary indictment proposal and disability pension, conducted in various proceedings in the courts and other authorities of various instances and in the different time periods. In all other decisions and documents, contained in this Referral, the Applicant appears in the capacity of a subsidiary claimant, the responding party, and in some others he is not a litigating party.

12. On 15 February 2010, the Municipal Court in Prizren, by Decision C. no. 247/08, rejected as inadmissible the claim of the claimants MS, TS and NSH for confirmation of the nullity of the contract and the delivery of the real estate to the possession against the respondents KBI "Progres-Export" and G. K.

13. On 21 January 2011, the Ministry of Labor and Social Welfare notified the Applicant that *"under all laws which are applicable and are treated by the Ministry of Labor and Social Welfare, we inform you that you cannot be the user of the disability pension, because you are the user of the early pension in Sweden, as you have mentioned in the Referral too and to enjoy the disability pension, you should not be the user of any foreign pension"*.

14. On 25 September 2012, the Municipal Court in Prizren, by Decision C. no. 47/2000, suspended the legal contested proceedings of the Applicant against the respondents, the Municipality of Prizren and D. D.

15. On 31 October 2012, the Municipal Court in Gjilan, by Decision P. no. 43/10, rejected the subsidiary indictment proposal filed by the Applicant against the respondents E. GJ., M. P., N. SH. and T. S., accused for criminal offences of Falsifying Official Documents, under Article 348 paragraph 1 and Falsifying Documents under Article 332 paragraph 3 in conjunction with paragraph 1 of the Provisional Criminal Code of Kosovo (PCCK).

16. On 29 November 2012, the Office of Disciplinary Counsel, by Notification ZPD/12/zp/910, informed the Applicant that there is no legal ground to initiate the disciplinary investigation for the misconduct and the court procedure delay against the Judge of the Special Chamber, assigned with his case.

17. On 13 February 2013, the Basic Court in Prizren, by Decision C. no. 830/09, rejected as inadmissible the claim of the claimants M. S., Z. S., B. S. and N. SH. against the Applicant as the responding party, due to obstruction to possession.

18. On 23 September 2013, the Court of Appeal of Kosovo, by Decision CA. no. 791/13, approved as grounded the appeals of the litigating parties, quashed the Decision of the Basic Court in Prizren, C. no. 830/09, of 13 February 2013, and remanded the matter to the same court for retrial.

Applicant's allegations

19. In regard to the Judgment of the Municipal Court in Prizren, C. no. 247/08, of 15 February 2010, the Applicant alleges: *"[...] as it seems the delays are deliberate and are made intentionally, because 15 years have elapsed after the war and 50 years of the past system when by force and threats have occupied my property and have threatened with signing of the contract with KBI Progres [...]".*

20. As to the notification of the Ministry of Labor and Social Welfare, of 21 January 2011, the Applicant alleges: *"Ministry of Labor and Social Welfare informed me that I cannot be the user of the disability pension, because I am the user of the pension of Sweden, while it did not take into account that I have worked in Kosovo for 10-15 years as a teacher [...] and defined me this right by this partial and incorrect response [...]".*

21. Regarding the Decision of the Municipal Court in Prizren, C. no. 47/2000, of 25 September 2012, the Applicant alleges that: *"why is the claim sent to the Ministry of Justice? – The reason is not provided to the unsatisfied party and in this suspension is camouflaged the claim against the former Prizren Municipality [...]".*

22. Regarding the Decision of the Municipal Court in Gjilan, P. no. 43/10, of 31 October 2012, the Applicant alleges: *"due to irregularity of the work by the Municipal Court, which has not conducted investigations properly, and later did not send my appeal to the District Court and delayed the process deliberately, by sending the information that the administrator should not perform the work of a judge [...]".*

23. As regards the Notification of the Disciplinary Counsel, ZPD/12/zp/910, of 29 November 2012, the Applicant claims among the other: *"[...] from this document of the Office of Disciplinary Counsel results another number SCA-11/19 which I am hearing for the first time from this document and before it was the number AC 664/10 which derived from C. no. 99/07 and this was formed from the revision 46/05 ...all these numbers are mixed in a matter of our heritage 207 are of land, in order to reoccupy, the same way they did in the old system [...]"*.

24. Regarding the Decision of the Court of Appeal of Kosovo, CA. no. 791/13, of 23 September 2013, the Applicant alleges: *"we have complained through the Basic Court, and we have also filed response to the appeal of the opposing party to attach to this Decision CA. nr. 791/13 as an evidence the document, where in no place are mentioned my appeals or my response against the appeal of the opposing party"*.

Assessment of admissibility

25. The Court notes that in order to be able to adjudicate the Applicant's Referral, it needs to examine beforehand whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution and further specified in the Law and the Rules of Procedure.

26. With regards to the Applicant's Referral, 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"*.

27. The Court refers to Article 47 of the Law, which provides:

> *"Every individual is entitled to request from the Constitutional Court legal protection when considers that his/her individual rights and freedoms guaranteed by the Constitution are violated by a public authority.*
>
> *Individual may submit the referral in question only after he/she has exhausted all legal remedies provided by the law."*

28. 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. 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".*

29. The Court also takes into account Rule 36 (1) b) and (3) c) of the Rules of Procedure, which provides:

> *(1) The Court may only deal with Referrals if:*
>
> *a) all effective remedies that are available under the law against the Judgment or decision on the last effective remedy have been exhausted*
>
> *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*
>
> *(3) A Referral may also be deemed inadmissible in any of the following cases:*
>
> *c) the Referral was lodged by an unauthorized person;*

30. In the concrete case, the Court notes that the Applicant has pursued different procedures in different periods of time and as consequence will review them separately.

Allegations regarding the Decision CA. No. 791/13 of the Court of Appeal of Kosovo of 23 September 2013

31. Concerning the Applicant's allegation regarding the Decision CA. no. 791/13, of 23 September 2013, of the Court of Appeal of Kosovo, the Court notes that the case has been remanded for retrial to the Basic Court in Prizren, meaning that this part of the Referral is premature due to the non-exhaustion of all legal remedies as it is provided by Article 113.7 of the Constitution.

32. The Court wishes to reiterate 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 shall provide an effective legal remedy for the violation of the constitutional rights. (see case KI34/11, Applicant *Sami Bunjaku* Resolution on inadmissibility, of 8 December 2011).

33. Consequently this part of the Referral is inadmissible due to the non-exhaustion of legal remedies as it is provided by Article 113.7 of the Constitution, Article 47 of the Law and Rule 36 (1) a) of the Rules of Procedures.

Allegations regarding the Decision C.No.47.2000 of the Municipal Court in Prizren of 25 September 2012, Decision P.No.43/10 of the Municipal Court in Gjilan of 31 October 2012, Notification ZPD/12/zp/910 of the Office of the Disciplinary Counsel of 29 November 2012, Notification of the Ministry of Labor and Social Welfare, of 21 January 2011

34. As to the Applicant's allegation for: i) Decision C. no. 47/2000, of 25 September 2012, of the Municipal Court in Prizren, ii) Decision P. no. 43/10, of 31 October 2012, of the Municipal Court in Gjilan, iii) Notification ZPD/12/zp/910, of 29 November 2012, of the Office of the Disciplinary Counsel and iv) Notification of the Ministry of Labor and Social Welfare, of 21 January 2011, the Court notes from the documents contained in the Referral that the Applicant has not complained against the challenged decisions and notifications before the courts and other competent authorities, within preclusive deadlines under the applicable law in Kosovo.

35. The Court notes that the decisions and the notifications above are dated 2011 and 2012, while the Referral was submitted to the Court on 1 April 2014, respectively, in a period of time of 2 and 3 years, which is not in compliance with the four month deadline provided by Article 49 and Rule 36 (1) b) of the Rules of Procedure.

36. The Court recalls that the objective of the four (4) month legal deadline under Article 49 of the Law and Rule 36 (1) b) of the Rules of Procedures is to promote legal certainty, by ensuring that cases raising issues under the Constitution are dealt with within a reasonable time and that past decisions are not continually open to challenge (See case *O'Loughlin and Others v. United Kingdom*, No. 23274/04, ECHR, Decision of 25 August 2005, and *mutatis mutandis* see case no. KI140/13, the Applicant *Ramadan Cakiqi,* Resolution on inadmissibility, of 3 March 2014).

37. The Court reiterates that Article 49 of the Law and Rule 36 (1) b) of the Rules of Procedure, require that the Applicants, after the exhaustion of all legal remedies, submit their referrals within the period of four (4) months of the legal time limit, from the day the final court decision was served.

38. Consequently, this part of the Referral is inadmissible because it is submitted out of the of four (4) month legal deadline specified in Article 49 of the Law and Rule 36 (1) b) of the Rules of Procedure.

Allegations regarding the Decision C. NO. 247/08 of the Municipal Court in Prizren of 15 February 2010

39. Regarding the Applicant's allegations for Decision C. no. 247/08, of 15 February 2010, of the Municipal Court in Prizren, the Court notes that the Applicant was not the litigating party in that procedure.

40. Consequently, this part of the Referral is inadmissible because it was submitted by an unauthorized party as it is provided by Rule 36 (3) c) of the Rules of Procedure.

41. Based on what was said above, the Court declares the Referral inadmissible, pursuant to Article 113.7 of the Constitution, Article 49 of the Law and Rules 36 (1) a) b) and (3) c) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113 (7) of the Constitution, Article 47 of the Law, and Rule 56 of the Rules of Procedure, on 1 July 2014, unanimously:

DECIDES

I. TO DECLARE 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	**President of the Constitutional Court**
Altay Suroy	Prof. Dr. Enver Hasani

KI56/14, Beqir Zhushi, Resolution of 26 June 2014- Constitutional Review of the Judgment ASC-ll-0069 of the Special Chamber of the Supreme Court of 22 April 2013

Case KI56/14, Decision of 26 June 2014.
Key words: Individual Referral, out of time

The Appellate Panel of the Special Chamber of the Supreme Court of Kosovo by Judgment ASC-ll-0069 of 22 April 2013 rejected the claim of the Applicant to a share of proceeds from the privatization of the SOE "Ramiz Sadiku" in Prishtina.

The Applicant complained that he was dismissed from work in a discriminatory manner and that he is entitled to a share of proceeds. The Applicant did not invoke any constitutional provision in particular.

The Constitutional Court declared the Referral inadmissible for being out of time because the Applicant did not submit his referral within the legal deadlines prescribed by the Law and further specified in the Rules of Procedure.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI56/14
Applicant
Beqir Zhushi
Constitutional Review of the Judgment ASC-11-0069 of the Special Chamber of the Supreme Court, 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
Arta Rama-Hajrizi, Judge.

Applicant

1. The Referral was submitted by Mr. Beqir Zhushi from Vushtrri (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges the Judgment ASC-11-0069 of the Special Chamber of the Supreme Court (hereinafter: the Special Chamber) of 22 April 2013, which was served on the Applicant on 29 April 2013, in relation to the Judgment SCEL-09-0001 of the Special Chamber, of 10 June 2011.

Subject matter

3. The subject matter of the Referral is the constitutional review of the challenged decisions, which allegedly *"have unjustly denied to Applicant the right to proceeds of 20% share from privatization of the SOE 'Ramiz Sadiku' in Prishtina"*.

4. In this respect, the Applicant does not refer to violation of any specific constitutional provision.

Legal basis

5. The Referral is based on Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), Article 47 of the Law on the Constitutional Court of the Republic of Kosovo No. 03/L-121 (hereinafter: the Law), and Rule 56 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

6. On 27 March 2014, the Applicant filed the Referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

7. On 3 April 2014, the President of the Court, by Decision No. GJR. KI56/14, appointed Judge Arta Rama-Hajrizi as Judge Rapporteur. On the same date, the President of the Court, by Decision No. KSH. KI56/14 appointed the Review Panel composed of Judges: Altay Suroy (Presiding), Snezhana Botusharova and Kadri Kryeziu (members).

8. On 19 May 2014, the Applicant was notified on the registration of Referral. On the same date, a copy of Referral was submitted to the Special Chamber.

9. On 26 June 2014, Judge Kadri Kryeziu notified in writing the Court for his exclusion from the deliberations for the period June-July 2014 until the Court decides regarding the allegations raised against him

10. On 2 July 2014, the President of the Court by Decision No. KSH.56/14, replaced Judge Kadri Kryeziu with Judge Robert Carolan Ivan as a member of the Review Panel.

11. On 26 June 2014 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

12. The Applicant was the employee of the SOE “Ramiz Sadiku” in Prishtina from 1977 until 1990.

13. The SOE "Ramiz Sadiku" was privatized on 27 June 2006.

14. On 23 March 2009, the Applicant filed an appeal within the time limit with the Special Chamber against the Privatization Agency of Kosovo (hereinafter: PAK), whereby he requested to be included on the list of eligible employees to a share of proceeds from the privatization of the SOE "Ramiz Sadiku" in Prishtina.

15. On 10 June 2011, the Trial Panel of the Special Chamber, decided to reject as ungrounded the Applicant's appeal, by considering that the evidence submitted by the Applicant does not meet the requirements of Article 10.4 of the amended UNMIK Regulation 2003/13.

16. On 18 July 2011, the Applicant filed an appeal with the Appellate Panel of the Special Chamber against the abovementioned Judgment of the Trial Panel.

17. On 22 April 2013, the Appellate Panel of the Special Chamber upheld the Judgment of the Trial Panel and rejected the Applicant's appeal as ungrounded.

Applicant's allegations

18. The Applicant requests from the Court: *"... that my right to 20% is recognized, to which I am entitled to based on evidence of my work experience as well as on the reason of my dismissal from work of a discriminatory nature, by violent and discriminatory regime of the Republic of Serbia, which applied coercive measures, at the organization, where I used to work".*

Assessment of the admissibility

19. The Court notes that in order to be able to adjudicate the Applicant's Referral, it has to examine beforehand whether the Applicant has met the admissibility requirements, laid down in the Constitution and further specified by the Law and the Rules of Procedure.

20. 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."

21. 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. 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 takes into account Rule 36 (1) b) 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."

23. In the present case, the Court notes that the challenged decision was rendered on 22 April 2013 and was served on the Applicant on 29 April 2013. The Referral was submitted to the Court on 27 March 2014, i.e., seven months after the four (4) month time limit, provided by Article 49 of the Law of the Rule 36 (1) b) of the Rules of Procedure.

24. Consequently, the Referral is out of time and must be declared 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 47 of the Law, Rules 36 (1) b) of the Rules of Procedure, on 26 June 2014, unanimously:

DECIDES

I. TO DECLARE 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	**President of the Constitutional Court**
Arta Rama-Hajrizi	Prof. Dr. Enver Hasani

KI220/13, Hysen Çeku, Resolution of 7 February 2014- Constitutional Review of the Judgment Ac. no. 4952/2012 of the Court of Appeal of Kosovo, of 27 May 2013

Case KI220/13, Decision of 7 February 2014.

Key words: Individual Referral, primafacie, manifestly ill-founded

The Applicant claims that the challenged Judgment constitutes a violation of Article 3 [Equality before Law], Article 22 [Direct Application of International Treaties and Instruments], Article 24 [Equality before Law], Article 54 [Judicial Protection of Rights] of the Constitution.

The Applicant requests the Constitutional Court of Kosovo "to review the violations made by public authorities" in the challenged judgments and "annul them as unconstitutional and unlawful".

The Court cannot observe arguments and evidence that the challenged Judgment Ac. No. 952/2012 of the Court of Appeal of Kosovo, of of 27 May 2013, was rendered in a manifestly unfair and arbitrary manner.

The Court concludes that the Applicant has not substantiated his allegation nor has he submitted any *prima facie* evidence indicating a violation of his rights under the Constitution, the ECHR and its protocols or the Universal Declaration of Human Rights.

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 47 of the Law and Rule 36 (1)c)and Rule 56 (2) of the Rules of Procedure, on 7 February 2014, unanimously declares the Referral inadmissible as manifestly ill-founded.

RESOLUTION ON INADMISSIBILITY
in
ase no. KI220/13
Applicant
Hysen Çeku
Request for constitutional review of the
Judgment Ac. No. 4952/2012 of the Court of Appeal of Kosovo, dated of 27 May 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 Mr. Hysen Çeku, from Village Fusha e Pejes, Municipality of Peja (hereinafter, the Applicant), represented by Mr. Bashkim Latifi, a practicing lawyer from Prishtina.

Challenged decision

2. The challenged decision is the Judgment Ac. no. No.4952/2012 of the Court of Appeal of Kosovo, of 27 May 2013, rejecting as ungrounded the appeal of the Applicant and upholding the judgment C.no.297/12 of the Municipal Court in Peja, of 04.12.2012. The challenged Judgment was served on Applicant on 5 November 2013.

Subject matter

3. The subject matter is the constitutional review of the challenged Judgment, which allegedly violated the Applicant's rights as guaranteed by Articles 3 (equality before the law), 22 [Direct Applicability of International Agreements and Instruments], 24

[Equality Before the Law] and 54[Judicial Protection of Rights] of the Constitution and European Convention for Protection of Human Rights(ECHR) and Universal Declaration on Human Rights, without specifying concretely any article of these two documents

Legal basis

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

Proceedings before the Court

5. On 5 January 2014, the Applicant submitted the Referral to the Constitutional Court.

6. On 8 January 2014, the President of the Court appointed the Judge Almiro Rodrigues as Judge Rapporteur and the Review Panel composed of Judges Altay Suroy, Kadri Kryeziu and Arta Rama-Hajrizi

7. On 6 September 2013, the Court notified the Applicant and the Court of Appeal of the registration of the Referral.

8. On 7 February 2014, 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 an unspecified date, the Applicant filed a claim with the Municipal Court in Peja, requesting the Department of Education of Municipality of Peja to pay to the Applicant a certain amount relative to the occasion of his retirement.

10. On 04 December 2012, the Municipal Court (Judgment C.no. 297/12) rejected the claim suit as ungrounded.

11. The applicant filed an appeal with the Court of Appealin Prishtina, due to *"substantial violation of contested procedure provisions, erroneous and incomplete ascertainment of factual situation, and erroneous application of substantive law"*.

12. On 27 May 2012, the Court of Appeal(Judgment Ac.no.4952/2012) rejected as ungrounded the appeal of the Applicant, reasoning that *"the general collective contract is indeed concluded, and it was effective as of 1 January 2005, as provided by Article 64 of the Contract. Article 43 provides that an employee is entitled to a jubilary award for 10 years of working experience with the last employer to an amount of a base salary, for 20 years of working experience with the last employer to an amount of a base salary"*

13. Furthermore, the Court of Appealstated that "*pursuant to Article 90, paragraph 4 of the Labour Law, it is explicitly provided that the Collective Agreement may be concluded for a certain period, with a duration of not more than 3 years, while the paragraph 5 provides that the Collective Agreement applies to those employers and employees who assume the obligations as determined by collective agreement.*

14. Finally, the Court of Appealconcluded that "*In this case, it has been safely ascertained that the general collective agreement expired on 1 January 2008, and was not extended further and, therefore, it bears no legal effect on this concrete matter.*

Applicant's allegations

15. The Applicant claims that the challenged Judgment constitutes a violation of Article 3 [Equality before Law], Article 22 [Direct Application of International Treaties and Instruments], Article 24 [Equality before Law], Article 54 [Judicial Protection of Rights] of the Constitution.

16. The Applicant alleges that, *"In the concrete case, the courts have mismatched the legal grounds of the claim suit, reviewing it as a category in claiming rights as per UNMIK Regulation no. 2001/35 on pensions in Kosovo, since the legal basis of the claim suit is on the rights of employees, as per Article 55.1 of the Law no. 03/L-212 on Labour".*

17. Furthermore, the Applicant alleges that *"courts should have adjudicated freely of any influence, in due regard of hierarchy of legal acts, as provided by Article 4 of the Law on Labour no. 03/L-212, which are a source of employee rights, such as: The Labour Law, Collective Contract, Internal Acts of the Employer,*

and the Working Contract, which in turn must be in accordance with the Labour Law provisions".

18. The Applicant requests the Constitutional Court of Kosovo *"to review the violations made by public authorities"* in the challenged judgments and *"annul them as unconstitutional and unlawful".*

Assessment of admissibilityof the Referral

19. First of all, the Court examines whether the Applicant has fulfilled the Referral admissibility requirements.

20. 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".*

21. 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".*

22. The Court considers that, taking into account these legal provisions, the Applicant would have been an authorized party, have exhausted all legal remedies provided by law and have submitted the Referral in the prescribed time limit.

23. However, the Court must also 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 (...)".*

24. 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".

25. The Applicant has not complied with that requirement of admissibility, as the Referral is manifestly ill- founded.

26. In fact, the Court notes that the Applicant challenged the Judgment of the Municipal Court of Peja before the Court of Appeal, due to erroneous and incomplete ascertainment of factual situation, and erroneous application of material law. Now, he is challenging the Judgment of the Court of Appeal before the Constitutional Court, because the challenged Judgment violated his *guaranteed right for equality before the law and judicial protection of rights*.

27. At the outset, the Court recalls that, in accordance with the principle of subsidiarity, it is up to the Applicant to raise any alleged constitutional violation before the regular courts for them primarily to ensure observance of the fundamental rights enshrined in the Constitution.

28. In this respect, the Court notes that the Applicant has not raised with the Court of Appeal the alleged constitutional violation of his *guaranteed right for equality before the law and judicial protection of rights*.

29. Meanwhile, the Court recalls that the Court of Appeal rejected his appeal, because "*the general collective agreement expired on 1 January 2008, and was not extended further and, therefore, it bears no legal effect on this concrete matter".* However, the Applicant does not accurately clarify why and how such a decision

has violated his right to equality before the law and judicial protection.

30. Moreover, the Court considers that the Judgment of the Court of Appeal provided extensive and comprehensive reasoning on the facts of the case and its legal findings are well reasoned and clear in answering the allegation presented by the Applicant. Thus, the Court findsthat the proceedings before the regular courts have been fair and reasoned (See, *mutatis mutandis,* Shub v. Lithuania, No. 17064/06, ECtHR, Decision of 30 June 2009).

31. In this conection, 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).

32. 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).

33. In sum, the Court cannot observe arguments and evidence that the challenged Judgment Ac. No.4952/2012 of the Court of Appeal of Kosovo, dated of 27 May 2013, was rendered in a manifestly unfair and arbitrary manner

34. Therefore, the Court concludes that the Applicant has not substantiated his allegation nor has he submitted any *prima facie* evidence indicating a violation of his rights under the Constitution, the ECHR and its protocols or the Universal Declaration of Human Rights.

35. 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 47 of the Law on Court and Rule 36 (1.c) and Rule 56 (2) of the Rules of Procedure, on 7 February 2014, unanimously

DECIDES

I. TO DECLARE 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	**President of the Constitutional Court**
Almiro Rodrigues	Prof. Dr. Enver Hasani

KI51/13, Shemsi Haliti, Resolution of 11 March 2014- Constitutional Review of the Judgment of the Supreme Court of Kosovo, Rev. no. 113/2010, of 19 December 2012

Case KI51/13, Decision of 11 March 2014.

Key words: individual referral, violation of constitutional rights and freedoms, Article 46, inadmissible referral.

The Applicant filed his Referral based on Article 113.7 of the Constitution of Kosovo, claiming that his constitutional rights and freedoms have been violated by the judgments of regular courts of all instances. The Applicant further requests from the Constitutional Court, to assess the legality and constitutionality of the Judgment of the Supreme Court of Kosovo and two judgments of the lower instance courts, which violate human rights and freedoms for protection of the immovable property, as a result of the lack of impartial trial, respectively as a result of incorrect application of the material provisions, guaranteed by Article 46 of the Constitution.

The Court considers that there is nothing in the Referral which indicates that, when reviewing the case, the regular courts 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 case Mezotur-Tiszazugi Tarsulat v. Hungary, No. 5503/02, Decision of 26 July 2005).

Therefore, the Court concludes that the Applicant's allegations were not substantiated by convincing evidence and arguments and should be declared as manifestly ill-founded, pursuant to Rule 36 (2) b) and d) of the Rules of Procedure.Consequently, for the reasons above, the Referral is inadmissible.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI51/13
Applicant
Shemsi Haliti
Request for constitutional review of the Judgment of the Supreme Court of Kosovo, Rev. no. 113/2010, 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 and
Arta Rama-Hajrizi, Judge

Applicant

1. The Applicant is Mr. Shemsi Haliti from Prishtina, who is represented by the lawyer, Mr. Gjuran Q. Dema.

Challenged decision

2. The Applicant challenges the Judgment of the Supreme Court of Republic of Kosovo (hereinafter: the Supreme Court), Rev. no. 113/2010, of 19 December 2012, which was served on the Applicant on 1 February 2013.

Subject matter

3. The subject matter of the case referred to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) is the constitutional review of the Judgment of the Supreme Court, Rev. no. 113/2010, by which, according to Applicant's allegations, the property right guaranteed by Article 46 of the Constitution was violated.

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 (hereinafter: the Law) and Rule 28 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure) .

Proceedings before the Court

5. On 8 April 2013, the Constitutional Court received the Referral, submitted by the Applicant and registered it under the number KI51/13.

6. On 10 April 2013, the Secretariat of the Court notified the Applicant's legal representative of the registration of Referral and requested from him to submit the written power of attorney for Applicant's representation before the Constitutional Court.

7. On 16 April 2013, the President, by Decision GJR. KI51/13, appointed Judge Altay Suroy as Judge Rapporteur. On the same day, the President, by Decision KSH. KI51/13, appointed the members of the Review Panel, composed of Judges: Snezhana Botusharova (Presiding), Ivan Čukalović (member) and Enver Hasani (member).

8. On 18 April 2013, the Applicant's legal representative submitted to the Court the written power of attorney, requested by the Court on 10 April 2013.

9. On 11 March 2014, the President of the Court requested from the full Court his recusal from the adjudication of this case. On the same date, the Deputy-President of the Court put to vote the request of the President for his recusal and his replacement as a member of the Review Panel. The Court unanimously approved the request of the President of the Court for recusal and unanimously decided that Judge Arta Rama-Hajrizi is appointed as a member of the Review Panel, instead of the President of the Court.

10. On 11 March 2014, the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the Court on inadmissibility of the Referral.

Summary of facts

11. On 1 July 1989, the Applicant had entered the gift contract with his father H.H.

12. By this contract, H.H in the capacity of the grantor, who is the owner of the cadastral plot NK. No. 9606 with surface area of 0.009.35 ha, consisting of the house, with surface area of 0.00,36 ha, the yard with surface area of 0.05,00 ha and orchard, with surface area of 0.03,49 ha, registered in the possession list no. 3169, donated to the Applicant, in capacity of the grantee 1/3 of the total surface area, without any compensation.

13. On an unspecified date in 1990, the Applicant registered the cadastral plot no. 9606 in his name, in the register of the Directorate for Cadastre and Geodesy in Prishtina.

14. On 26 February 1990, the Secretariat of Urbanism, Communal and Housing Affairs of Prishtina Municipality rendered the Ruling 07 no. 351-846, thereby allowing the construction of the individual house P+1 on the old foundations, with expansion and dislocation.

15. On 26 October 1990, the Applicant entered the contract with the Self-governing Community of Interest on governing the construction land in Prishtina, by which the Applicant was given a permission to regulate the construction land for individual construction with dimensions described in the Ruling on issuing the construction permit.

16. On 15 June 2007, the Municipal Court in Prishtina rendered Judgment C. no. 3147/2004, by which approved the request of the claimants: Xh. K., K. Z., Z. P., N. S., N. H., A. S., N. H., K. B., and S. Z., (the heirs of the deceased H. H.) for confirmation of the property rights regarding the parcel NK. No. 9606 and stated that: *„the claimants are the co-owners of 1/3 of the ideal part of cadastral plot no. 6906, place called "R. Gajdiku" of culture house, yard and orchard, under the possession list no. 3169, cadastral zone Prishtina, whereas the claimant R. H. is the owner of 1/3 of ideal part of this cadastral plot."*

17. In the same Judgment, the Municipal Court in Prishtina partly approved the claimant's request (in capacity of a counterclaimant) and confirmed that the Applicant is the owner of 1/3 ideal part of the abovementioned property, which he acquired by the gift contract.

18. In the reasoning of its Judgment, the Municipal Court states that based on presented evidence, hearing of witnesses, examination of cadastral registers and of the expertise of the expert of geodesy, concluded that: *"the challenged immovable property was divided by the father of the litigating parties into three equal parts, namely by the former owner, now the deceased H. H., so that 1/3 of ideal part was divided to the claimant R.H. and the respondent Shemsi Haliti, while 1/3 part was divided to the sisters of the above mentioned, namely to the claimants."*

19. Likewise, the Municipal Court held that: "*the fact that the entire immovable property is registered in the name of the respondent has no importance for the claimant's property rights over the parts of the immovable property, divided according to the abovementioned agreement. This is due to the fact that according to administered evidence, respectively the claimants' testimonies and the gift contract, concluded between the deceased H. H. and the respondent, it results the latter was entitled only to 1/3 of ideal part of the challenged immovable property, thus it is found that the registering of the other parts of the immovable property in question under the respondent's name is not legally grounded.*"

20. The Applicant filed an appeal with the District Court within the legal time limit, against the Judgment C. no. 3147/2004, of 15 June 2007.

21. On 4 February 2010, the District Court in Prishtina rendered the Judgment Ac. no. 478/2008, thereby rejecting the appeal of the Applicant as ungrounded, while it upheld in entirety the Judgment of the Municipal Court.

22. In the reasoning of its Judgment, the District Court in Prishtina stated that: *"According to the panel's evaluation, the respondent's appealed allegations that the challenged Judgment is a result of the erroneous application of the material law, are not grounded because the first instance court, as it was stated above, has determined the fact that the claimants on one side and the counterclaimant-respondent on the other, based on the agreement reached with the deceased H. H. have acquired the right of co-*

ownership over the challenged immovable property [...] and in this particular situation the first instance court has correctly applied the provisions of Article 13, paragraph 1 and Article 14, paragraphs 1 and 2 of the Law on Basic Property Legal Relations applicable at the time the challenged Judgment was rendered."

23. The Applicant filed a revision within the legal time limit with the Supreme Court of Kosovo, against the Judgment Ac. no. 478/2008 of the District Court, due to alleged violation of the contested procedure provisions, pursuant to Article 182 paragraph 1 and 2 of the Law on Contested Procedure.

24. On 19 December 2012, the Supreme Court rendered the Judgment Rev. no. 113/2010, by which rejected as ungrounded the Applicant's revision.

25. In the reasoning of its Judgment, the Supreme Court stated that: *" the lower instance courts have correctly assessed that 2/3 of the ideal part of cadastral plot no.6906 belong to the claimants-counter respondents, whereas 1/3 of the ideal part belongs to the respondent-counterclaimant, as they have agreed by verbal agreement when their predecessor divided this immovable property."*

Applicant's allegations

26. The Applicant alleges that *„The first instance Court's Judgment is confusing and not grounded, and those of higher instances have not avoided this confusion and other uncertainties over the contradictions in the enacting clause and those between the enacting clause and their reasoning. These judgments cannot be executed due to the non-existence of the measurements and borders of the contested property and as a result contain substantial violations of the contested procedure provisions*."

27. In addition, the Applicant insists that: "*From the enacting clause it results that the property included in the gift contract has been turned into inheritance, whereas the contract has still remained in force, because it has not been decided on its annulment. This procedural violation with other legal violations presented in this referral, make the final Judgment absolutely non-executable."*

28. The Applicant also states that *„by approving his referral all flaws of the abovementioned Judgments will be eliminated, related to*

violation of human rights and freedoms, and in this particular case it will be confirmed that by the abovementioned Judgments were violated the Applicant's human rights and freedoms respectively the property right over the immovable property, guaranteed by the Constitution of the Republic of Kosovo, Article 46."

29. The Applicant further requests from the Constitutional Court, *"to assess the legality and constitutionality of the Judgment of the Supreme Court of Kosovo, with noted number and date and two judgments of the lower instance courts, which violate human rights and freedoms for protection of the immovable property, as a result of the lack of impartial trial, respectively as a result of incorrect application of the material provisions."*

Admissibility of the Referral

30. The Court first examines whether the Applicant has fulfilled all admissibility requirements laid down in the Constitution and further specified in the Law and the Rules of the Procedure of the Court.

31. In this respect, the Court should specifically determine, whether the Applicant has met the requirements, provided by Article 113.7 of the Constitution, Article 48 of the Law and Rule 36 (2) of the Rules of Procedure.

32. 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".*

33. In the present case, the Applicant is authorized party and he has exhausted all legal remedies, provided by the law.

34. In addition, Article 48 of the Law also 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. Furthermore, Rule 36 (2) of the Rules of Procedure provides that:

> *„(2) 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".*

36. In this respect, the Court reiterates that it is not its task to act as a court of fourth instance, when reviewing the decisions taken by regular courts. It is still the domain of the regular courts to interpret the law and apply the pertinent rules of both procedural and substantive law (see case Garcia Ruiz v. Spain, no. 30544/96, ECtHR Judgment of 21 January 1999-1, § 28).

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

38. In the present case, the Applicant has been provided numerous opportunities to present his case and challenge the interpretation of the facts and the law, which he considers to be as incorrect, before the regular courts of all instances. Nevertheless, the Court concludes that the decisions of regular courts are reasoned and adequately respond in substance to the Applicant's allegations.

39. After reviewing the court proceedings in entirety, the Court has not found that the relevant proceedings have been otherwise unfair or arbitrary (See case Shub v. Lithuania, No. 17064/06, ECtHR, Decision of 30 June 2009).

40. The Court considers that there is nothing in the Referral which indicates that, when reviewing the case, the regular courts 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 case Mezotur-Tiszazugi Tarsulat v. Hungary, No. 5503/02, Decision of 26 July 2005).

41. Therefore, the Court concludes that the Applicant's allegations were not substantiated by convincing evidence and arguments and should be declared as manifestly ill-founded, pursuant to Rule 36 (2) and d) of the Rules of Procedure.

42. Consequently, for the reasons above, the Referral is inadmissible.

FOR THESE REASONS

Pursuant to Rule 36 (2) b) and d) as well as Rule56 (2) of the Rules of Procedure, the Constitutional Court, on 11 March 2014, unanimously:

DECIDES

I. TO DECLARE the Referral 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	**President of the Constitutional Court**
Altay Suroy	Prof. Dr. Enver Hasani

KI92/14, Fidaie Bytyqi, Resolution of 2 July 2014- Constitutional Review of the Judgment Rev. E. no. 1/2014, of the Supreme Court of Kosovo, of 12 February 2014

Case KI92/14, Decision of 2 July 2014.

Key words: Individual Referral, *manifestly ill-founded*

The Applicant alleges that the Judgment of the Supreme Court has violated the rights of guaranteed by the Constitution to a fair and impartial trial and the right to protection of property [Article 31 and 46] of the Constitution and the right to a fair trial and protection of property guaranteed by the Convention [Article 6 and Article 1 of the Protocol 1 of the Convention].

The Court finds that the Applicant has only argued that the Constitution and the Convention have been violated , but she has not provided any evidence of the way and the nature of the alleged violations could have occurred. The Court recalls that the mere description of the provisions of the Constitution and the allegation that they have been violated, without presenting evidence of the way they were violated, without specifying the circumstances, without specifying actions of the public authority that are contrary to fair and impartial trial, does not constitute sufficient grounds to convince the Court that there has been a violation of the Constitution and of the Convention regarding a fair and impartial trial.

The Court finds that the facts presented by the Applicant do not in any way justify the allegation for violation of a constitutional right, and it cannot be concluded that the Referral is grounded and, therefore, in accordance with Rule 36, paragraph 2, item b, it found that the Referral must be rejected as manifestly ill-founded and must be declared inadmissible.

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 47 of the Law and Rules 36 and 56 (2) of the Rules of Procedure, on 2 July 2014, unanimously declares the Referral inadmissible as manifestly ill-founded.

RESOLUTION ON INADMISSIBILITY
in
Case no. KI92/14
Applicant
Fidaie Bytyqi
Request for constitutional review of the Judgment of the Supreme Court of Kosovo, Rev. E. no. 1/2014, of 12 February 2014

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 and
Arta Rama-Hajrizi, Judge

Applicant

1. The Applicant is Mrs. Fidaie Bytyqi (hereinafter: the Applicant) from Malisheva, the owner of NNP "Shkoza F07", with the office in Prishtina, who is represented by Mr. Nezir Bytyqi, lawyer from Prishtina.

Challenged decision

2. The challenged decision is the Judgment of the Supreme Court of Kosovo, Rev. E. no. 1/2014, of 12 February 2014, which was served on the Applicant on 26 March 2014.

Subject matter

3. The subject matter is the constitutional review of the challenged Judgment of the Supreme Court, which allegedly violated the Applicant's rights, guaranteed by the Constitution of Kosovo, under Article 31 [Right to Fair and Impartial Trial], Article 46 [Protection of Property], as well as Article 6 [Right to a Fair Trial] and Article 1 of Protocol 1 [Protection of Property] of the European Convention of Human Rights (hereinafter: the Convention).

Legal basis

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

Proceedings before the Constitutional Court

5. On 20 May 2014, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 10 June 2014, the President of the Court, by Decision No. GJR. KI92/14, appointed Judge Robert Carolan as Judge Rapporteur and on the same date, appointed the Review Panel, composed of Judges: Snezhana Botusharova (Presiding), Kadri Kryeziu and Arta Rama-Hajrizi.

7. On 11 June 2014, the Court notified the Applicant and the Government of Kosovo –the Ministry of Infrastructure, on the registration of the Referral.

8. On 11 June 2014, the Supreme Court was notified on the registration of the Referral and was served with a copy of the Referral.

9. On 26 June 2014 Judge Kadri Kryeziu notified the Court in writing of his not taking part in the deliberations for the period June-July 2014 awaiting the Court's decision regarding certain allegations raised against him.

10. On 2 July 2014 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 15 October 2009, NNP “Shkoza F07”, a private company, which owner is the Applicant, has concluded contract no. MTPT 9/087511 with the Ministry of Transport and Telecommunication (hereinafter: MTPT, now transformed into the Ministry of Infrastructure) for performing the works: asphalting of local roads

Dubovc-Beqiq-Skenderaj-Vushtrri. After finishing the works, provided by the contract, the contractor would be paid the monetary amount as specified in the contract.

12. According to the Applicant, while performing the works on the ground, appeared the urgent need for the additional works, requested by the project manager, and these works were recorded in the construction book and were recognized by the committee, established by the MTPT Secretary. Although the additional works were finished, they were not paid by the respective ministry, despite several requests by the Applicant.

13. On 19 October 2010, the Applicant filed a claim with the District Commercial Court in Prishtina, against the Government of Kosovo–MTPT, for the payment of debt in the name the performed additional works.

14. On 14 December 2010,the District Commercial Court in Prishtina rendered the Judgment I.C. no. 384/2010, by which it approved the Applicant's statement of claim and obliged the respondent, the Government of Kosovo- the MTPT-Prishtina, to pay to the Claimant in the name of debt, the amount of 46.455,10€, with annual interest rate of 3,5%, starting from the day of filing the claim, until the final payment.

15. In the reasoning of the Judgment, the Commercial Court stated among the other:

> *"The works were performed according to the order of the supervisory body, which admitted all additional works, based on Article 8.4 of the basic contract. In addition, the party has stated that the works have not started without the signature of the supervisory body and after the signature by the supervisory body, the additional works were finished and admitted by the approval committee of MTPT"*...andit was further stated in the Judgment that *"The Court concluded that the contractors may perform unforeseen works even without previous consent of the orderer, if due to emergency there was no opportunity to take this consent, Article 634 of LOR"*.

16. On 9 October 2013, the Court of Appeal, decided upon the appeal of the Government of Kosovo–the MTPT, rendered the Judgment Ac. no. 159/2012, rejecting as ungrounded the respondent's appeal and upholding the Judgment of the District Commercial Court in Prishtina, I.C. no. 384/2010, of 14 December 2010.

17. In the reasoning of this Judgment, the Court of Appeal, held among the other:

> *"The Court of Appeal of Kosovo, found that the first instance court, by determining correctly and completely the factual situation, applied correctly the contested procedure provisions and the material law, when it found that the claimant's statement of claim is grounded. According to this court, the challenged judgment does not contain substantial violations of the contested procedure, which this court observes ex-officio, pursuant to Article 194 of LCP".*

18. On 12 February 2014, the Supreme Court of Kosovo, deciding upon the revision filed by the MTPT, rendered the Judgment Rev. E. no. 1/2014, by which it approved the revision as grounded and decided to modify the Judgment of the Court of Appeal of Kosovo, Ac. no. 159/2012, of 9 October 2013, and the Judgment of the District Commercial Court in Prishtina, C. no. 384/2010, of 14 December 2010, and rejected as ungrounded the Applicant's claim regarding the payment of debt, in the name of the performed works.

19. In the reasoning of the Judgment, the Supreme Court stated:

> *"The Supreme Court of Kosovo approved as grounded the allegations from the revision with regards to the erroneous application of the material law, since the lower instance courts have erroneously approved as grounded the claimant's statement of claim, due to the fact that the claimant did not act pursuant to Article 633 of LOR, applicable pursuant to Article 1057 of LOR, in force from 20.12.2012, since according to this legal provision, it was provided that for any avoidance from the contract, the executor, here the claimant, should take written consent by the orderer and he cannot request any increase of payment for the works he performed without consent of the work orderer".*

20. The Supreme Court, in the Judgment of revision, further reasoned:

> "*Therefore, based on the legal provision mentioned above, and on the fact that the claimant has not informed that claimant on time and in written form, for the need to perform the additional works on one side, in order that they agree on these works and possibly to conclude an annex contract and that in*

the present case it is not about the urgent works, unforeseen by Article 634 of LOR".

Applicant's allegations

21. The Applicant alleges that the Judgment of the Supreme Court has violated the rights of her business entity guaranteed by the Constitution to a fair and impartial trial and the right to protection of property [Article 31 and 46] of the Constitution and the right to a fair trial and protection of property guaranteed by the Convention [Article 6 and Article 1 of the Protocol 1 of the Convention].

22. According to the Applicant, the right to a fair trial was violated, since the Supreme Court erroneously applied the material law, by applying the Law on Obligational Relationships, instead of the Law on Public Procurement, which is *Lex Specialis* for this field, whereas as a consequence of this action of the Court, the Applicant was denied the right to property, because she had "legitimate expectation" of the property, based on the finished works. In this regard, the Applicant referred to Judgment of the Constitutional Court in case KI40/09, *Ibrahimi and 48 other former KEK employees*, where according to her, the Court held that there was a violation of the right to property.

23. The Applicant requested that "*the Constitutional Court decides to declare invalid Judgment of the Supreme Court Rev. E. no.1/2014, and remand the case to the Supreme Court to decide based on identified violations and findings by the Constitutional Court".*

Assessment of the admissibility of Referral

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

25. 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".*

26. The Court notes that the Applicant challenges the Judgment of the Supreme Court, Rev. E. no. 1/2014, of 12 February 2014, by which the MTPT revision was approved as grounded, whilst the Applicant's claim for compensation of the debt requested from MTPT, was rejected as ungrounded.

27. The Court further finds that the Applicant alleges that her rights guaranteed by the Constitution and the Convention, as specified in paragraph 20 of this report, have been violated.

Article 31 of the Constitution [Right to Fair and Impartial Trial] provides:

"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".
[...]

Article 46 [Protection of Property]

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

And Article 6.1 of the Convention:

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

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".*

28. In reviewing the Applicants' allegations , the Court finds that the Applicant has only argued that the Constitution and the Convention have been violated , but she has not provided any evidence of the way and the nature of the alleged violations could have occurred. The Court recalls that the mere description of the provisions of the Constitution and the allegation that they have been violated, without presenting evidence of the way they were violated, without specifying the circumstances, without specifying actions of the public authority, that are contrary to fair and impartial trial, does not constitute sufficient grounds to convince the Court that there has been a violation of the Constitution and of the Convention regarding a fair and impartial trial.

29. The Court has found that in all stages of the court proceedings, the Applicant's complaints have been of legal character and never, in any stage, of the constitutional nature or of possible violation of human rights, protected by the Constitution, which for the first time has been raised before the Constitutional Court, which leads the Court to conclusion that, in fact, the Applicant is unsatisfied with the final outcome of the trial of her case.

30. The application of applicable law and the correct and complete determination of the factual situation in a civil case before a regular court is full and undisputed jurisdiction of that court, and in the present case, the Supreme Court had clearly concluded that "*for any avoidance from the contract, the executor, here the claimant, should take written consent by the orderer and he cannot request any increase of payment for the works he performed without consent of the work orderer".* Therefore, it is not the task of the Constitutional Court to interfere with this jurisdiction, and in the circumstances in the present case, when the

application of law is challenged, the Court cannot find violation of Article 31 of the Constitution or of Article 6 of the Convention.

31. The Court further concludes that the Applicant's allegation that her case is similar to
the case KI40/09 of the Court is not grounded , because in the case KI40/09, the Court found that the Judgment of the Supreme Court had erroneously relied in it's judgment on a law that was never formally adopted and found that a pension disability fund had been established when, indeed, that pension disability fund had never been established. This action of the Supreme Court made the Judgment arbitrary, because this was the substantial fact on which depended the legitimate expectation for material compensation of the Applicant. In contrast, in the Applicant's case, the court applied an existing law and acted in full compliance with its constitutional and legal jurisdiction. Therefore, there is no arbitrariness in the Applicant's case, and consequently, no violation of the right to property.

32. The Court reiterates that it is not a fact finding court, it does not adjudicate as a court of fourth instance, and it is not merely a higher instance court. It is essential for the Court the issues on which existence depends the assessment of possible violations of the constitutional rights and not clearly legal issues, which were mainly the facts presented by the Applicant (See, *mutatis mutandis, i.a., Akdivar v. Turkey*, 16 September 1996, R.J.D, 1996-IV, para. 65).

33. The Court recalls that in the case KI53/14 submitted from the applicant NTP "Llabjani" in the similar circumstances ,with the same subject of review, the Court decided for the inadmissibility of the referral(See Resolution on Inadmissibility KI53/14 ,7 July 2014)

34. The Court recalls that the mere fact that the Applicants are dissatisfied with the outcome of the case cannot of itself raise an arguable claim of a breach of the provisions of the Constitution (see *mutatis mutandis*, Judgment ECHR Appl. No. 5503/02, *Mezotur Tizsazugi Tarsulat v. Hungary*, or the Resolution of the Constitutional Court, Case KI128/12 of 12 July 2013, the Applicant *Shaban Hoxha* in the request for constitutional review of the Judgment of the Supreme Court of Kosovo, Rev. no. 316/2011).

35. In these circumstances, the Court finds that the facts presented by the Applicant do not in any way justify the allegation for violation of a constitutional right, and it cannot be concluded that the Referral is grounded and, therefore, in accordance with Rule 36, paragraph 2, item b, it found that the Referral should be rejected as manifestly ill-founded and should be declared inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 47 of
the Law and Rules 36 and 56 (2) of the Rules of Procedure, on 2 July 2014, unanimously

DECIDES

I. TO DECLARE the Referral 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	**President of the Constitutional Court**
Robert Carolan	Prof. Dr. Enver Hasani

KI84/14, Arlind Kaçaniku, Resolution of 16 September 2014-Constitutional Review of Decision, Rev. No. 18/2014 of the Supreme Court, of 3 February 2014

Case KI84/14, Decision of 16 September 2014.

Key words: Individual Referral, right to a fair and impartial trial, judicial protection of rights, employment relationship, manifestly ill-founded

The Applicant challenges the Decision of the Supreme Court of 3 February 2014, which rejected the Applicant's revision against the Decision of the Court of Appeals as ungrounded. The Applicant alleges that the Judgment of the Supreme Court violated his rights guaranteed by Article 31 [Right to Fair and Impartial Trial] and Article 54 [Judicial Protection of Rights] of the Constitution.

The Applicant specifically requested the Constitutional Court to assess whether the regular courts may apply a law adopted after 1989, in particular in cases when employment relationship is covered by other applicable legislation of the Republic of Kosovo. In this regard, the Constitutional Court considered that the matter referred by the Applicant is the matter of legality, not of the constitutionality.

The Constitutional Court declared the Referral as inadmissible for being manifestly ill-founded because the facts presented by the Applicant do not in any way justify the alleged violation of the constitutional rights invoked by him and he has not sufficiently substantiated his allegation.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI84/14
Applicant
Arlind Kaçaniku
Constitutional review of Decision, Rev. No. 18/2014 of the Supreme Court, of 3 February 2014

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

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

Applicant

1. The Applicant is Mr. Arlind Kaçaniku with residence in Prizren, represented by Mr. Ymer Koro, lawyer from Prizren.

Challenged decision

2. The challenged decision is Decision, Rev. No. 18/2014 of the Supreme Court date 3 February 2014,which was served on the Applicant on 21 March 2014.

Subject matter

3. The subject matter is the constitutional review of Decision, Rev. No. 18/2014 of the Supreme Court dated 3 February 2014,whereby the Applicant's revision against Decision of the Court of Appeals (Ac. No. 373/2013, of 11 September 2013) was rejected as ungrounded. The Applicant alleges that the Judgment of the Supreme Court violated his rights guaranteed by Article 31 [Right to Fair and Impartial Trial] and Article 54 [Judicial Protection of Rights] 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 47 of the Law on the Constitutional Court of the Republic of Kosovo no. 03/L-121 (hereinafter: the Law), and Rule 56 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 12 May 2014, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 10 June 2014, the President of the Court by Decision, GJR. KI84/14 appointed Judge Arta Rama-Hajrizi as Judge Rapporteur. On the same date, the President of the Court by Decision, KSH. KI84/14 appointed the Review Panel composed of Judges: Altay Suroy (Presiding), Snezhana Botusharova and Kadri Kryeziu.

7. On 17 June 2014, the Constitutional Court notified the Applicant of the registration of Referral.On the same date, the Court sent a copy of the Referral to the Court of Appeal.

8. On 16 September 2014, theReview 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

9. Starting from 25 September 2000, the Applicant was employed for an indefinite period of time with Microfinance Institution "FINCA-KOSOVË" in Prizren (hereinafter: the Employer).

10. On 25 June 2010, based on the warning issued by Disciplinary Committee, the Employer rendered a decision on termination of the Applicant's employment relationship, effective as of 30 June 2010.

11. On 26 August 2010, the Applicant filed a claim with the Municipal Court in Prizren against the Employer's decision on termination of the employment relationship.

12. On 22 October 2012, the Municipal Court in Prizren, by Decision, C. no. 598/2010, rejected the Applicant's claim as out of time.

13. The Municipal Court based on the case files and by referring to the provisions of the applicable law, in its Decision held that:

> *"Based on evidence presented in the case files, it has been determined that on 18.06.2010 the respondent imposed a warning to the claimant (whereby it is provided that the effective date of termination of employment relationship is 30.06.2010, and the latter was served on the claimant on 25.06.2010, which is seen in the PTK receipt of acknowledgement), whereas the decision on termination of the employment contract was rendered on 30.06.2010 (a date which was mentioned also by the claimant in the claim), the notification which was served on the Applicant one day later by mail (this fact was confirmed by the post receipt of acknowledgement). The Applicant filed a claim on 26.08.2010. From the case files, it can be seen clearly that since the effective decision on termination of the employment relationship have elapsed 56 days. Thus, the claim was filed with the Court after the expiration of the legal deadline of 45 days […]".*

14. As a result of the appeal against the Decision of the Municipal Court in Prizren, the Court of Appeals of Kosovo, by Decision, AC. no. 373/2013 rejected the Applicant's appeal as ungrounded and upheld the Decision of the Municipal Court in Prizren, C. no. 598/2010, of 22 October 2010.

15. Against the Decision of the Court of Appeals, the Applicant filed a revision with the Supreme Court of Kosovo, with allegation of substantial violation of the Law on Contested Procedure and erroneous application of the substantive law.

16. On 3 February 2014, the Supreme Court by Decision Rev. No. 18/2014 rejected the Applicant's revision as ungrounded.

17. As regards to the allegations raised by the Applicant, the Supreme Court held that:

> *"Under Article 83 of the Law on Basic Rights from Employment Relationship, it is provided that an unsatisfied employee with the final decision of the competent authority in the organization, or if the authority does not render a decision within 30 days from the date of filing the request, i.e. objection, he has the right to seek protection of his rights before the competent court within a time limit of 15 days. The claimant,*

pursuant to the Law on Associated Labor and the Law on Basic Rights from Employment Relationship, was able to claim the protection of his rights deriving from employment relationships. These laws were in force, because by Regulation no. 1999/24 (Article 1) of the UN Special Representative of the Secretary General, are defined laws that are in force in Kosovo. Section I, item (b) defines the laws that were in force in Kosovo until 22.03.1989. The applicable law until 1999, among other laws, was also the Law on Associated Labor and the Law on Basic Rights from Employment Relationship, which provide the time limit on protection of the rights of employees deriving from employment relationship, so the allegation stated in the revision that the laws, which were applied by the lower instance courts do not contain any provision regarding the time limit of the claim, are considered by this court as ungrounded".

[…]

"According to the assessment of the Supreme Court, the lower instance courts have correctly applied the provision of Article 83 of LBRER [Law on Basic Rights from Employment Relationship], because this deadline is preclusive and after expiration of this deadline, the employee loses the right to judicial protection, therefore the claim filed after this deadline, must be rejected as out of time […]".

Applicant's allegations

18. The Applicant addresses the Court with the following reasoning:

"[…]
In this case the regular courts rejected the Applicant's claim as out of time, based on the Law on Basic Rights from Employment Relationship of former SFRY, promulgated in the Official Gazette no. 60/1989 on 08.10.1989, which entered in to force 8 days after its promulgation, namely on ***14.10.1989.*** *This constitutes violation of Article 1.1 of UNMIK Regulation 1999/24. It must be stressed that Article 1.2 of this Regulation provides a possibility of application of another law, even after this date which is not discriminatory andif a subject matter or situation* ***is not covered by the laws set out in section 1.1 of the present regulation.*** *But in this case such a situation as described in Article 1.2 of this Regulation did not exist,*

*because this matter (time limit of claim), was covered by the **Law on Associated Labor** (promulgated in Official Gazette of former SFRY 53/1976). In fact, the Supreme Court in its Decision stated that this Law according to Regulation 1999/24, is applicable law, but this Court has not specified any Article of this Law [...]".*

19. The Applicant concludes by alleging that " *[...] the regular courts did not hold fair trial by applying non-applicable law in Kosovo and consequently the applicant remained without judicial protection, and this constitutes violation of Articles 31 and 54 of the Constitution of the Republic of Kosovo."*

20. Finally, the Applicant addresses the Court with the following request:

"[...] that the Constitutional Court states whether a law after 22.03.1999 [1989], can be applied if other positive laws in Kosovo before this date in the field of employment relationship already govern a legal matter (time limit of claim)".

Assessment of the admissibility of Referral

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

22. In this respect, the Court refers to Article 113, paragraph 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".

23. The Court also refers to Rule36 of the Rules of Procedure, which provides:

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

(4) 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*
> *(d) when the Applicant does not sufficiently substantiate his claim".*

24. As it was mentioned above, the Applicant alleges that "*[…] the regular courts did not hold a fair trial by applying non-applicable law in Kosovo and consequently the Applicant remained without judicial protection, which constitutes violation of Articles 31 and 54 of the Constitution of the Republic of Kosovo,"* and he requests from the Court *"[…] to state whether a Law after 22.03.1999 [1989], can be applied if other positive laws in Kosovo before this date in the field of employment of relationship already govern a legal matter (time limit of claim)".*

25. In this case, the Court notes that the matter referred by the Applicant is the matter of legality, not of the constitutionality.

26. As regards to this, 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 also reiterates that the Constitutional Court cannot replace the role of the regular courts. It is the role of regular courts to interpret and apply the pertinent rules of both procedural and substantive law (see case*, Garcia Ruiz v. Spain*, ECHR, Judgment of 21 January 1999, see also case 70/11, Applicants *Faik Hima, Magbule Hima and Bestar Hima*, Resolution on Inadmissibility of 16 December 2011).

28. Regarding the Applicant's allegation, cited in paragraph 24, the Court notes that the reasoning provided in the Decision of the Supreme Court is clear and the reasoning provided by the Supreme Court covers the allegations raised by the Applicant regarding the implementation of the legislation in force with respect to the time limit of the claim. After reviewing the entire proceedings, the Court also found that the proceedings before the Court of Appeals and the Municipal Court in Prizren, have not been unfair or arbitrary (see, *mutatis mutandis, Shub v. Lithuania*, No. 17064/06, ECHR, Decision of 30 June 2009).

29. Accordingly, the Court considers that the Referral is inadmissible as manifestly ill-founded, because the facts presented by the Applicant do not in any way justify the allegation of violation of his constitutional rights, invoked by the Applicant and he has not sufficiently substantiated his claim.

FOR THESE REASONS

The Constitutional Court, pursuant to Rules 36 (2), b) and d) and 56 (2) of the Rules of Procedure, on 16 September 2014, unanimously:

DECIDES

I. TO DECLARE 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	**President of the Constitutional Court**
Arta Rama-Hajrizi	Prof. Dr. Enver Hasani

KI73/14, Xhafer Dvorani, Resolution of 16 September 2014- Constitutional Review of the Decision Ac. no. 2770/2013 of the Court of Appeals of Kosovo, dated 17 March 2014.

Case KI73/14, Decision of 16 September 2014.

Keywords: equality before the law, individual referral, judicial protection of rights, manifestly ill-founded

The applicant, Xhafer Dvorani, filed a Referral pursuant to Article 113.7 of the Constitution challenging the Decision Ac. no. 2770/2013 of the Court of Appeals of the Republic of Kosovo, of 17 March 2013 as being taken in violation of the Applicant's rights to Equality Before the Law and Judicial Protection of Rights (Articles 3 and 24, and 54 of the Constitution).

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) and (2) d) of the Rules of Procedure.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI73/14
Applicant
Xhafer Dvorani
Constitutional Review of the Decision Ac. no. 2770/2013 of the Court of Appeals of Kosovo, dated 17 March 2014

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

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

Applicant

1. The Referral was filed by Mr. Xhafer Dvorani from Terstenik village, Municipality of Gllogoc (hereinafter, the Applicant) and represented by Mr. Bashkim Latifi, lawyer from Prishtina.

Challenged decision

2. The Applicant challenges the Decision Ac. no. 2770/2013 of the Court of Appeals of the Republic of Kosovo (hereinafter, the Court of Appeals), dated 17 March 2013, which was served on the Applicant on 7 April 2014.

Subject matter

3. The subject matter is the constitutional review of the challenged decision, which allegedly violated the Applicant's rights to *Equality Before the Law and Judicial Protection of Rights (Articles 3 and 24, and 54 of the Constitution)*.

Legal basis

4. TheReferral is based on Article 113.7 of the Constitution; Article 22 and 47 of the Law No. 03/121 on the Constitutional Court of the Republic of Kosovo (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 Constitutional Court

5. On 16 April 2014, the Applicant submitted the referral to the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).

6. On 6 May 2014, the President of the Court appointed Judge Almiro Rodrigues as Judge Rapporteur and the Review Panel composed of Judges Altay Suroy (Presiding Judge), Kadri Kryeziu and Arta Rama-Hajrizi.

7. On 27 May 2014, the Court notified the Applicant on the registration of the Referral and sent a copy of the Referral to the Court of Appeals.

8. On 16 September 2014, 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 12 August 2013, the Branch in Gllogoc of the Basic Court in Prishtina (Decision C. nr. 143/013) rejected as inadmissible the claim of the claimant concerning two jubilee salaries and on behalf of two monthly salaries relating to retirement along with the legal interest and proceeding costs, because *"the claim was submitted before the permitted legal remedies (...) had been exhausted"*.

10. The Applicant submitted a complaint with the Court of Appeals against that Decision, due to "*an erroneous or incomplete ascertainment of the factual situation whereby the court has erroneously ascertained a crucial fact, namely when such fact was not ascertained at all"*.

11. On 17 March 2014, the Court of Appeals (Ac. nr. 2770/2013) rejected the complaint of the claimant as ungrounded and upheld

the Decision of the first instance. The Court of Appeals concluded as follows:

> *"[…] the Court has found that such a claim shall be rejected as inadmissible in terms of the provisions of Article 391 item f) of the LCP, because the claimant has not complied with the obligations referred to in Article 78 and 79 of the Law on Labour of the Republic of Kosovo. (…) in this case the claimant did not address to the relevant body of the respondent, an obligation that has been over-passed by the claimant".*

Applicant's allegations

12. The Applicant claims that "*his rights stated in (…) Article 3 (Equality Before the Law), Article 22 (Direct Applicability of International Agreements and Instruments) Article 24 (Equality Before the Law), Article 54 (Judicial Protection of Rights) of the Constitution of the Republic of Kosovo, as well as the Universal Declaration of Human Rights, the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols have been violated".*

13. TheApplicant alleges that *"[…] The Courts should have adjudicated without being influenced, in compliance with the hierarchy of legal acts set forth in the* provisions *of Article 4 of Law No. 03/1-212 on Labour, which represent a source of workers' rights, namely: Law on Labour, Collective Agreement, Employer's Internal Act and Labour Contract and which must comply with the provisions of the Law on Labour and that the provision of Article 54 of the Constitution of the Republic of Kosovo guarantees to the employees the judicial protection of the rights, providing 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."*

14. The Applicant requests the Constitutional Court *"[…] to oblige the respondent, Municipality of Gllogoc – Education Department, in Gllogoc, to pay to the claimant the debt on behalf of two jubilee salaries and on behalf of two monthly salaries relating to retirement, along with the legal interest and proceeding costs".*

Admissibility of the Referral

15. The Court initially reviews whether the Applicant has fulfilled the admissibility requirements set forth in the Constitution, the Law and the Rules of Procedure.

16. In this respect, the Court refers to Article 48 of the Law on the Court 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.*

17. The Court also refers to Rules 36 (1) c) and (2) d) of the Rules of Procedure, which provide:

> *(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:*
>
> *(...) (d) the Applicant does not sufficiently substantiate his claim.*

18. The Court notes that the Applicant filed an appeal with the Court of Appeals *"due to essential violations of the provisions of the contested procedure"* allegedly committed by the first instance court. No allegation was made on a constitutional violation.

19. Moreover, the Applicant has not explained and proved how and why his rights and freedoms have been violated by the decision of the Court of Appeals which rejected his appeal as not grounded and confirmed the decision of the Basic Court.

20. In fact, the Applicant has not substantiated the allegation based on a constitutional violation and did not provide relevant evidence showing that his rights and freedoms protected by the Constitution have been violated by the challenged decision.

21. Furthermore, the Court reiterates that it is not the duty of the Constitutional Court to deal with errors of facts or law (legality) alleged to have been made by the Court of Appeals, except and to the extent they might have violated the rights and freedoms protected by the Constitution (Constitutionality). Therefore, it is

not a duty of the Constitutional Court to act as a fourth instance court when considering the decisions made by regular courts. It is the latter's role to interpret and apply the relevant rules of both the procedural and substantive law (See, *mutatis mutandis, Garcia Ruiz v. Spain* [GC], No. 30544/96, para. 28, Report of the European Court on Human Rights [ECHR] 1999-I).

22. Therefore, the Constitutional Court cannot conclude that the relevant proceedings might have violated the rights and freedoms protected by the Constitution or they were, in any way, unfair or tainted by arbitrariness (see mutatis *mutandis, Shub v. Lithuania, ECHR*, Decision on Admissibility of the Application No. 17064/06, dated 30 June 2009).

23. Consequently, the Referral is inadmissible, as it is manifestly ill-founded pursuant to Rule 36 (1), c) and (2), d) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 48 of the Law and Rules 36 (1) c) and (2) d) of the Rules of the Procedure, in its session held on 16 September 2014, unanimously

DECIDES

I. TO DECLARE 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

KI104/14, Agron Çerreti, Resolution of 17 September 2014- Constitutional Review of unspecified decisions of the Supreme Court and the Court of Appeals and Judgment P. no. 88/2012 of the Municipal Court in Gjilan

Case KI104/14, Decision of 17 September 2014.

Key words: individual referral, criminal contest, manifestly ill-founded referral

In this case, the Applicants alleged that the regular courts violated his rights guaranteed by the applicable law and the Constitution, due to the following reasons: 1) the Court of Appeal changed, upon the request of the Municipal Prosecutor Office in Gjilan, the punishment by a fine of 700 Euros with imprisonment of a duration of 4 (four) months, although the MPGJ did not request it from the Municipal Court; 2) due to the fact that the Court of Appeals did not apply Article 47 of the CPCK, relating to the option of replacing the imprisonment with a fine; and 3) due to the fact that the Supreme Court rejected his request for protection of legality, reasoning that neither the Applicant nor his defense council requested to attend the main hearing of the Court of Appeal to request the change of punishment.

With regard to the allegation for violation of rights guaranteed by the Constitution, the Applicant had not mentioned the specific provision of the Constitution that had been violated. In this respect, the Court could not review the constitutionality of decisions of the regular courts, since the Applicant did not submit the challenged decisions to the Court. Therefore, the Court cannot take into consideration only the allegations and statements of the Applicants, if such allegations and statements are not supported by substantive arguments and evidence.

The Court considered that the Applicant has not shown a *prima facie* case in order for the court to assess whether the admissibility procedural requirements have been satisfied, whether the Applicant has exhausted all effective legal remedies, whether the Referral has been submitted within the time limit of 4 (four) months and whether the allegations of the Applicant on violation of his rights guaranteed by the Constitution present an evidence-based ground to assess the merits of the Referral.

In sum, the Court concludes that, pursuant to Article 48 of the Law and the Rule 36 (1) c) of the Rules of Procedure, the Referral of the Applicant is manifestly ill-founded.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI104/14
Applicant
Agron Çerreti
Constitutional review of unspecified decisions of the Supreme Court and the Court of Appeals and Judgment P. no. 88/2012 of the Municipal Court in Gjilan

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

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

Applicant

1. The Referral was submitted by Mr. Agron Çerreti, permanently residing in Prizren.

Challenged decision

2. The Applicant challenges unspecified decisions of the Supreme Court and the Court of Appeals and the Judgment P. no. 88/2012 of the Municipal Court in Gjilan, however, none of them was submitted to the Court.

Subject matter

3. The subject matter is the constitutional review of decisions as stated in the title herein. In general, the applicant complains against decisions of regular courts alleging that they have violated his rights guaranteed by the Constitution.

Legal basis

4. The legal basis of the present case is Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: Constitution), Article 22 and 47 of the Law No. 03/L-121, on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law).

Proceedings before the Constitutional Court

5. On 20 June 2014, the Applicant submitted the Referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 7 July 2014, the President of the Court, by Decision No. GJR. KI104/14, appointed Judge Arta Rama-Hajrizi, as Judge Rapporteur and on the same date by Decision No. KSH. KI104/14, appointed the Review Panel composed of Judges Robert Carolan (Presiding), Almiro Rodrigues and Ivan Čukalović.

7. On 15 July 2014, the Court notified the Applicant on the registration of the Referral and requested him to supplement it with relevant documentation.

8. On 17 September 2014, the President of the Court replaced the member of the Review Panel, Judge Robert Carolan with Judge Snezhana Botusharova.

9. On 17 September, the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the full Court on the inadmissible of the Referral.

Summary of facts

10. The Applicant stated that he was accused by the Municipal Prosecution Office in Gjilan (hereinafter: MPGJ), of the criminal offence of fraud.

11. The Applicant stated that, within the legal time limit, he had submitted an appeal against the punitive order.

12. The Municipal Court in Gjilan (Judgment P. no. 88/2012), following the main trial session, found the Applicant guilty, based on the indictment for the criminal offence of fraud, whereby it imposed a fine at the amount of 700 Euros. However, the Court