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

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BULLETIN OF CASE LAW 2014

OF THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

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Foreword

It is with great pleasure that I am writing this Foreword to the Bulletin of Case Law 2014 of the Constitutional Court of Kosovo which is the fourth publication of its kind since the Court's establishment in 2009. I thank the Secretariat of the Court wholeheartedly for having prepared this Bulletin with the utmost care and dedication following the same approach as in the Court's previous Bulletins. As the publication of Bulletin 2013, also the publication of the present Bulletin has been financed by a generous donation of the German International Cooperation (GIZ) for which the Court is very obliged.

Also the present Bulletin contains a number of leading cases. As I already mentioned in the Foreword to the Court's Yearbook 2013, one of these cases concerned a referral by the Ombudsperson of Kosovo challenging the constitutionality of certain Articles of the Law on Banks, Microfinance Institutions and Non-Bank Financial Institutions. A further important referral, submitted by some Deputies of the Assembly of Kosovo, concerned the constitutional review of the Law on Ratification of the First International Agreement of Principles Governing the Normalization of Relations between the Republic of Kosovo and the Republic of Serbia and of the implementation of this Agreement. The Court was requested to confirm that the proposed amendments did not diminish the rights and freedoms guaranteed by Chapter II [Fundamental Rights and Freedoms] of the Constitution. In a further case the Court dealt with the question, submitted by a number of Deputies of the Assembly, whether the Law on Amnesty was in violation of the Constitution regarding its substance and the procedure followed for adopting the Law.

I cannot repeat enough that prospective applicants and their legal practicioners, if any, who are intending to submit a referral to the Constitutional Court, should, by using this and previous Bulletins or looking on the Court's website, carefully consult the Court's decisions in similar cases and, if there are any, to consider whether in light thereof their case could have any prospect of success. Of course, in principle, the right to petition cannot be denied to any applicant, but it would be better not to have false hopes in hopeless cases.

The goal of the publication of the Court's decisions in the Bulletins and on the Court's website is, as I said already in Bulletin 2012, also to show to the world that the judges of the Constitutional Court take their decisions independently in a fully transparent manner while applying the highest standards of human rights and constitutional justice.

Prof. Dr. Enver Hasani
President of the Constitutional Court

KI21/13, Elfete Haxhiu, Resolution of 17 October 2013 - Constitutional Review of the Decision of the Supreme Court of Kosovo Appellate Panel of Kosovo Property Agency, GSK-KPA-A-63/12, of 17 January 2013

Case KI21/13, decision of 17 October 2013

Key words: individual referral, right to property, manifestly ill-founded

The Applicant submitted his 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 paragraph 2 of the Rules of Procedure.

The Applicant alleges that by the decision of the Appellate Panel of KPA, GSK-KPA-A-63/12, of 17 January 2013 were violated the rights guaranteed by Constitution, such as: the right of property and right to choose the residence.

After having reviewed the documents, the Court found that the Applicant has not shown why and how her rights guaranteed by the Constitution were violated. The mere statement that the Constitution was violated cannot be considered as a constitutional complaint. Therefore, pursuant to the Rule 36 (1) (c) of the Rules of Procedure, the Referral is manifestly ill-founded and consequently it is inadmissible.

RESOLUTION ON INADMISSIBILITY
in
Case no. KI21/13
Applicant
Elfete Haxhiu
Constitutional Review of the Decision of the Supreme Court of Kosovo-Appellate Panel of Kosovo Property Agency, GSK-KPA-A-63/12, 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
Kadri Kryeziu, Judge
Arta Rama-Hajrizi, Judge

Applicant

1. The Applicant is Ms. Elefete Haxhiu, from Viti (hereinafter: Applicant), who is represented by lawyer Mr. Sahit Musa from Viti.

Challenged decision

2. The Applicant challenges the Decision of the Appellate Panel of the Supreme Court of Kosovo on Kosovo Property Agency Matters (hereinafter: KPA Appellate Panel), GSK-KPA-A-63/12, of 17 January 2013, which was served on her on 6 February 2013.

Subject matter

3. The Applicant alleges that the decision of the KPA Appellate Panel, GSK-KPA-A-63/12 of 17 January 2013 violates her constitutionally guaranteed rights, such as: the property right and the right of freedom to choose residence.

Legal basis

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

Proceedings before the Court

5. On 25 February 2013, the Applicant submitted a Referral to the Constitutional Court of the Republic of Kosovo, and the same was registered under the number KI21/13.

6. On 28 May 2013, the President appointed Arta Rama-Hajrizi as Judge Rapporteur and the Review Panel composed of Judges Altay Suroy (presiding), Snezhana Botusharova and Kadri Kryeziu.

7. On 17 October 2013, the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility.

Summary of the facts

8. On 19 September 2001, M. S. submitted a request to the Housing and Property Claims Commission in Gjilan (hereinafter: HPCC) to confirm the ownership right over a property, respectively over an apartment, which is located in Viti.

9. On the same day, the HPCC registered the request of M. S. under number DS 200669.

10. On 29 April 2003, A. A. submitted also a request to HPCC in Gjilan for confirmation of the ownership right over the same property, respectively the apartment, which is located in Viti.

11. On the same day, the HPCC registered the request of A.A. under the number DS 605934.

12. On 15 May 2003, M. S. submitted a request to the HPCC in Gjilan, requesting the withdrawal of the request, which he submitted on 19 September 2001.

13. On 5 April 2004, M. S., concluded a sale-purchase agreement of the apartment with the Applicant at the Municipal Court of Viti.

14. On an unspecified date, M. S., submitted a request to the Municipal Court of Viti, requesting from the Court to approve the conclusion of the sale-purchase agreement of the apartment, which he and the Applicant signed on 05 April 2004.

15. On 29 April 2004, the Municipal Court in Viti rendered Decision [no. N.No. 26/2004], approving the proposal of M. S., and thereby approved the signing of the sale-purchase agreement of the apartment.

16. In the enacting clause of the Ruling, the court stated that:

> *„The Court has administered evidence proposed by representative of proposer and counter-proposer: the sale-purchase agreement of apartment with no. 250/94, of 05.04.1994, certified at this court, the power of attorney no. 150/2000, of 14.09.2000, form for interviews of Housing Property Affairs Directorate- Housing Property Claims Commission in Gjilan, in the name of M.S. no. DS -200669 of 23.12.2002, the consent of municipal administrator in Viti, no. 223 of 29.09.2003, pursuant to Regulation 2001/17, and at the end concluded that the proposal of proposer is entirely grounded and was approved in entirety as grounded."*

Proceedings before HPCC upon the request of A. A.

17. On 17 October 2003, in the proceeding of the first instance, the HPCC rendered Decision [no. HPCC/D/93/2003], which recognized to A. A. the right of ownership over the apartment in Viti.

18. On an unspecified date, the Applicant filed an appeal to the second instance panel of HPCC against the decision of the first instance of HPCC [HPCC/D/93/2003] of 17 October 2003.

19. On an unspecified date, the second instance panel of HPCC rendered decision [HPCC/REG/95/2007], rejecting the Applicant's request for reconsideration of the first instance decision of HPCC [HPCC/D/93/2003] of 17 October 2003.

20. On 14 May 2012, the Applicant filed an appeal to the KPA Appellate Panel against the decision of the first and the second instance of HPCC.

21. On 17 January 2013, KPA Appellate Panel rendered Judgment [GSK-KPA-A-63/12], rejecting Applicant's appeal as inadmissible.

22. In the reasoning of judgment, the KPA Appellate Panel stated that:

> "*The abovementioned decisions are rendered based on UNMIK Regulation, 2000/60 (hereinafter: the Regulation). By Decision HPCC/REG/95/2007, the request for reconsideration submitted by appealing party against Decision HPCC/D/93/2003 is rejected. UNMIK Regulations do not provide legal remedy (appeal or any other extraordinary legal remedy) against final decisions of Housing Property Claims Commission - argument pursuant to Article 22 and 23, at the same place. In this regard, this is also the law case of Constitutional Court of the Republic of Kosovo (see Case no. KI104/10, paragraph 64, 74 and 75). Thus, the abovementioned appeal, filed against the final decision is inadmissible and should be rejected.*"

Applicant's allegations

23. The Applicant alleges that by the decisions of the HPCC and KPA Appellate Panel are violated the rights guaranteed by Constitution, such as: the right of property and right to choose the residence.

24. Applicant addresses the Court, requesting that:

> *„The Court decides to my benefit, because to me and my family were violated the constitutional rights."*

Assessment of admissibility of the Referral

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

26. The Court refers to Article 113 (7) of the Constitution, which establishes:

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

27. The Court notes that the Applicant has fulfilled the requirements prescribed by Article 113 of the Constitution and therefore the Applicant is an authorized party to file the Referral with the Court.

28. The Court also refers to Article 48 of the Law on Constitutional Court, which reads*:*

"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. In addition, the Court takes into account Rule 36 (1) c) of Rules of Procedure, which provides that:

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

30. The Constitutional Court recalls that under the Constitution, it is not the duty of the Constitutional Court to act as a court of appeals, when considering decisions taken by regular courts. It is the role of regular courts to interpret and apply pertinent rules of both procedural and substantive law (See, mutatis mutandis, Garcia Ruiz v. Spain [GC), no. 30544/96, para. 28, European Court on Human Rights [ECHR],1999-1).

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

32. The Court states that it dealt with the HPCC decisions in case KI104/10, and that on 29 April 2012 it rendered the Judgment AGJ221/12, in which is stated that*: "In the Court's view, the HPCC decision of 15 July 2006 must be considered as the final decision, which became res judicata, when it was certified by the HCPP*

Registrar on 4 September 2006, as was confirmed by the HPCC Letter of Confirmation to the Applicant, dated 7 May 2008. This letter also stated that the procedures in connection with the Applicant's application had been submitted to the Housing and Property Directorate in accordance with Section 1.2 of UNMIK Regulation 1999/23, and had been completed, while the remedies that were available to the parties in accordance with the provisions of UNMIK Regulation 2000/60 had been exhausted." (See mutatis mutandis Case No. KI104/10, Draža Arsić, Constitutional Review of Decision GZ No. 78/2010 of the District Court of Gjilan dated 7 June 2010).

33. After having reviewed the documents submitted by the Applicant, the Constitutional Court does not find that the proceedings before HPCC and KPA Appellate Panel were in any way unfair or tainted by arbitrariness (see mutatis mutandis, Vanek v. Slovak Republic, ECHR Decision as to the admissibility of application no. 53363/99, of 31 May 2005).

34. Consequently, the Applicant has not shown why and how her rights guaranteed by the Constitution were violated. The mere statement that the Constitution was violated cannot be considered as a constitutional complaint. Therefore, pursuant to the Rule 36 (1) (c) of the Rules of Procedure, the Referral is manifestly ill-founded and consequently it is inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 20 of the Law and Rule 36 (1) c) of the Rules of Procedure, on 17 October 2013, unanimously

DECIDES

I. TO REJECT the Referral as Inadmissible;

II. TO NOTIFY the Parties of this Decision;

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

IV. This Decision is effective immediately.

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

KI132/12, Bahtir Beqiri, Resolution of 19 November 2013 - Constitutional Review of the Decision of the Court of Appeal Ac. no 1076/2013, of 8 April 2013

Case KI132/12, Decision of 19 November 2013

Key words: violation of constitutional rights and freedoms, Articles 53 and 54, individual referral, 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 judgment of regular courts. The Applicant claims that he has worked in the SOE "Qyqavica" in Vushtrri until 1991 whereby Serbian forces coercively removed him from work and discriminated him. The Applicant alleges that his rights guaranteed by the Constitution were violated because he is entitled to a share of proceed from the privatization of SOE "Qyqavica" as a form of compensation for his salary for the years 1991until 1999. The applicant calls upon Article 53 [Interpretation of Human Rights Provisions] and 54 [Judicial Protection of Rights] of the Constitution.

The Court found that the Referral of the Applicant was inadmissible based on Rule 36 (1) a), Article 113.7 of the Constitution, and Article 47.2 of the Law, which states: “The individual may submit the referral in question only after he/she has exhausted all the legal remedies provided by the law.” The Court wishes to emphasize that the rationale for the exhaustion rule is to afford the authorities concerned, including the courts, the opportunity to prevent or put right the alleged violation of the Constitution. The rule is based on the assumption that the Kosovo legal order will provide an effective remedy for the violation of constitutional rights. Bearing this in mind, it is clear from the documentation submitted by the Basic Court in Vushtrri that the case is still pending before this regular court. It follows that the Applicant has not exhausted all legal remedies available to him under applicable law as required for him to be able to pursue a claim to the Court. The Court finds that the Applicant has not exhausted all the legal remedies available to him under the applicable law. Due to the abovementioned reasons, the Court decided to reject the Referral as inadmissible.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI132/12
Applicant
Bahtir Beqiri
Constitutional Review of the Decision of the Court of Appeal Ac.no 1076/2013 dated 8 April 2013

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

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

Applicant

1. The Referral was submitted by Mr. Bahtir Beqiri, 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 Applicant on an unspecified date.

3. However, the final decision in this case is the Decision of the Court of Appeal of the Republic of Kosovo Ac. no. 1076/2012 (hereinafter: the Court of Appeal) of 8 April 2013.

Subject matter

4. The subject matter is the constitutional review of the above-mentioned Decision of the Court of Appeal of the Republic of Kosovo.

5. Notwithstanding this, the Applicant in the referral challenged the 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 Referral is 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 of 15 January 2009 (hereinafter: the Law) and Rule 56 (2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Court

7. The Applicant has submitted the referral on 24 December 2012.

8. On 6 December 2012, the President of the Constitutional Court, with Decision No.GJR.KI-132/12, appointed Judge Altay Suroy as Judge Rapporteur. On the same date, the President of the Constitutional Court, with Decision No. KSH. KI132/12, appointed the Review Panel composed of Judges Snezhana Botusharova (Presiding), Ivan Čukalović and Arta Rama-Hajrizi.

9. On 19 April 2013, the Referral was communicated to the Basic Court in Vushtrri (hereinafter: Basic Court).

10. On 17 October 2013, the Basic Court in Vushtrri submitted to the Court the Decisions of the Municipal Court in Vushtrri and the Court of Appeal of the Republic of Kosovo, which were not initially submitted by the Applicants.

11. On 31 October 2013, the Court notified the Applicant regarding the submitted documents by the Basic Court in Vushtrri.

12. On 13 November 2013, the Applicant submitted his comments.

13. On 19 November 2013, after having considered the report of Judge Rapporteur, the Review Panel made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

14. The applicant was employed as a worker of the Socially Owned Enterprise "Cyqavica" until the year 1992.

15. According to the documents submitted, based on the 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 1992 until 1999 with an interest of 4.5% per year as of 29 June 2005 until its final payment for all the Applicants.

16. The Applicant 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.

17. On 15 September 2006, the Municipal Court in Vushtrri rendered the Decision E. no. 784/06 on the execution of the Judgment C. no. 215/06 dated 3 July 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.

18. However, on 20 February 2008 the Municipal Court in Vushtrri rendered the Decision E. no. 258/08 to cancel the Execution procedure.

19. 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".*

20. Against the Decision of the Municipal Court in Vushtrri E. no. 258/08 dated 20 February 2008, the Applicant filed an appeal with the Court of Appeal.

21. On 8 April 2013, the Court of Appeal rendered the Decision Ac. no. 1076/2012 whereby it decided to approve the appeal filed by the Applicant as grounded and to quash the Decision of the Municipal Court E. nr. 258/2008 dated 20 February 2008.

22. The Court of Appeal in its aforementioned decision found that the Municipal Court in Vushtrri has erroneously applied the provisions of substantive law. Furthermore it stated that that the lower court instance did not sufficiently reason its decision to cancel the execution procedure.

23. On 13 November 2013, the Applicant in his reply regarding the submitted decisions by the Basic Court, amongst others stated *"that according to their interpretation the submitted decisions are arbitrary and do not have a legal basis"*

Applicant's allegations

24. The Applicant claims that he has worked in the SOE "Cyqavica" in Vushtrri until 1991 whereby Serbian forces coercively removed him from work and discriminated him.

25. The Applicant alleges that his rights guaranteed by the Constitution were violated because he is entitled to a share of proceed from the privatization of SOE "Cyqavica" as a form of compensation for his 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

26. 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.

27. At the outset, the Court would like to reiterate that it can only decide on the admissibility of a Referral, if the Applicant shows that it has exhausted all legal remedies available under applicable law pursuant to Article 113.7 of the Constitution, Article 47.2 of the Law and Rule 36.1.a, providing:

Article 113.7

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

Article 47.2

"The individual may submit the referral in question only after he/she has exhausted all the legal remedies provided by the law".
Rule 36.1.a

"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".

28. The Court wishes to emphasize that the rationale for the exhaustion rule is to afford the authorities concerned, including the courts, the opportunity to prevent or put right the alleged violation of the Constitution. The rule is based on the assumption that the Kosovo legal order will provide an effective remedy for the violation of constitutional rights. (See case KI65/11, Applicant Holding
Corporation "Emin Duraku", Resolution on Inadmissibility of 21 January 2013).

29. Bearing this in mind it is clear from the documentation submitted by the Basic Court in Vushtrri that the case is still pending before this regular court. It follows that the Applicant has not exhausted all legal remedies available to him under applicable law as required for him to be able to pursue a claim to the Court.

30. Moreover, 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.

31. 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. 256/08 dated 20 February 2008) to cancel the

procedure of its execution and the Decision of the Court of Appeal (Ac. No. 1076/2012 dated 8 April 2013) to 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*, see ECHR decision Hadrabova and others v Czech Republic, ECHR Decision on Admissibility of Application No. 42165/02 and 466/03 of 25 September 2007).

32. The Court further emphasizes that there is no final decision to be challenged before this Court.

33. 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 113.7 of the Constitution, Rules 36 (1) a) and 56 (2) of the Rules of Procedure, on 19 November 2013, unanimously

DECIDES

I. TO REJECT the Referral as Inadmissible;

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

III. This Decision is effective immediately.

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

KI128/13, Shukri Maxhuni and Arian Bytyqi, Resolution of 16 October 2013 - Constitutional Review of the Judgment of the Supreme Court of Kosovo Rev. No. 365/2012 of 18, of April 2013

Case KI128/13, decision of 16 October 2013

Key words: individual referral, request for imposition of interim measure.

The Applicants submitted their Referral based on Article 113.7 of the Constitution of the Republic of Kosovo, Article 27 and 47 of the Law no. 03/L-121 on the Constitutional Court of the Republic of Kosovo of 15 January 2009, and Rules 28 and 54 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo

On 16 August 2013, the Applicants submitted their Referral to the Constitutional Court of the Republic of Kosovo, whereby requesting the constitutional review of the Judgment of the Supreme Court of Kosovo.
The Applicant allege in the Referral that the Judgment of the Supreme Court violated their constitutional rights guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution of Kosovo, and Article 6 [Right to a Fair Trial] of the European Convention of Human Rights.

Upon consideration of the Referral, the Court concludes that the Applicants have neither built nor shown a *prima facie* case either on the merits or on the admissibility of the Referral, therefore, the Court concludes that the Referral is inadmissible as manifestly ill-founded.

Taking into account all circumstances of the submitted Referral, the Constitutional Court of Kosovo, in its session held on 16 October 2013, decided to reject the Referral as inadmissible, the Applicants did not provide evidence, showing how their rights and freedoms guaranteed by the Constitution were violated, because the presented facts do not in any way justify the allegation of their constitutional rights.

The Court further concludes that, as the Applicant's Referral is inadmissible, the request for interim measures is moot and thus must be rejected.

RESOLUTION ON INADMISSIBILITY
in
Case no. KI128/13
Applicants
Shukri Maxhuni and Arian Bytyqi
Constitutional Review of the Judgment of the Supreme Court of Kosovo
Rev. No. 365/2012 of 18 April 2013

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

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

Applicant

1. The Applicants are Shukri Maxhuni and Arian Bytyqi from Prishtina, who are represented by lawyer Mr. Ibrahim Dobruna from Gllogovc.

Challenged decision

2. The Applicants challenge the Judgment of the Supreme Court of Kosovo Rev. No. 362/2012 of 18 April 2013, which rejected the revision of the Judgment of the District Court in Prishtina Ac.no.1492/2008 of 30 December 2011 regarding the release and delivery into possession of the apartments.

Subject matter

3. The subject matter is the Judgment of the Supreme Court of Kosovo Rev. No. 362/2012 of 18 April 2013, and the issue whether by the abovementioned judgment were violated the Applicants' constitutional rights, guaranteed by Article 31 of the Constitution of the Republic of Kosovo and Article 6 of the European Convention

for the Protection of Human Rights and Fundamental Freedoms and its Protocols.

Legal basis

4. The Referral is based on Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), Article 27 and 47 of the Law no. 03/L-121 on the Constitutional Court of the Republic of Kosovo of 16 December 2008, (hereinafter: the Law) and Rules 28 and 54 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules).

Proceedings before the Constitutional Court

5. On 16 August 2013, the Applicants, respectively the legal representative, submitted by mail the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 27 August 2013, the President, by Decision no. GJR. KI 128/13, appointed Judge Altay Suroy as Judge Rapporteur. On the same day, the President, by Decision no. KSH. KI 128/13, appointed the Review Panel composed of judges: Robert Carolan (Presiding), Ivan Čukalović and Enver Hasani.

7. On 5 September 2013, the Constitutional Court notified the Applicant and the Supreme Court of Kosovo that the procedure for constitutional review of the judgments in Case no. KI 128/13 had been initiated.

8. On 16 October 2013, after having reviewed the report of the Judge Altay Suroy, the Review Panel composed of Judges: Robert Carolan (Presiding), Ivan Čukalović and Enver Hasani, made a recommendation to the full Court on inadmissibility of the Referral.

9. At the same time, the Review Panel recommended to the full Court to reject the Applicant's request for interim measures, on the grounds that he failed to provide any convincing evidence to justify the imposition of the interim measures as necessary to avoid any risk or irreparable damages, or if such an interim measure is in the public interest.

Summary of facts

10. According to the Applicant's claims, in 1999, after the war in Kosovo, humanitarian housing in apartments was awarded to them: Shukri Maxhuni (hereinafter: the Applicant) was provided apartment no. 17, III floor, entrance IV building no. 9/4 neighborhood "Çezma e Bardhë" (Dardania) and Arian Bytyqi (hereinafter: the Applicant) was provided apartment no. 18, III floor, entrance IV building no. 9/4 neighborhood "Çezma e Bardhë" (Dardania) with a purpose of temporary shelter, since they did not have any shelter. The apartments were in rough construction phase, so that the Applicants had certain financial expenses associated with the adaptation of the apartments for normal living.

11. On 29 November 2005, the Public Housing Enterprise in Prishtina (hereinafter: the PHE) initiated a claim for release of the apartment from people and households against the Applicant and other persons. The Applicants, according to the PHE allegations, used the apartments without legal ground and they were not ready to release them. According to PHE allegations, the same was declared as an investor on the abovementioned apartments, which, because of the use of the apartments by the Applicants and other persons, could not perform construction works provided by the contract on construction.

12. On 28 March 2007, the Kosovo Property Agency (hereinafter: KPA) informed the Applicants that it is considering to place the contested apartments under the administration of KPA and that the Applicants may address the KPA within legal time limit.

13. On 17 July 2007, the KPA, pursuant to the decision of the property claim commission in Kosovo, issued the eviction order to the Applicants to leave the abovementioned apartments, because the contested apartments were not qualified as apartments for further humanitarian shelter.

14. On 2 August 2007, then Prime Minister of Kosovo, addressed the letter to KPA and PHE, with a proposal to temporarily suspend the eviction order against 136 families in the residential complex "Bela česma" (Dardania), 84 families in "Ulpiana," and in "Sunny Hill" against families in difficult financial situation and serious social and humanitarian cases.

15. On 22 September 2008, the Municipal Court in Prishtina, by Judgment C.no. 2326/05 approved as grounded the statement of

claim of the PHE and obliged the Applicants to release people and households from the abovementioned contested apartments.

16. On 22 October 2008, the Applicants filed an appeal to the District Court in Prishtina against the Judgment of the Municipal Court in Prishtina C.no.2326/05 of 22 September 2008, due to (according to the Applicant's allegations), substantial procedural violation of the provisions of LCP, erroneous and incomplete determination of the factual situation and decision on release of apartments.

17. On 05 September 2011, the Applicants filed an amendment to the appeal with the District Court, where among others, mentioned the fact that some documents from the case file of case C.no.2326/05 of 22 September 2008, were submitted in Serbian, which is not their native language, and is a language that they do not understand.

18. On 30 December 2011, the District Court in Prishtina by Judgment Ac.no.1492/2008 rejected as ungrounded the Applicants' appeal and upheld the Judgment of the Municipal Court in Prishtina C.no. 2326/05 of 22 September 2008.

19. On 13 March 2012, the Applicants filed revision in the Supreme Court of Kosovo against the Judgment of the District Court in Prishtina Ac.no.1492/2008 of 30 December 2012 and Judgment of Municipal Court in Prishtina C.no.2326/05 of 22 September 2008, due to (according to Applicant's allegations), substantial violation of the contested procedure provisions and erroneous application of the substantive law, with a proposal that the aforementioned judgments of the Municipal and District Court in Prishtina to be annulled and the case be remanded for retrial to the first instance court.

20. On 18 April 2013, the Supreme Court of Kosovo, by Judgment Rev.no. 365/2012 rejected as ungrounded the Applicant's revision against the Judgment of the District Court in Prishtina Ac.no.1492/2008 of 30 December 2012 and Judgment of Municipal Court in Prishtina C.no.2326/05 of 22 September 2008, holding that:

> *"Supreme Court of Kosovo finds the legal stance and reasoning of the lower instance courts as fair and lawful, in relation to the approval of the statement of claim and rejection of the respondents' appeal, since sufficient and convincing*

reasons, also acceptable to this court, have been provided from the fact that the approval of the claimant's statement of claim is fair and lawful, since it has been confirmed that the claimant as investor has the property right over the contested apartments."

Applicant's allegations

21. The Applicants allege that:

> *"the first and the second instance courts and finally the Supreme Court of Kosovo by rendering the Judgment Rev.no.365/2012 of 18 April 2013, have committed substantial and multiple violation of the provisions of the Constitution of the Republic of Kosovo, Law on Contested Procedure, European Convention on Human Rights as well as the Law on Use of Languages, at the moment when submitted the documents to the Applicants: Ruling on urban permit of 26.01.1996, Ruling of 14.12.1995, Ruling of 15.11.1995 and Contract on construction of 16.12.1995, Contract on investments, in Serbian language-namely in non-native language, without translation of the Contract on construction no.02.2932/1, of 06.12.1995, from Serbian into Albanian language, the language which the parties understand, from Serbian into Albanian language. This is substantial violation and its consequence is the annulment of the Judgment and is fully contrary to the requirements, provided by the Constitution of Kosovo and the European Convention on Human Rights.*

Relevant legal provisions concerning contested procedure

22. ***LAW ON CONTESTED PROCEDURE no. 03/L- 006***

Article 96

96.1 The party and other participants in the procedure have the right to speak in front of the court their own language or the language they understand.

96.2 If the procedure is not conducted in the language of the party or other participants in the procedure, upon their request shall be provided verbal interpretation into their language or language they understand of all submissions and evidences and of all that is submitted in the court session.

Request for interim measure

23. The Applicants have also requested from the Court to impose interim measure:

> *"GRANTS the interim measure until the time Supreme Court of Kosovo reconsider the matter as per ratio decidendi of the Constitutional Court."*

24. In this respect, the Court is referred to Article 116.2 [Legal Effect of Decisions] of the Constitution which establishes:

> *"While a proceeding is pending before the Constitutional Court, the Court may temporarily suspend the contested action or law until the Court renders a decision if the Court finds that application of the contested action or law would result in unrecoverable damages".*

25. The Court also takes into account Article 27 of the Law, which provides:

> *"The Constitutional Court ex-officio or upon the referral of a party may temporarily decide upon interim measures in a case that is a subject of a proceeding, if such measures are necessary to avoid any risk or irreparable damages, or if such an interim measure is in the public interest."*

26. Furthermore, Rule 54.1 of the Rules of Procedure, provides:

> "*At any time when a referral is pending before the Court and the merits of the referral have not been adjudicated by the Court, a party may request interim measures."*

27. Finally, the Rule 55.1 of the Rules of Procedure, provides:

> *"A request for interim measures shall be given expedited consideration by the Court and shall have priority over all other referrals."*

28. Moreover, in order for the Court to grant interim measures pursuant to Rule 55.4 of the Rules of Procedure, it must find that:

> *" (a) the party requesting interim measures has shown a prima facie case on the merits of the referral and, if admissibility has not yet been determined, a prima facie case on the admissibility of the referral;*
>
> *(b) the party requesting interim measures has shown that it would suffer*
>
> *unrecoverable damages if the interim relief is not granted; and*
>
> *(c) the interim measures are in the public interest.*
>
> *If the party requesting interim measures has not made this necessary showing, the Review Panel shall recommend denying the application."*

Assessment of the admissibility of the Referral

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

30. In the present case, the Court is referred to Article 113 [Jurisdiction and authorized parties] which provides:

> *"1. The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties. (...)*
>
> *7. Individuals are authorized to refer violations by public authorities of their individual rights and freedoms guaranteed by the Constitution, but only after exhausting all legal remedies provided by law."*

31. Article 47(2) of the Law on the Court, also provides:

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

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

> "*In his/her referral, the claimant should accurately clarify what rights and freedoms he/she claims to have been violated*

and what concrete act of public authority is subject to challenge."

33. Furthermore, the Rule 36 (1) a), (b) and (c) of the Rules of Procedures, 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, 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."

34. The Court considers that the Applicant has met the prescribed time limit of four months from the date when he was served the Judgment of the Supreme Court; From the case file it can be clearly noted that the Judgment of the Supreme Court Rev.365/2012 was rendered on 18 April 2013, whereas the Applicant submitted the Referral through mail on 16 August 2013, which means that the Referral has been submitted within the four month time limit as prescribed by Law and Rules of Procedures.

35. The Applicant mainly alleges that the judgment of the first instance and the second instance court, as well as the Judgment of the Supreme Court violated his constitutional rights guaranteed by Article 31 of the Constitution, as well as Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols.

36. The Applicant also alleges that his rights were violated:

"... at the moment when to the Applicants were submitted certain documents in the Serbian language-namely in their non-native language and by not translating these documents from Serbian into Albanian language and it resulted in the substantial violation of the Constitution of Kosovo and the European Convention on Human Rights..."

37. From the legal provisions cited above of the Law on Contested Procedure no. 03/L-006 of 30 June 2008, Article 96.2 is clearly seen that:

"If the procedure is not conducted in the language of the party or other participants in the procedure, upon their request shall be provided verbal interpretation into their language or language they understand of all submissions and evidences and of all that is submitted in the court session."
Having examined the documents submitted to the Court, it is evident that the Applicants have not submitted a request for translation of the contested documents at any stage of the proceedings before the regular courts, as provided in the abovementioned Law on contested procedure. Therefore the Court finds that the Applicants have not exercised their legal right, as guaranteed by law, to ensure translation of documents in the proceedings. The Court did not find that the respective proceedings were in any way unfair or tainted by arbitrariness (see, Resolution on Inadmissibility, *Beqiri against decision no. 50116335 of the Ministry of Labor and Social Welfare KI 10/09, 25 January 2010)* Decision of Constitutional Court of Kosovo.

38. The Court further notes that the judgment of the first and second instance courts, as well as the Judgment of the Supreme Court are reasoned and this Court did not notice that there were any procedural violations during the process of trial of this case, which would result in violation of fundamental rights of the Applicants, guaranteed by the Constitution. The Applicant was afforded ample opportunities for defense during the entire process of trial in this case.

39. The Court considers that the Applicant has not substantiated and supported with evidence the alleged violation of his rights by the first and second instance court as well as by the Supreme Court.

40. In fact, the Applicant's allegation for violation of constitutional rights does not present *prima facie* sufficient ground for filing a case with the Court; the Applicant's dissatisfaction with decisions of the regular courts cannot be a constitutional ground to complain before the Constitutional Court.

41. Furthermore, the Court notes that, for a *prima facie* case on meeting the admissibility requirements of the Referral, the Applicant must show that the proceedings before the first and second instance court and the Supreme Court, viewed in their

entirety, have been conducted in such a way that the Applicant has had a fair trial, or that other violations of constitutional rights might have been committed by the regular courts during the trial.

42. In this respect, the Court recalls Rule 36 (2) a) of the Rules of Procedure which provides that *"The Court shall reject a referral as being manifestly ill-founded when it is satisfied that: a) the Referral is not prima facie justified.*

43. 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).

44. Thus, the Court is not to act as a court of fourth instance, when considering the decisions taken by regular courts. It is the role of 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, para. 28, European Court of Human Rights [ECtHR] 1999-I).

45. However, the Applicant does not explain why and how his rights were violated, he does not substantiate a *prima facie* claim on constitutional grounds and did not provide evidence showing how his rights and freedoms, guaranteed by Article 31 of the Constitution and Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols, had been violated by the regular courts.

46. The Court does not consider that the relevant proceedings in the first and second instance and in the Supreme Court were in any way unfair or arbitrary (see *mutatis mutandis*, Shub v. Lithuania, ECHR Decision on Admissibility of Application No. 17064/06 of 30 June 2009).

47. In fact, the Applicant did not show *prima facie* why and how the first and the second instance and the Supreme Court violated his rights as guaranteed by Articles 31 of the Constitution of Kosovo and Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols.

48. The Court concludes that the Applicant has neither built nor shown a *prima facie* case either on the merits or on the admissibility of the Referral.

49. Therefore, the Court concludes that the Referral is inadmissible as manifestly ill-founded.

50. The Court further concludes that, as the Applicant's Referral is inadmissible, the request for interim measures is moot and thus must be rejected.

FOR THESE REASONS

The Constitutional Court of Kosovo, pursuant to Article 27 and 48 of the Law, and Rules 36 (2) a) and 56 of the Rules of Procedure, on 16 October 2013, unanimously

DECIDES

I. TO REJECT the Referral as Inadmissible;

II. TO REJECT the request for imposing interim measures;

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

IV. This Decision is effective immediately.

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

KI107/13, Hasan Salihu, Resolution of 21 October 2013 - Constitutional Review of the Judgment SCEL-09-0001-C1060, of the Special Chamber of the Supreme Court, of 25 March 2010

Case KI107/13, decision of 21 October 2013

Key words: Individual Referral, right to property, out of time.

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 subject matter of the Referral is the Applicant's alleged right to be included in the list of employees that are entitled to a share of the proceeds from the privatization of SOE ICC "Ramiz Sadiku" in Prishtina. The Applicant alleges that his constitutionally guaranteed rights have been violated because he was not included in the list of employees that are entitled to a share of proceeds from the privatization of SOE "Ramiz Sadiku" in Prishtina. The Applicant does not refer to a violation of any constitutional provision in particular.

Under these circumstances, the Court noted that the decision that is challenged by the Applicant is dated 25 May 2010, whereas the Referral has been submitted to the Court on 19 July 2013, which means that the Applicant's Referral is not in compliance with Article 49 of the Law and Rule 36 (1) b) of the Rules of Procedure.

Therefore, the Applicant’s Referral was rejected as out of time.

RESOLUTION ON INADMISSIBILITY

in
Case No. KI107/13
Applicant
Hasan Salihu
Constitutional review of the Judgment of the Special Chamber of the Supreme Court, SCEL-09-0001-C1060, of 25 May 2010

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

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

Applicant

1. The Applicant is Mr. Hasan Salihu from village Bajçinë, Municipality of Podujevo.

Challenged decision

2. The Judgment of the Special Chamber of the Supreme Court of Kosovo, SCEL-09-0001-C1060, of 25 March 2010.

Legal basis

3. The Referral is based on Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), Article 49 of the Law on the Constitutional Court of the Republic of Kosovo, No. 03/L-121, of 15 January 2009 (hereinafter: the Law) and Rule 56 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Subject matter

4. The subject matter of the Referral is the Applicant's alleged right to be included in the list of employees that are entitled to a share of the proceeds from the privatization of SOE ICC "Ramiz Sadiku" in Prishtina.

Proceedings before the Constitutional Court

5. On 19 July 2013, the Applicant filed the Referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 5 August 2013, the President, by Decision No. GJR. KI107/13, appointed Judge Altay Suroy as Judge Rapporteur. On the same date, the President, by Decision No. KSH. KI107/13, appointed the Review Panel composed of Judges: Robert Carolan (Presiding), Ivan Čukalović and Enver Hasani.

7. On 30 August 2013, the Applicant was informed of the registration of the Referral. On the same date, the Referral was communicated to the Special Chamber of the Supreme Court (hereinafter: the Special Chamber).

8. On 21 October 2013, the Review Panel reviewed the report of the Judge Rapporteur and recommended to the Court the inadmissibility of the Referral.

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

9. On 2 April 2009, the Applicant submitted a complaint to the Privatization Agency of Kosovo (hereinafter: PAK), requesting to be included in the list of employees that are entitled to a share of the proceeds from the privatization of SOE ICC "Ramiz Sadiku" in Prishtina.

10. On 5 May 2009, PAK informed the Special Chamber that the Applicant had not provided any relevant proof that he was in continuity in employment relationship with SOE "Ramiz Sadiku" in Prishtina; and that at the time of the privatization of this SOE, namely on 27 June 2006, he was not a registered employee of the SOE. Furthermore, KAP also informed the Special Chamber that the Applicant had not submitted his complaint to KAP within the

deadline set by Kosovo Trust Agency (predecessor of KAP) on 31 August 2007.

11. In the abovementioned reply of 5 May 2009, KAP replied to the Special Chamber: *"…taking into consideration the facts provided by the Complainant and additional investigations made by PAK, PAK is of the opinion that allegations made by the Complainant do not support his claim as required according to UNMIK Regulation No. 2003/13, Section 10, Article 10.4."*.

12. The Special Chamber by Order SCEL-09-0001 requested from the Applicant to clearly state why he filed his complaint with the Special Chamber after the legal time limit. The Applicant replied to the Order stating that he had filed a late complaint because he lived in a village where postal deliveries are always delayed and that he was informed about the published list by his fellow villagers who had gone to the post office and had received the delivery with delay.

13. On 25 March 2010, the Special Chamber by Judgment SCEL-09-0001-C1060 rejected Applicant's complaint as unfounded.

14. By the abovementioned Judgment of 25 March 2010, the Special Chamber found that the Applicant's justification for filing the complaint after the deadline is unfounded and as such it will not be taken into consideration because the applicable law does not prescribe any requirement for the KAP to notify each and every employee, but only a publication of the list in the daily newspaper with a notice on the possibility of filing a complaint with the Special Chamber within 20 days.

15. The Special Chamber, in accordance with Section 9.5 of UNMIK Regulation 2008/4, also stated in the legal advice that the Applicant may file an appeal against its decision with the Appellate Panel of the Special Chamber within thirty (30) days of the receipt of that decision.

Law

"REGULATION NO. 2003/13

UNMIK/REG/2003/13

9 May 2003

ON THE TRANSFORMATION OF THE RIGHT OF USE TO SOCIALLYOWNED IMMOVABLE PROPERTY

Section 10

ENTITLEMENT OF EMPLOYEES

10.4 For the purpose of this section an employee shall be considered as eligible, if such employee is registered as an employee with the Socially-owned Enterprise at the time of privatisation 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.

10.6 Upon application by an aggrieved individual or aggrieved individuals, a complaint regarding the list of eligible employees as determined by the Agency and the distribution of funds from the escrow account provided for in subsection 10.5 shall be subject to review by the Special Chamber, pursuant to section 4.1 (g) of Regulation 2002/13.

(a) The complaint must be filed with the Special Chamber within 20 days after the final publication in the media pursuant to subsection 10.3 of the list of eligible employees by the Agency. The Special Chamber shall consider any complaints on a priority basis and decide on such complaints within 40 days of the date of their submission.

Applicant's allegations

16. The Applicant alleges *"...that he was employed with SOE "Ramiz Sadiku" in Prishtina since 1981, and on 28 February 1990 Serbian forces had discriminated him against and dismissed him".*

17. The Applicant alleges that his constitutionally guaranteed rights have been violated because he was not included in the list of employees that are entitled to a share of proceeds from the privatization of SOE "Ramiz Sadiku" in Prishtina. The Applicant does not refer to a violation of any constitutional provision in particular.

Assessment of the admissibility

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

19. With regard to 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".*

20. The Court refers to Article 47 of the Law which stipulates:

> *"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".*

21. In the present case, the Court notes that the Special Chamber in accordance with the applicable law informed the Applicant through the legal advice of the possibility he has to appeal before the Appellate Panel of the Special Chamber against the decision of the Trial Panel of the Special Chamber.

22. From the submitted documents, the Court notes that the Applicant has not presented any evidence that he had acted in accordance with the legal advice of the Special Chamber and that he had pursued to the end the initiated court proceedings, respectively he has not proved that he has exhausted all legal remedies as prescribed by Article 113.7 of the Constitution and Article 47 of the Law.

23. The rationale for the exhaustion rule is to afford the competent authorities, including the courts, the opportunity to prevent or put right the alleged violations of the Constitution. The rule is based on

the assumption that the legal order of Kosovo will provide effective legal remedies for the violation of the constitutional rights. This is an important aspect of the subsidiary character of the Constitution (see, Case KI 41/09, Applicant AAB/RIINVEST University LLC, Prishtina, Resolution on Inadmissibility, of 21 January 2010; and, *mutatis mutandis*, see case Selmouni v. France, no. 25803/94, ECtHR Decision of 28 July 1999).

24. The Court refers to Article 49 of the Law which stipulates:

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

25. The Court also refers to Rule 36 (1) b) of the Rules of Procedure which provides:

> *"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..."*

26. Under these circumstances, the Court notes that the decision that is challenged by the Applicant is dated 25 May 2010, whereas the Referral has been submitted to the Court on 19 July 2013, which means that 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 has been submitted to the Court with a delay of more than three years.

27. The Court reiterates that Article 49 of the Law and Rule 36 (1) b) of the Rules of Procedure require from the Applicants that, after exhaustion of all legal remedies, they be mindful to submit their Referrals to the Constitutional Court within the four month time limit of the day when the last court decision is received.

28. It results that the Referral is out of time.

29. Consequently, the Referral must be rejected as inadmissible due to failure to comply with the criteria set forth in 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, Articles 49 of the Law and Rule 36 (1) b) of the Rules of Procedure, on 21 October 2013, unanimously,

DECIDES

I. TO REJECT the Referral as Inadmissible;

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

III. This Decision is effective immediately.

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

KI61/13, Blerim Shabi, Resolution of 18 November 2013 - Constitutional Review of the Decision Pkl. no. 119/2012 of the Supreme Court of Kosovo, of 21 December 2012

Case KI61/13, decision of 18 November 2013

Key words; Individual referral, protection of property, manifestly ill-founded referral.

On 22 April 2013, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo, requesting from the Court to review the constitutionality of the challenged decision.

The Applicant alleges that the aforementioned Decision violated his rights guaranteed by the Constitution of Kosovo, namely Article 21 [General Principles], Article 23 [Human Dignity], Article 24 [Equality Before the Law], Article 30 [Rights of the Accused], and Article 31 [Right to Fair and Impartial Hearing and violation of the European Convention on Human Rights in its entirety.

The Court considers that there is nothing in the Referral which indicates that the courts hearing of the case lacked impartiality or that the proceedings were otherwise unfair. The Court finds that the Applicant has not been a victim of a denial of equal judicial protection of his rights. The Court also finds that the Applicant's claims have not been substantiated and must be rejected as manifestly ill-founded.

Taking into consideration all circumstances of the filed Referral, the Constitutional Court decided to reject the Referral as inadmissible, 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. KI61/13
Applicant
Blerim Shabi
Constitutional Review
of the Decision Pkl. no. 119/2012 of the Supreme Court of Kosovo,
dated 21 December 2012

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

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

The Applicant

1. The Applicant is Mr. Blerim Shabi, resident of Peja. He is represented by the attorney Mr. Isa Osdautaj of Deçan.

Challenged decision

2. The Applicant challenges the Decision of the Supreme Court, Pkl.no.119/2012, dated 21 December 2012.

Subject matter

3. The Applicant alleges that the aforementioned Decision violated his rights guaranteed by the Constitution, namely Article 21 [General Principles], Article 23 [Human Dignity], Article 24 [Equality Before the Law], Article 30 [Rights of the Accused], and Article 31 [Right to Fair and Impartial Hearing]. The Applicant also alleges a violation of the European Convention on Human Rights in its entirety.

Legal basis

4. The Referral is based on Article 113.7 of the Constitution, Article 47 of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo of 15 January 2009 (hereinafter: the Law), and Rule 56, paragraph 2, of the Rules of Procedure (hereinafter: the Rules).

Proceedings before the Constitutional Court

5. On 22 April 2013, the Applicant submitted the Referral to the Court.

6. On 25 April 2013, the Applicant submitted to the Court a completed Referral Form and copies of the judicial decisions in his case.

7. On 29 April 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.

8. On 10 May 2013, the Constitutional Court notified the Applicant and the Supreme Court of Kosovo on initiated proceedings on constitutional review of judgments in case KI 61/13.

9. On 18 November 2013, after having considered the report of judge report, the Review Panel made a recommendation to the full Court on inadmissibility of the Referral.

The facts of the case

10. It appears from the file that, on 15 October 2009, at approximately 20:30 hours, a physical altercation, or 'brawl', took place in a neighborhood of Peja, involving the Applicant and several other persons. One person died at the scene as a result of injuries received from a knife.

11. On 15 October 2009, the Applicant was arrested and placed in detention on remand. Subsequently, the Applicant was indicted for the crime of murder and the case was transferred to the District Court in Prizren.

12. On 15 July 2011, the District Court of Prizren (P.no.59/2010) pronounced the Applicant guilty of the crime of murder under

Article 146 of the Criminal Code of Kosovo, and sentenced him to 15 years imprisonment. The Applicant was absent when the verdict was pronounced, but his legal representative was present.

13. In its Decision, the District Court paraphrased further from the report of the forensic expert*: "According to the autopsy and description there are two penetrating injuries, cuts from the back side of the body – direction from back to front and up-down, right-left. From the sustained injuries, the deceased when suffering the injuries was unable to resist or fight further."*

14. The Applicant submitted an appeal to the Supreme Court against this judgment. The Applicant requested the Supreme Court to either acquit him of the charge of murder, or to return the case for re-trail to the District Court. The Applicant alleged that the first instance court had committed violations of criminal law and procedure, and that its determination of the facts was erroneous and incomplete. The Applicant specifically stated that his own injuries sustained during the fight in Peja had not been taken into account by the District Court. The Applicant also requested to be present during the hearing at the Supreme Court and stated that he had not been present when the verdict and sentence were pronounced by the first instance court.

15. On 08 February 2012, the Supreme Court (Ap.no.446/2011) declared the Applicant's appeal ungrounded, and confirmed the decision of the District Court (P.no.59/2010). The Applicant and his legal representative were present at the hearing conducted by the Supreme Court appeal panel. In its decision, the Supreme Court extensively reviewed the facts and the law in the case, as well as the specific grounds of appeal presented by the Applicant.

16. The Applicant submitted a request for protection of legality against this decision. He alleged substantial violations of criminal law and procedure. He again alleged that his own injuries had not been taken into account by the trial courts. He also explicitly referred to the fact that the first instance court had sentenced him to a very lengthy prison sentence without his presence in the court, despite the fact that he had been brought from his place of detention in Peja to the court in Prizren many previous times in order to attend hearings.

17. On 21 December 2012, the Supreme Court (Pkl.no.119/2012) rejected the request for protection of legality as ungrounded. In its decision, the Supreme Court reviewed the assessment of the facts

of the case given by the first and second instance courts. The Supreme Court also assessed that the Applicant had not acted in self-defense, and concluded that the trial courts had not committed any violations of criminal procedural law. The Supreme Court did not address the question of the Applicant's absence at the pronouncement of sentence by the first instance court.

Applicant's Allegation

18. The Applicant alleges that the District Court, and the Supreme Court on appeal, violated his rights as an accused person, and his right to a fair and impartial trial as guaranteed by Article 31 of the Constitution, in particular because the applicant was not present at the District Court when it pronounced his conviction and sentence.

19. The Applicant claims that he never received from the District Court a copy of a digital recording of the trial hearings that he had requested twice by letter. He alleges that this denial of access to the digital recording violated his rights as an accused person, as well as his right to the equal protection of his rights in proceedings before the courts, as guaranteed by Article 31 (1) of the Constitution.

20. The Applicant also alleges that both the District Court, and the Supreme Court on appeal, failed to take into account the injuries he had sustained during the fight in Peja, and the impact of these injuries on his ability to commit the murder of which he was convicted. The Applicant contends that his injuries were not treated equally by the trial courts with those of the victim and other persons involved in the fight, and that this violated his right to equality of treatment as guaranteed by Article 24 of the Constitution.

Assessment of the admissibility of the Referral

21. First of all, in order to be able to adjudicate the Applicant's Referral, the Court has to examine whether the Applicant has met all the requirements of admissibility, which are foreseen by the Constitution and further specified by the Law and the Rules.

22. Article 113 of the Constitution establishes the general frame of legal requirements for a Referral being admissible. It provides:

> "1. The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties.

> […]
>
> 7. Individuals are authorized to refer violations by public authorities of their individual rights and freedoms guaranteed by the Constitution, but only after exhaustion of all legal remedies provided by law."

23. Article 48 of the Law on the Constitutional Court also establishes that

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

24. In addition, Rule 36 (2) of the Rules provides that

> *"The Court shall reject a Referral as being manifestly ill-founded when it is satisfied that:*
>
> *[…]*
>
> *(b) […] the presented facts do not in any way justify the allegation of a violation of the constitutional rights, or*
>
> *[…], or*
>
> *(d) […] the Applicant does not sufficiently substantiate his claim;"*

25. The Court notes that the Applicant has raised his arguments with the Supreme Court concerning his absence in court when the District Court pronounced his conviction and sentence. The Court notes also that the Applicant raised the issue of the factual assessment of his injuries during the appeal and the proceedings for protection of legality.

26. Therefore, the Court concludes that the Applicant has exhausted all legal remedies available to him regarding his claims, not only formally, but also in substance.

27. However, the Constitutional Court reiterates that it is not its task under the Constitution to act as a court of appeal, or a court of fourth instance, in respect of the decisions taken by the regular

courts. It is the role of the latter to interpret and apply the pertinent rules of both procedural and substantive law (see Avdyli v. Supreme Court of Kosovo, KI 13/09, 18 June 2010; see *mutatis mutandis* García Ruiz v. Spain [GC], no. 30544/96, para. 28, European Court of Human Rights 1999-1).

28. The Constitutional Court can only consider whether the evidence has been presented in such a manner and the proceedings in general, viewed in their entirety, have been conducted in such a way that the Applicant had a fair trial (see, *inter alia*, European Commission of Human Rights, Edwards v. United Kingdom, App. No. 13071/87, 10 July 1991).

29. In the present case, the Applicant was afforded ample opportunities to present his case and to contest the interpretation of the facts and the law which he considered incorrect, both before the Supreme Court on appeal and in the protection of legality proceedings.

30. The Court notes that the text of the decisions of the Supreme Court on his appeal, and the Supreme Court on his request for protection of legality, do not explicitly refer to the Applicant's absence from the District Court when his conviction and sentence were pronounced.

31. The Court notes, however, that the Applicant was present during other hearings in his trial before the District Court, as well as at a hearing before the Supreme Court on his appeal. Furthermore, the Applicant's legal representative was present at the hearing where his conviction and sentence were pronounced.

32. In these circumstances, the Court finds that the absence of the Applicant at the hearing when his conviction and sentence were pronounced cannot be said to have violated his rights to a fair hearing.

33. Regarding the alleged refusal to supply the Applicant's legal representative with a copy of a digital recording of the trial hearings, it appears from the Applicant's submisssions to the Supreme Court, and the detailed decision of the Supreme Court on appeal, that the Applicant was present during the court hearings in his case and was represented by a lawyer throughout the proceedings.

34. In these circumstances, the Court finds that the Applicant's rights to adequate facilities for the preparation and conduct of his defense, as guranteed by Article 30 (3) of the Constitution, were sufficiently met by the trial courts, whether or not a digital recording of the hearings was made available to the Applicant.

35. Regarding the alleged failure of the regular courts to take into account the physical injuries the Applicant had sustained in the abovementioned brawl when assessing his responsibility for the death of the victim, the Court notes that the Supreme Court in the protection of legality proceedings explicitly rejected the argument that the Applicant may have been acting in self-defense.

36. Regarding the alleged failure of the trial courts to fairly assess the actions of other parties to the events, both as perpetrated against the Applicant and as contributory factors towards the death of the victim, the Constitutional Court finds that this is outside the scope of the authority of the Constitutional Court to review based on Article 113 (7) of the Constitution, as stated in paragraphs 28 and 29 above.

37. Having examined all of the criminal proceedings as a whole, the Constitutional Court does not find that the relevant proceedings were in any way unfair or tainted by arbitrariness (see *mutatis mutandis*, Shub v. Lithuania, ECtHR App. No. 17064/06, 30 June 2009).

38. The Court considers that there is nothing in the Referral which indicates that the courts hearing the case lacked impartiality or that the proceedings were otherwise unfair. The mere fact that the Applicant is dissatisfied with the outcome of the case cannot raise an arguable claim of a breach of Article 31 of the Constitution (see Memetoviq v. Supreme Court of Kosovo, Application no. KI 50/10, Resolution of 21 March 2011; see *mutatis mutandis* Mezotur-Tiszazugi Tarsulat v. Hungary, ECtHR App. No. 5503/02, Judgment of 26 July 2005).

39. Based on these considerations, the Court finds that the Applicant has not been a victim of a denial of equal judicial protection of his rights.

40. Therefore, the Constitutional Court finds that the Applicant's claims have not been substantiated and must be dismissed as manifestly ill-founded.

FOR THESE REASONS

The Constitutional Court of Kosovo, pursuant to Article 113 (7) of the Constitution, Article 48 of the Law and Rule 36 (2) of the Rules of Procedure, in its session held on 18 November 2013, unanimously

DECIDES

I. TO REJECT the Referral as inadmissible;

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

III. This Decision is effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Ivan Čukalović	Prof. Dr. Enver Hasani

KI152/13, Municipality of Gjakova, Resolution of 20 November 2013 – Constitutional Review of the Judgment Rev. No. 49/2012, of the Supreme Court of the Republic of Kosovo, of 3 June 2013

Case KI152/13, decision of 20 November 2013

Key words: individual referral, property dispute, request for compensation, manifestly ill-founded referral

The Applicant alleged that the Judgment Rev. No.49/2010, of the Supreme Court, of 3 June 2013, contained evident shortcomings in terms of the assessment of the substantive law and legal provisions of the Law on Contested Procedure. He claimed that the reasoning of the Judgment of that court is utterly confusing and stereotyped due to the fact that the court did not sufficiently examine the facts and the material evidence.

In the present case, the Court noted that the Applicant's Referral, concerning the constitutional review of the challenged decision, consists on: a) violation of substantive law and b) violation of the legal provisions of the Law on Contested Procedure. Applicant's allegations in this case have not been made on the basis of the constitutional complaint (constitutionality) on violation of any right. In this context, the Court considered that the Applicant's allegations are mainly of legality nature and as such they do not raise constitutional issues with respect to the violation of any fundamental right guaranteed by the Constitution in order for the Court to be able to intervene.

For the foregoing reasons, the Court concluded that the Applicant's Referral did not meet the admissibility requirements because the Applicant failed to prove that the challenged decision has violated any of its constitutionally guaranteed rights. The Court concluded that the Applicant's Referral is manifestly ill-founded.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI152/13
Applicant
Municipality of Gjakova
Constitutional review of the Judgment of the Supreme Court of the Republic of Kosovo, Rev. No. 49/2012, of 3 June 2013

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

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

Applicant

1. The Applicant is the Municipality of Gjakova, represented by Municipal Public Attorney's Office in Gjakova (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges the Judgment of the Supreme Court of Kosovo in Prishtina, Rev. 49/2012, of 3 June 2013, which the Applicant received on 28 July 2013.

Subject matter

3. The subject matter of this Referral is the constitutional review of the challenged decision, by which the Applicant alleges that considerable monetary damage was caused to it, as a result of the violation of the substantive law and violation of the provisions of

contested procedure by the Supreme Court of the Republic of Kosovo (hereinafter: the Supreme Court).

Legal basis

4. Article 113.7 in conjunction with Article 21 of the Constitution, Article 47 of the Law no. 03/L-121 on the Constitutional Court of the Republic of Kosovo of 16 December 2008, which entered into force on 15 January 2009 (hereinafter: the Law) and Rule 56.2 of the Rules of Procedure of the Constitutional Court (hereinafter: Rules of Procedure).

Proceedings before the Court

5. On 25 September 2013, the Applicant filed the Referral with the Court.

6. On 30 September 2013, the President appointed Judge Ivan Čukalović as the Judge Rapporteur in this case and the Review Panel composed of Judges: Altay Suroy (Presiding), Snezhana Botusharova (member) and Arta Rama-Hajrizi (member).

7. On 9 October 2013, the Court notified the Applicant and Supreme Court of Kosovo on registration of this Referral.

8. On 20 November 2013, the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

Summary of the facts

9. Based on the statement of facts presented, this Referral concerns a civil dispute between the Applicant as the respondent and the plaintiff K.N.

10. In 1966, The Fund for development of land, roads and municipal activities in Gjakova had announced a public auction on joint investments, regarding construction of the business premises in Gjakova, respectively construction of the green market. The plaintiff, according to the achieved agreement with the Fund, and based on the receipt No.03/96 of 3 September 1996, paid an amount of 246.398,00 dinars as advance payment for business premise no. 3, in location "Hani i Kaqit". The plaintiff has fulfilled all the obligations that derive from the achieved agreement.

However, he was not given the business premises nor the amount of money he had paid.

11. Later on, the fund in question, in a non-judicial proceedings, allocated plaintiff in use a land bank in area of 0.03,75 ha, however, it was finally found that in 1995 this land bank was allocated to D. J. who has paid a sum of 9.375,00 dinars, thus the Fund withdrew from this agreement.

12. The plaintiff, requesting reimbursement of the paid amount according to the agreement achieved with the above-mentioned, filed a lawsuit to the Municipal Court in Gjakova.

13. On 16 April 2010, the Municipal Court in Gjakova, by Judgment C. No. 531/2005, rejected in its entirety the plaintiff's lawsuit filed against the Applicant (the respondent). The plaintiff requested through a lawsuit that the Applicant be obliged to compensate to the plaintiff the monetary amount of 76.415,90 € in the name of unjust acquisition.

14. The plaintiff filed an appeal against the Judgment of the Municipal Court in Gjakova to the District Court in Peja.

15. The District Court in Peja, on 24 February 2011, Judgment Ac. No. 375/2010, modified the Judgment that was challenged by the plaintiff and concluded that in that case the Applicant had passive legitimacy therefore it was obliged to pay to the plaintiff, in the name of unjust acquisition, the monetary amount of 76.415,90 €, with interest, which will be paid by commercial banks in Kosovo.

16. The Applicant filed a revision to the Supreme Court against the decision of the second instance court. It requested from the Supreme Court to review the decision of the District Court in Peja due to violation of the substantive law and violation of the provisions of the Law on Contested Procedure.

17. On 3 June 2013, the Supreme Court, Judgment Rev. 49/2012, rejected as unfounded the Applicant's request for revision. The Supreme Court, in this case, concluded that: "*The allegations in the revision that the respondent cannot be responsible for the obligations that were created by the municipal bodies of the previous regime, that there is no succession with the previous municipality, are unfounded, as the second instance court, pursuant to UNMIK Regulation no. 2000/45, of 11 August 2000,*

has found that the respondent has passive legitimacy of the sued party in this legal matter, because Article 2.4 provides that every municipality shall have its own legal status, the right to own and manage property."

Applicant's allegations

18. The Applicant alleges that the Judgment of the Supreme Court, Rev. No. 49/2010, of 3 June 2013, contains evident shortcomings in terms of the assessment of the substantive law and legal provisions of the Law on Contested Procedure. He claims that the reasoning of the Judgment of that court is utterly confusing and stereotyped due to the fact that the court did not sufficiently examine the facts and the material evidence.

19. Furthermore, the Applicant alleges that: *1. "The Revision filed against the Judgment of the District Court in Peja, Ac. nr. 375/10 was in essence focused in the well known fact that the Municipality of Gjakova, in this legal-civil relation, LACKED FULL PASSIVE LEGITIMACY, with grounded justification that the contractual relationship regarding the sale-purchase of the immovable property was concluded between the former "Fund" of Gjakova, later on the successor of the "Fund" Housing Enterprise "Housing Company", registered with MTI and the plaintiff Kolë Ndrecaj. 2. In this contractual relationship, the Municipality of Gjakova was on no occasion and at no point in time involved. 3. From the challenged Judgment it results that the subject of the dispute are business premises, whereas from the claim it results that the subject of the dispute is the immovable property – unbuilt building plot, no. 4446/165, no. of plot 378 KK, Gjakova, in the town, with surface area of 375 m2.*

Admissibility of the Referral

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

21. In this case, the Court refers to Article 113.7 which provides: Article 21 paragraph 4 of the Constitution which provide:

113.7 " Individuals are authorized to refer violations by public authorities of their individual rights and freedoms guaranteed

by the Constitution, but only after exhaustion of all legal remedies provided by law".

Article 21.4 of the Constitution which stipulates:

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

22. For the purposes of the admissibility, the Court must also take into account whether the Applicant's Referral meets the admissibility criteria set forth under Rule 36.1 (c) of the Rules, which provides that:

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

c) the Referral is not manifestly ill-founded".

23. 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:

(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".

24. In the present case, the Court notes that the Applicant's Referral, concerning the constitutional review of the challenged decision, consists on: a) violation of substantive law and b) violation of the legal provisions of the Law on Contested Procedure. Applicant's allegations in this case have not been made on the basis of the constitutional complaint (constitutionality) on violation of any right.

25. In this context, the Court considers that the Applicant's allegations are mainly of legality nature and as such they do not raise constitutional issues with respect to the violation of any fundamental right guaranteed by the Constitution in order for the Court to be able to intervene.

26. The Court should remind the Applicants that the Constitutional Court is not a fourth instance court to review the legality and the accuracy of the decisions taken by the regular courts, unless there is convincing evidence that such decisions have been issued in an evidently unfair and unclear manner.

27. It still remains the duty of the regular courts to interpret and apply the pertinent rules of both procedural and substantive law (See, *mutatis mutandis*, Garcia Ruiz versus Spain [GC], no. 30544/96, paragraph 28, European Court of Human Rights [ECtHR] 1999-I).

28. For the foregoing reasons, the Court concludes that the Applicant's Referral does not meet the admissibility requirements because the Applicant has failed to prove that the challenged decision has violated any of its constitutionally guaranteed rights.

29. In sum, the Court concludes that the Applicant's Referral is manifestly ill-founded.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113 (7) of the Constitution, pursuant to Rule 36.2 (b) and 56.2 of the Rules of Procedure, in its session held on 20 November 2013, unanimously

DECIDES

I. TO REJECT the Referral as Inadmissible;

II. TO NOTIFY the Parties of this Decision;

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

IV. This Decision is effective immediately.

Judge Rapporteur **President of the Constitutional Court**

Ivan Čukalović Prof. Dr. Enver Hasani

KI182/13, Xhevat Rrustemi, Resolution of 5 December 2013 - Constitutional Review of the Judgment ASC-11-0035 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

Case KI182/13, decision of 05 December 2013

Key words: individual referral, right to property, out of time.

The Applicant submitted his 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 paragraph 2 of the Rules of Procedure.

The Applicant challenges the Judgment ASC-11-0035, of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters (hereinafter: Special Chamber Appellate Panel), of 23 November 2012, which according to the Applicant's claim, was served on him on 25 February 2013, while based on the certification on receipt of documents, issued by the Special Chamber of the Supreme Court, it was served on the Applicant on 9 February 2013.

The Applicant did not state in the Referral what are the specific constitutionally guaranteed rights violated by the challenged decision, but only states that these are rights that derive from the employment relationship.

Based on the submitted documents, the Court found that the Applicant filed his Referral on 24 October 2013, while the last decision of the Special Chamber of the Supreme Court, according to the Applicant's claims, was served on him on 25 February 2013, which is 3 months and 29 days after the expiry of the legal deadline as provided by Article 49 of the Law, and Rule 36 (1) b) of the Rules of Procedure. However, based on the certification on receipt of documents, issued by the Special Chamber of the Supreme Court, the judgment was served on the Applicant on 9 February 2013, which is 4 months and 15 days after the expiry of the legal deadline as provided by Article 49 of the Law and Rule 36 (1) b) of the Rules of Procedure.

It results that in both cases, the Applicant's Referral is out of time.

RESOLUTION ON INADMISSIBILITY
in
Case no. KI182/13
Applicant
Xhevat Rrustemi
Constitutional review of the Judgment ASC-11-0035 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
Kadri Kryeziu, Judge
Arta Rama-Hajrizi, Judge

Applicant

1. The Applicant is Mr. Xhevat Rrustemi (hereinafter: Applicant), from the village of Upper Pakashtica, Municipality of Podujeva.

Challenged decision

2. The Applicant challenges the Judgment ASC-11-0035, of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters (hereinafter: Special Chamber Appellate Panel), of 23 November 2012, which according to the Applicant's claim, was served on the Applicant on 25 February 2013, while based on the certification on receipt of documents, issued by the Special Chamber of the Supreme Court, was served on the Applicant on 9 February 2013.

Subject matter

3. The subject matter is constitutional review of the judgment, which allegedly deprives the Applicant from the entitlement to a share of 20% of proceeds of the privatization of the Socially owned Enterprise "Ramiz Sadiku" (hereinafter: SOE "Ramiz Sadiku"), in Prishtina.

Legal basis

4. The Referral is based on the Article 113. 7 of the Constitution, Article 47 of the Law on the Constitutional Court of the Republic of Kosovo no. 03/L-121, of 15 January 2009 (hereinafter: Law), and Rule 56 of the Rules of Procedure of the Constitutional Court (hereinafter: Rules of Procedure).

Proceedings before the Court

5. On 24 October 2013, the Applicant filed a Referral with the Constitutional Court of the Republic of Kosovo (hereinafter: Court).

6. On 31 October 2013, the President appointed Judge Arta Rama-Hajrizi as Judge Rapporteur, and a Review Panel composed of Judges Altay Suroy (Presiding), Snezhana Botusharova and Kadri Kryeziu.

7. On 11 November 2013, the Court notified the Applicant and the Special Chamber of the Supreme Court of the registration of Referral.

8. On 5 December 2013, the Review Panel considered the report of Judge Rapporteur and made a recommendation to the Court on the inadmissibility.

Summary of the facts

9. The Applicant had an employment relationship with SOE "Ramiz Sadiku" from 30 July 1974 to 28 February 1990.

10. On 27 June 2006, SOE "Ramiz Sadiku" concluded the privatization process.

11. On 07 April 2010, the Applicant filed a complaint with the Special Chamber of the Supreme Court against the final list of employees compiled by the Privatization Agency, since he as a former employee was not in the list.

12. In the complaint to the Special Chamber of the Supreme Court, the Applicant stated that he was unfairly excluded from the list, which is discriminatory, since his employment relationship was terminated against his will.

13. The Trial Panel of the Special Chamber, during the hearing in the complaint procedure, found that the complaint of the Applicant was ungrounded.

14. In its reasoning of the ruling, the Trial Panel of the Special Chamber stated: "*that the complaint filed by the Applicant against the final list is out of time",* and further stated: *„that the Applicant has not provided any proof of the reasons for missing the deadline as provided by law, and due to such fact, the Trial Panel of the Special Chamber rejected the Complaint of the Applicant as ungrounded."*

15. On an unknown date, the Applicant filed an appeal with the Appellate Panel against the decision of the Trial Panel of the Special Chamber.

16. On 23 November 2012, the Appellate Panel rendered Judgment ASC-11-0035, thereby rejecting the Applicant's appeal as ungrounded, and upholding the decision of the Trial Panel of the Special Chamber in its entirety.

Applicant's allegations

17. The Applicant does not state in the Referral what are the specific constitutionally guaranteed rights violated by the challenged decision, and only states that these are rights that derive from the employment relationship.

18. The Applicant addressed the Court with the following request:

> *„I wish to enjoy the right to 20%, which belongs to me like any other employee, because I have worked in the enterprise for 16 years..."*

Assessment of the Admissibility

19. The Court notes that in order to be able to adjudicate Applicant's Referral, it must first examine whether the Applicant has met the

admissibility requirements as provided by the Constitution, and further specified by the Law and Rules of Procedure.

20. 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 (...)".*

21. 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 ...".*

22. Based on the submitted documents, the Court finds that the Applicant filed his Referral on 24 October 2013, while the last decision of the Special Chamber of the Supreme Court, according to the applicant's claims, was served on him on 25 February 2013, which is 3 months and 29 days after the expiry of the legal deadline as provided by Article 49 of the Law, and Rule 36 (1) b) of the Rules of Procedure. However, based on the certification on receipt of documents, issued by the Special Chamber of the Supreme Court, the judgment was served on the Applicant on 9 February 2013, which is 4 months and 15 days after the expiry of the legal deadline as provided by Article 49 of the Law and Rule 36 (1) b) of the Rules of Procedure.

23. It results that in both cases, the Applicant's Referral is out of time.

24. Therefore, the Referral must be rejected as inadmissible, in compliance with Article 49 of the Law, and Rule 36 (1) b) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 20 of the Law and Rule 36 (1) b) of the Rules of Procedure, on 5 December 2013, unanimously

DECIDES

I. TO REJECT the Referral as Inadmissible;

II. TO NOTIFY the Parties of this Decision;

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

IV. TO DECLARE this Decision immediately effective.

Judge Rapporteur
Arta Rama-Hajrizi

President of the Constitutional Court
Prof. Dr. Enver Hasani

KI75/13, Bajrush Gashi, Resolution of 5 December 2013 - Requesting clarification of the Judgment of the Constitutional Court KI06/12 of 9 May 2012 and Resolution on Inadmissibility of the Constitutional Court KI123/12, of 29 January 2013

Case KI75/13, decision of 05 December 2013.

Key words: individual referral, res judicata.

The Applicant submitted his 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 paragraph 2 of the Rules of Procedure.

The Applicant in his Referral does not challenge decisions of public authorities, but requests clarification of the Judgment of the Constitutional Court of the Republic of Kosovo, of 9 May 2012.

The Court concludes that this Applicant's Referral is not based and built on constitutional grounds and taking into account that the Court previously dealt and issued decision on the Applicant's referral, as such the Court considers that the Applicant's referral is *res judicata*.

Therefore, in accordance with Rule 36 (1) (c), 36 (2) (a) and 36 (2) (e) of the Rules of Procedure, the Referral is manifestly ill-founded and consequently inadmissible.

RESOLUTION ON INADMISSIBILITY
in
Case no. KI 75/13
Applicant
Bajrush Gashi
Request for clarification of the Judgment of the Constitutional Court KI 06/12 of 9 May 2012 and Resolution on Inadmissibility of the Constitutional Court KI 123/12, of 29 January 2013

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

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

Applicant

1. The Applicant is Mr. Bajrush Gashi, from the village of Hoçë e Vogël Municipality of Rahovec, (hereinafter: Applicant), duly represented by Mr. Nexhat Elshani, a practicing lawyer.

Challenged decision

2. The Applicant in his Referral does not challenge decisions of public authorities, but requests clarification of the Judgment of the Constitutional Court of the Republic of Kosovo (hereinafter: the "Court") of 9 May 2012, and Resolution on Inadmissibility of the Court of 29 January 2013.

Subject matter

3. The subject matter of the Referral filed with the Court, of 28 May 2013, is the request for clarification of the decisions of the Court.

Legal basis

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

Proceedings before the Court

5. On 28 May 2013, the Applicant filed his Referral with the Court.

6. On 28 may 2013, the President of the Constitutional Court, by decision No. GJR. KI. 75/12, appointed Judge Ivan Čukalović as Judge Rapporteur. On the same date, the President, by decision No. KSH. 75/12, appointed a Review Panel, composed of Judges Altay Suroy (Presiding), Snezhana Botusharova and Arta Rama-Hajrizi.

7. On 11 September 2013, the Court notified the Applicant on the registration of referral.

8. On 5 December 2013 the Review Panel considered the Report of the Judge Rapporteur and made a recommendation to the Court on the Inadmissibility of the Referral.

Summary of facts

9. On 28 May 2013, the Applicant filed his Referral with the Court, thereby requesting that the Court clarify the Judgment of 9 May 2012, and Resolution on Inadmissibility of 29 January 2013, in which he appears as Applicant in the Referral.

Summary of facts related to Judgment of the Constitutional Court KI 06/12, of 9 May 2012

10. The Applicant filed a referral with the Court, on 27 January 2012, thereby challenging the Decision of the Supreme Court, [Pzd. no. 67/2001], of 12 December 2011, by which his request for extraordinary mitigation of sentence was rejected as ungrounded.

11. The Applicant stated in his Referral that the challenged decision violated his rights guaranteed by Article 31 [Right to a Fair and Impartial Trial] of the Constitution of the Republic of Kosovo

(hereinafter: Constitution), and Article 6 [Right to Fair Process] of the European Convention for Protection of Human Rights and Fundamental Freedoms (hereinafter: ECHR), because according to the Applicant, "*the court proceduresweare conducted with a lot of irregularities*".

12. On 9 May 2012, the Court considering the facts and proofs in the case file, declared the Referral of the Applicant admissible, thereby finding that there was: „a violation of Article *31 [Right to a Fair and Impartial Trial] of the Constitution and Article 6 [Right to due process] of the ECHR, thereby reasoning that „[...] in circumstances of this case, the impartiality of the Supreme Court may be put to question, and that the concerns of the Applicant in this sense may be considered subjectively and objectively reasoned „since [...] the same Judge, who was the Presiding Judge at the District Court in Prizren, was the member of the Trial Panel of the Supreme Court when it decided upon extraordinary mitigation of sentence.*"

13. Further, the Court „DECLARED" invalid the Decision of the Supreme Court [Pzd. no. 67/2011] of 12 December 2011, due to violation of Article 31 of the Constitution, and Article 6 of the ECHR, and "RETURNED" the Decision [Pzd. no. 67/2011] of 12 December 2011, to the Supreme Court for reconsideration in accordance with the Judgment of this Court, pursuant to Rule 74 (1) of the Rules of Procedure."

14. On 17 October 2012, the Supreme Court notified the Court that it has reconsidered its decision in accordance with the Judgment of the Court, namely, a ruling has been rendered by a different composition of judges (Decision Pzd. no. 65/2012 of 10 September 2012).

Summary of facts related to Resolution on Inadmissibility of Referral of the Constitutional Court KI123/12, of 29 January 2013

15. On 4 December 2012, the Applicant filed a Referral with the Court, thereby requesting constitutional review of the Decision of the Supreme Court [Pzd.no. 65/2012] of 10 September 2012.

16. The Applicant claimed in his referral that the challenged decision violated his rights guaranteed by Article 31 [Right to a Fair and

Impartial Trial] of the Constitution of the Republic of Kosovo and Article 6 [Right to Due Process] of the ECHR.

17. The Court noted that it had already dealt with the Applicant's referral in the case KI 06/12, when by Judgment KI 06-12 of 9 May 2012, it had found that the Supreme Court, by Judgment Pzd.no.67/2011 of 12 December 2011, had violated the rights of the Applicant as per Article 31 [Right to a Fair and Impartial Trial] of the Constitution and Article 6 [Right to Due Process] of the ECHR.

18. The Court further noted that the Supreme Court, with the new Judgment Pzd.no.65/2012, of 10 September 2012, had remedied the violation of Article 31 [Right to a Fair and Impartial Trial] of the Constitution and Article 6 [Right to Due Process] of the ECHR, found by the Constitutional Court in the Judgment of 9 May 2012.

19. The Applicant had not submitted to the Court any new facts or evidence that would represent a good basis for a new decision.

20. Consequently, the Court had not found, in this case, any violation of rights as guaranteed by the Law, Constitution of the Republic of Kosovo or the European Convention on Human Rights and Fundamental Freedoms by regular courts, or more specifically, the Judgment of the Supreme Court [Pzd.no. 65/2012], of 10 September 2012.

21. Based on all facts and circumstances submitted with the Referral, the Court, on 29 January 2013, concluded that the Referral of the Applicant is inadmissible, in accordance with Rule 36.3.e of the Rules of Procedure.

Applicant's allegations

22. The Applicant in his referral claims that the Court, in its Judgment KI 06/12, had found that there are violations of different kinds, and therefore, the Applicant had recommended to the Supreme Court to consider all violations, which in future proceedings would meritoriously remedied.

23. The Applicant further states that "*the Court later rendered another decision, by which his referral was rejected as unfounded, without any reasoning.*"

24. The Applicant requests from the Court:

„That the Court clarifies the decisions, respectively, which decision is authentic. "

Assessment of admissibility of referral

25. In order to be able to adjudicate the Referral of the Applicant, the Court must first examine whether the Applicant has met the admissibility criteria, as provided by the Constitution, and further specified by Law and Rules of Procedure.

26. In this case, the Court refers to Article 48 of the Law on the Constitutional Court, which provides that:

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

27. *In addition, the Court refers to Rule 36 (Admissibility criteria) of the Rules of Procedure, which provides:*

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

c) the referral is not manifestly ill-found."

(2) The Court shall reject a Referral as manifestly ill-founded, if it is satisfied that:

a) *the Referral is not justified prima facie" ...*

e) the Court has already issued a Decision on the matter concerned and the Referral and does not provide sufficient grounds for a new Decision."

28. However, with a view of clarifying the decision, the Court reminds that in the Judgment KI 06/12 of 9 May 2012, the Court found procedural violations of Article 31 [Right to a Fair and Impartial Trial] of the Constitution and Article 6 [Right to Due Process] of the ECHR, while as a ground of violation of rights guaranteed by the Constitution, the Court found that *"the same judge who presided the Trial Panel of the District Court in Prizren took part in a trial panel in the Supreme Court in adjudicating the request for diminishing sentence".*

29. The Court also notes that the Supreme Court, on 10 September 2012, in a repeated proceeding, rendered another decision [Pzd. no. 65/2012], in the trial panel composition, which was the basis that caused the procedural violation of Article 31 [Right to Fair and Impartial Trial] of the Constitution and Article 6 [Right to Due Process] of the ECHR, which the Court had found in its Judgment KI 06/12, of 9 May 2012.

30. Therefore, the Court notes that the Supreme Court, by decision [Pzd.no.65/2012], remedied the abovementioned procedural violation of Article 31 [Right to Fair and Impartial Trial] of the Constitution and Article 6 [Right to Due Process] of the ECHR.

31. In the concrete case, the Court concludes that the Applicant's Referral is not based and built on constitutional grounds and taking into account that the Court previously dealt and issued decision on the Applicant's referral, as such the Court considers that the Applicant's referral is *res judicata*. Therefore, in accordance with Rule 36.1.c, 36.2.a and 36.2.e of the Rules of Procedure, the referral is manifestly ill-founded and consequently inadmissible.

FOR THESE REASONS

Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 20 of the Law and Rule 36.1, 36.2 and Rule 56.2 of the Rules of Procedure, on 5 December 2013, by majority:

DECIDES

I. TO REJECT the Referral as Inadmissible;

II. TO NOTIFY this decision to the Parties

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

IV. This Decision is effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Ivan Čukalović	Prof. Dr. Enver Hasani

KI110/13, Shaqir Përvetica, Resolution of 2 December 2013 - Constitutional Review of the Decision of the Supreme Court of Kosovo Rev. no. 142/2013, of 14 June 2013

Case KI110/13, decision of 2 December 2013

Key words; Individual Referral, manifestly ill-founded referral.

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 on the Constitutional Court of the Republic of Kosovo, and Rule 56 (2) of the Rules of Procedure of the Constitutional Court of Kosovo.

On 23 July 2013, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo, requesting from the Court the constitutional review of Decision of Supreme Court of Kosovo.

Having considered the Referral, the Court concludes that the admissibility requirements have not been met in this Referral. The Applicant has failed to point out and substantiate the allegation that his constitutional rights and freedoms have been violated by the challenged decision. The Constitutional Court reiterates that it is not its task under the Constitution to act as a court of appeal, or a court of fourth instance, in respect of the decisions taken by regular courts. It is the role of the regular courts to interpret and apply the pertinent rules of both procedural and substantive law.

Taking into consideration all circumstances of the submitted Referral, the Constitutional Court of Kosovo, in its session held on 2 December 2013, decided to declare the Referral inadmissible, because the presented facts do not justify in any manner the violations of his constitutional rights.

RESOLUTION ON INADMISSIBILITY
in
Case no. KI110/13
Applicant
Shaqir Përvetica
Constitutional review of the Decision of the Supreme Court of Kosovo
Rev. no. 142/2013 of 14 June 2013

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. Shaqir Përvetica from Prishtina (hereinafter: the Applicant).

Challenged decision

2. The challenged decision is the Decision of the Supreme Court of Kosovo Rev. no. 142/2013 of 14 June 2013.

Subject matter

3. The subject matter is the constitutional review of the challenged decision of the Supreme Court of Kosovo (Rev. no. 142/2013 of 14 June 2013) served on the Applicant 8 July 2013, and by which was terminated the property-legal dispute between the Applicant and Kosovo Police. 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, Articles 20, 22.7 and 22.8 of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo of 15 January 2009 (hereinafter: the Law) and Rule 56 paragraph 2 of the Rules of Procedure (hereinafter: the Rules).

Proceedings before the Constitutional Court

5. On 23 July 2013, the Applicant filed the Referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 5 August 2013, by the Decision of the President (no. GJR. KI110/13), Judge Ivan Čukalović was appointed as Judge Rapporteur. On the same day, the President by Decision no. KSH. KI110/13 appointed the Review Panel composed of Judges: Altay Suroy (Presiding), Snezhana Botusharova and Arta Rama-Hajrizi.

7. On 29 August 2013, the Constitutional Court notified the Applicant and the Supreme Court of Kosovo of the initiation of proceedings of the constitutional review of decisions under case no. KI110-13. By that notification the Constitutional Court requested from the Applicant to furnish it with proof of the date of receipt of the Judgment of District Court in Prishtina Ac. no. 1411/09 of 13 July 2012.

8. On 13 September 2013, the Supreme Court of Kosovo, respectively, the Municipal Court submitted the proof (a copy of the delivery note) that the Applicant received the impugned Judgment of the District Court in Prishtina on 27 August 2012.

9. Upon Court's notifications sent to the Applicant on 29 August 2013, no additional documents have been submitted by the Applicant within the legally envisaged time limit.

10. On 2 December 2013, after having reviewed the report of Judge Rapporteur Ivan Čukalović, the Review Panel composed of judges Altay Suroy (presiding), Snezhana Botusharova and Arta Rama-Hajrizi, recommended to the full Court the inadmissibility of the Referral.

Summary of the facts

11. The Applicant complains of a circumstance in which the Kosovo Police confiscated his hunting weapon, but he does not specify the date, the description of the circumstance nor the reasons that led to the confiscation of the hunting weapon.

12. On 8 September 2009, deciding upon a lawsuit of the Applicant, the Municipal Court in Prishtina issued Decision C. No. 1649/07 rejecting as unclear and incomplete the Applicant's lawsuit against the Kosovo Police in connection with the confiscation of the hunting weapon, with the reasoning that the lawsuit itself and the supplementation to the lawsuit, did not contain the subject matter of the dispute, legal basis, value of the dispute and who is the respondent in the litigation matter.

13. On 13 July 2012, the District Court in Prishtina deciding upon the appeal of the Applicant issued Decision Ac. no. 1411/2009 rejecting the appeal's request of the Applicant as unfounded and upholding the Decision of Municipal Court in Prishtina C.no.1649/07 of 8 September 2009, reasoning that:

> *"Taking into consideration this state of affairs, the panel deems that the allegations in the plaintiff's appeal that the lawsuit is clear because an order for return of the weapon to the owner has been attached to it are ungrounded and as such they are rejected, with the reasoning that the plaintiff by submission dated 07.04.2009 did not make a correction to the lawsuit, therefore the first instance court has correctly applied the provision of Article 102.3 of LCP, when it rejected the plaintiff's lawsuit."*

14. On 14 June 2013, the Supreme Court of Kosovo, deciding upon Applicant's appeal, issued Decision Rev. No. 142/2013, rejecting Applicant's revision reasoning that it is belated because:

> *"From the receipt of delivery of the second instance court decision, it is concluded that the plaintiff received the Decision Ac. No. 1411/2009 of 13.07.2012 on 27.08.2012 and he filed the revision (appeal) on 5.10.2012"*

Applicant's allegations

15. The Applicant considers that *"the Supreme Court has erred in calculating the time limit, because I have received Decision AC.*

No. 1411/09 of 13-07-2012 on 08-09-2012 and not on 27-08-2012, in order to corroborate that I submit the discharge list which confirms that on 27-08-2012 I was hospitalized".

16. The Applicant also alleges: *"My appeal (he refers to the revision-translator's note) has not been taken into consideration because the value of the lawsuit was not stated, thinking that the value would be determined in one of the sessions, but during these 9 years the court never invited me to take a statement from me."*

17. The Applicant also requests from the Constitutional Court: *"to oblige Kosovo Police to compensate the damage.*

To have my weapon returned or the damage compensated

Specification of the value

1. Lawsuit-80 euro

2. Weapon -650

3. Medical certificate -30

4. Weapon permit -40

5. Certificate on training in hunting -300

6. Appeal - 2001-80

7. Lawsuit -II--2007-80

8. Appeal -18.11.2009-80

9. Court fee -03.10.12-31

10. Appeal - 03-10-2012—80

11. Court fee – 05-11-2012—31

12. Appeal - 23.07.2013-80

13. Fee- 22.07.2013-31

Total 1.593

Annual interest 2.867,4

4.460,40

Assessment of the admissibility of the Referral

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

19. In the case, the Court has to specifically determine whether the Applicant has met the requirements of Article 113 (1) of the Constitution, Article 49 of the Law and Rule 36 (1) b) of the Rules of Procedure.

20. The Court refers to Article 113.7 of the Constitution, which provides that:

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

21. The Applicant is authorized party and he has exhausted all legal remedies, provided by law.

22. Article 48 of the Law on the Constitutional Court of the Republic of Kosovo provides:

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

23. In addition, the Rule 36 (2) of the Rules provides that:

> *"(2) The Court shall reject a Referral as being manifestly ill-founded when it is satisfied that:*
> *(d) when the Applicant does not sufficiently substantiate his claim."*

24. From the above, the Applicant claims that the Supreme Court has erred in calculating the time limit and rejected as belated their appeal (revision).

25. However, the Court considers that the Applicant failed to show how and why his right to a fair trial has been violated, nor he has substantiated his allegations of such violations.

26. On the other hand, the Court notes that from paragraph 8 of this Resolution, it can be clearly concluded that the Applicant's allegations for erroneous calculation of time limits are not accurate, since from the evidence submitted by the Supreme Court, respectively the Municipal Court in Prishtina of 13 September 2013 (a copy of the court's delivery note) it is undoubtedly determined that the Applicant received the impugned Judgment of the District Court in Prishtina on 27 August 2012, therefore none of his constitutionally guaranteed rights have been violated by acts of public authorities.

27. The mere fact that the Applicant is unsatisfied with the outcome of the case cannot serve as the right to file an arguable claim on violation of the Constitution or of the European Convention on Human Rights (see Memetoviq v. Supreme Court of Kosovo Kl 50/10, 21 March 2011; see *mutatis mutandis* Mezour-Tiszazugi Tarsulat vs. Hungary, ECHR Appl. No. 5503/02, of 26 July 2005).

28. In this regard, the Constitutional Court reiterates that it is not its task under the Constitution to act as a court of appeal, or a court of fourth instance, in respect of the decisions taken by regular courts. It is the role of the latter to interpret and apply the pertinent rules of both procedural and substantive law (see, Avdyli v. Supreme Court of Kosovo, KI13/09, 18. juna 2010, see *mutatis mutandis*, Garcia Ruiz v. Spain [GC], no. 30544/96, § 28, European Court on Human Rights [ECHR] 1999-1).

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

30. In the present case, the Applicant has been provided numerous opportunities to present his case and to challenge the

interpretation of the law, which he considers as being incorrect, before the Municipal Court and the District Court in Prishtina, and the Supreme Court of Kosovo. The interpretation of legal deadline for filing appeal (revision) against the Decision of the District Court is the matter that should be established by the Supreme Court of Kosovo and it does not belong to the constitutional review of his rights to fair and impartial trial by the Court.

31. The Constitutional Court found that the pertinent proceedings were fair and they were not arbitrary (see *mutatis mutandis*, Shub v. Lithuania, ECtHR Application no. 17064/06 of 30 June 2009). In addition, there was nothing found in the Referral that would indicate that the Supreme Court of Kosovo lacked impartiality or that the proceedings were unfair.

32. Finally, admissibility requirements have not been met in this Referral. The Applicant has failed to point out and substantiate the allegation that his constitutional rights and freedoms have been violated by the challenged decision.

33. Consequently, the Constitutional Court finds that the Applicant's allegations are not substantiated and they should be rejected as manifestly ill-founded.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of Constitution, Article 48 of the Law, and Rule 36 (2) d) of the Rules of Procedure, in its session held on 2 December 2013, unanimously

DECIDES

I. TO REJECT the Referral as inadmissible;

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

III. Decision is effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Ivan Čukalović	Prof. Dr. Enver Hasani

KI153/13, Adem Dushi, Resolution of 20 November 2013 - Constitutional Review of the Decision of the Trial Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters, of 10 January 2010

Case KI153/13, decision of 20 November 2013.

Key words; Individual referral, out of time.

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

On 29 September 2013, the Applicant filed the Referral with the Constitutional Court of the Republic of Kosovo, whereby he requsted from the Court the constitutional review of the Decision of the Trial Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters.

The Applicant alleges that the said decision violates his constitutional rights guaranteed by Articles 21 and 22 of the Constitution of Kosovo.

After reviewing the documentation, the Court noted that the Applicant had missed the deadlines provided by the Law and the Rules of Procedure.

In this regard, the Court concludes that the Applicant's Referral is out of time.

Taking into account all the circumstances of the submitted Referral, the Constitutional Court of Kosovo rejected the Referral as inadmissible for review.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI153/13
Applicant
Adem Dushi
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-09-001, of 10 January 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. Adem Dushi from village Lupç i Epërm, Municipality of Podujevo (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges the decision of Trial Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters SCEL-09-001, of 10 January 2010, which was served on the Applicant on 13 July 2010.

Subject matter

3. The Subject matter is constitutional review of the decision, which allegedly deprives the Applicant from the right to the 20% share from the privatization of the Socially Owned Enterprise "Ramiz Sadiku" (hereinafter: SOE "Ramiz Sadiku"), in Prishtina.

Legal basis

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

Proceedings before the Constitutional Court

5. On 29 September 2013, the Applicant filed the Referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 30 September 2013, the President, by Decision GJR. No. KI153/13, appointed Judge Kadri Kryeziu as Judge Rapporteur. On the same day, the President, by Decision KSH. No. KI153/13, appointed the Review Panel composed of Judges: Robert Carolan (Presiding), Almiro Rodrigues and Ivan Čukalović.

7. On 9 October 2013, the Court notified the Applicant and the Special Chamber of the Supreme Court of the registration of Referral.

8. On 20 November 2013, the Review Panel considered the Report of Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

Summary of the facts

9. The Applicant was in employment relationship with SOE "Ramiz Sadiku" from 11 May 1979 until 28 February 1990.

10. On 27 June 2006, SOE "Ramiz Sadiku" completed the privatization process.

11. On 23 February 2009, the Applicant filed a complaint with Special Chamber of the Supreme Court against the final list of employees which was compiled by the Privatization Agency because he as a former employee was not in the list.

12. In the complaint to the Special Chamber of the Supreme Court, the Applicant stated that he was in employment relationship with SOE "Ramiz Sadiku", from 11 May 1979 until 28 February 1990, and

that in 1999, he reported to the management of the enterprise requesting to enable him to return to his previous work position based on the contract of 11 May 1979.

13. During the hearing, the Trial Panel of the Special Chamber on the basis of the personal identification card of the Applicant found that he was born on 15 February 1941, respectively that on 15 February 2006 he turned 65 and thereby acquired the right to old age pension.

14. On 10 January 2010, the Trial Panel of the Special Chamber issued Decision SCEL-09-001, rejecting the Applicant's complaint as inadmissible.

15. In the reasoning of its Decision the Trial Panel of the Special Chamber stated that "*during the hearing and based on the administration of evidence it found that the Applicant at the moment of the privatization of "SOE Ramiz Sadiku" was older than 65. Therefore, the position of Trial Panel of the Special Chamber is that the Applicant's complaint does not meet the requirements provided under Section 10.4 of UNMIK Regulation 2003/13 (see paragraph 15).*

Relevant law

16. UNMIK Regulation no. 2003/13, of 9 May 2003, ON THE TRANSFORMATION OF THE RIGHT OF USE TO SOCIALLYOWNED IMMOVABLE PROPERTY

Section 10.4 (Entitlement of Employees)

"For the purpose of this section an employee shall be considered as eligible, if such employee is registered as an employee with the Socially-owned Enterprise at the time of privatization and is established to have been on the payroll of the enterprise for not less than three years. This requirement shall not preclude employees, who claim that they would have been so registered and employed, had they not been subjected to discrimination, from submitting a complaint to the Special Chamber pursuant to subsection 10.6."

Applicant's allegations

17. The Applicant alleges that the said decision violates the constitutional rights guaranteed by Articles 21 and 22 of the Constitution of Kosovo.

18. The Applicant addresses the Constitutional Court requesting:

> *"He wants that the 20 % share from privatization belong also to him as he is entitled to it under the applicable law".*

Assessment of the admissibility of the Referral

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

20. In that regard, the Court notes that Article 113.7 of the Constitution provides:

> *"7. Individuals are authorized to refer violations by public authorities of their individual rights and freedoms guaranteed by the Constitution, but only after exhaustion of all legal remedies provided by law."*

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. Based on the submitted documents, the Court concludes that the Applicant submitted Referral to the Court on 29 September 2013, whereas the last decision of the Appellate Panel of the Special Chamber was served on him on 13 July 2010, which means after the expiration of legal time limit provided by Article 49 of the Law and Rule 36. (1) b) of the Rules of Procedure.

24. It follows that the Applicant's Referral is out of time.

25. Based on the foregoing, the Referral should be rejected as inadmissible for review, because it is not in accordance with Article 49 of the Law and Rule 36. (1) b) of the Rules of Procedure.

FOR THESE REASONS

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

DECIDES

I. TO REJECT the Referral as Inadmissible;

II. TO NOTIFY the Parties of this Decision;

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

IV. This Decision is effective immediately.

Judge Rapporteur Kadri Kryeziu

President of the Constitutional Court Prof. Dr. Enver Hasani

KI65/13, Rasim Hoxha and Mrs. Remzije Hoxha-Prelvukaj, Resolution of 18 November 2013 - Constitutional Review of the Judgment Rev. 291/2009, of the Supreme Court of Kosovo, of 4 September 2012.

Case KI65/13, decision of 18 November 2013

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

The Applicants 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 subject matter is the constitutional review of the challenged Decision which allegedly is "unfair and unconstitutional because, by rejecting the Applicants' revision as ungrounded, their rights to fair trial and right to property have been violated."

In this respect, the Applicants claim that Article 31 [Right to Fair and Impartial Trial] and Article 46 [Protection of Property], of the Constitution are violated.

Finally, the Applicants request from the Court to assess the legality and constitutionality of the decisions of regular courts and to restore their right to property which was allegedly denied to them by the regular courts in an arbitrary manner.

Considering the Applicants' allegations regarding the constitutional review of the Judgment Rev. no. 291/2009, of the Supreme Court of the Republic of Kosovo, of 4 September 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. KI65/13
Applicants
Rasim Hoxha and Remzije Hoxha-Prelvukaj
Constitutional review of the Judgment of the Supreme Court of the Republic of Kosovo, Rev. 291/2009 of 4 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 and
Arta Rama-Hajrizi, Judge

Applicants

1. The Referral is submitted by Mr. Rasim Hoxha and Mrs. Remzije Hoxha-Prelvukaj (hereinafter: Applicants), represented by Mr. Gani Asllani, practicing lawyer from Prishtina.

Challenged decisions

2. The Applicants challenge the Judgment Rev. 291/2009 of 4 September 2012 of the Supreme Court of Kosovo, which was served on them on 28 December 2012.

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 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).

Subject matter

4. The subject matter is the constitutional review of the challenged Decision which allegedly is "*unfair and unconstitutional because, by rejecting the Applicants' revision as ungrounded, their rights to fair trial and right to property have been violated.*"

5. In this respect, the Applicants claim that Article 31 [Right to Fair and Impartial Trial] and Article 46 [Protection of Property], of the Constitution are violated.

Proceedings before the Constitutional Court

6. On 29 April 2013, the Applicants filed the Referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

7. On 29 April 2013, the President by Decision No. GJR. KI65/13, appointed Judge Altay Suroy as Judge Rapporteur. On the same day, the President by Decision No. KSH. KI65/13 appointed the Review Panel composed of Judges Ivan Čukalović (Presiding), Kadri Kryeziu and Enver Hasani.

8. On 26 June 2013, the Applicants were notified of the registration of the Referral. On the same day, the Referral was communicated to the Supreme Court of Kosovo.

9. On 3 July 2013, the Court requested from the Applicants and the Basic Court in Peja to submit additional documents.

10. On 19 July 2013, the Basic Court in Peja – Branch in Istog and the Applicants replied.

11. On 18 November 2013, the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

Summary of the facts

12. On 27 May 2002, the Municipal Court in Istog, by Judgment C.no.133/01, confirmed that the Applicant Rasim Hoxha is the owner of the disputed house and user of the plot where the house was built and obliged the respondent G. M. to vacate the said immovable property for the Applicant. The Municipal Court in

Istog rejected as unfounded the claim of the Applicant Remzije Hoxha-Prelvukaj for recognition of the co-ownership over the disputed immovable property.

13. On 7 November 2002, the District Court in Peja by Decision Ac. no. 163/02 quashed Judgment C. no. 133/01 of 27 May 2002 of the Municipal Court in Istog and remanded the case for retrial.

14. On 23 July 2004, the Municipal Court in Istog by Judgment C. no. 9/03 rejected as unfounded the Applicants' claim for confirmation that they are the co-owners of the disputed immovable property (plot and house) and confirmed that the counter-plaintiff G. M. is the owner of the disputed immovable property on the basis of the sale-purchase, occupancy and construction.

15. On 20 October 2004, the District Court in Peja by Decision Ac. no. 283/2004 quashed Judgment C. no. 9/03 of 23 July 2004 of the Municipal Court in Istog and remanded the case for retrial.

16. On 28 April 2005, the Municipal Court in Istog by Judgment C. no. 1794/04 rejected as unfounded the Applicants' claim to confirm that they are co-owners of the disputed immovable property and confirmed that the counter-plaintiff G. M. is the owner of the contested immovable property.

17. On 11 January 2006, the District Court in Peja by Decision Ac. no. 219/05 quashed Judgment C. no. 1794/04 of 28 April 2005 of the Municipal Court in Istog and remanded the case for retrial.

18. On 6 November 2007, the Municipal Court in Istog by Judgment C. no. 10/06 rejected as unfounded the Applicants' claim for confirmation that they are the co-owners of the disputed immovable property and confirmed that counter-plaintiff G. M. is the owner of the disputed immovable property.

19. On 19 February 2009, the District Court in Peja by Judgment Ac. no. 13/08 rejected the Applicants' appeals as unfounded and upheld the Judgment C. no. 10/06 of 6 November 2007 of the Municipal Court in Istog.

20. On 4 September 2012, the Supreme Court of Kosovo by Judgment Rev. no. 291/2009 rejected as unfounded the Applicants' revision and upheld the Judgment Ac. no. 13/2008 of 19 February 2009 of the District Court in Peja.

21. By Judgment Rev. no. 291/2009 of 4 September 2009, the Supreme Court, among others, reasoned:

> *"... From the case files, it may be derived that the claimants/counter-respondents (Applicants) are brother and sister, while the respondent/counter-claimant G. M. is brother-in-law to them. The claimant/counter-respondent Rasim (Applicant) is owner of the parcel 5/1, an ownership right acquired by contract on division of family property, certified with the Municipal Court in Gjurakoc, Vr.no. 467/72, of 06.09.1972. Based on such a contract, the claimant/counter-respondent Rasim (Applicant) was issued a deed (Tapi). Based on the construction permit issued by the competent municipal authority, the claimant/counter-respondent Rasim (Applicant) started constructing the family house, together with the second claimant/counter-respondent Remzije (Applicant), pursuant to a contract on joint construction. Since the claimant/counter-respondent Rasim had decided to live in Prishtina, and purchase a house in Prishtina, an agreement was made between him and the respondent/counter-claimant G. M., for the latter to sell his own home in Banja of Peja, and give the claimant/counter-respondent Rasim (Applicant) the money from such a sale. In 1979, the respondent/counter-claimant G. M. sold his house in Banja to a person S. Z., for the amount of 120 Million Dinars of that time, and as per agreement, gave such money to claimant/counter-respondent Rasim (Applicant). Based on the agreement, the Rasim was bound to build or purchase another house in Banja, Prishtina or Gjakova to the respondent/counter-claimant G. M., within a deadline of 5-6 years. The claimant/counter-respondent decided that the respondent/counter-claimant G.M. inhabit the house in dispute. These facts were undisputed by the litigants.*
>
> *Since the claimant/counter-respondent Rasim (Applicant) could not perform on his obligation from the agreement, to purchase or build another house in Banja, Prishtina or Gjakova to the respondent/counter-claimant G. M., he invested in the house, to adapt it for housing, thereby installing water and electricity mains, and other items, with his own money, and moved in the disputed house in 1980. Since the claimant/counter-respondent (Applicant) could not perform on his obligation, he congratulated to the wife of the respondent/counter-claimant G. M., who is his sister, and to his own nephews, in 1986 for acquiring the house in question...*

The respondent/counter-claimant G. M. has invested in the house, considering that he was doing this for his own home, and there was no objection from the respondent/counter-claimant (Applicant) to such investments. There were later efforts to have an agreement between the litigating parties for the house in dispute, but to no avail...

Setting from such a factual situation, the court of revision finds that the conclusion of the second instance court that the respondent/counter-claimant G. M. has acquired ownership rights as per Article 24, paragraph 1 of the LBPR, since as a conscious builder, he had knowledge of building on his own building, is correct. With the investment made by the respondent/counter-claimant G.M. in the object, the ownership rights are acquired if the conscious builder has made considerable investments, while the owner of the property had knowledge of such investments, and made no objections within the meaning of Article 24, paragraph 1 of the LBPR. Setting from the factual situation ascertained by the first instance court, it may be derived that the respondent/counter-claimant G. M. moved in the house in dispute in 1980, based on a prior agreement with the claimant/counter-respondent (Applicant), and that since the moving into the house, the respondent/counter-claimant G.M. has made considerable investments, which according to the civil engineering expert amount to 81.822,95 €...

The respondent/counter-claimant G. M. was conscious that he was building in his own home, since according to the agreement with the claimant/counter-respondent (Applicant), he moved to the house in 1980, and invested in the building, thereby bringing the object to the current condition, while the claimant/counter-respondent (Applicant) never objected until the filing of the claim...”

Applicants’ allegations

22. The Applicants allege that the regular courts have not rendered fair and impartial decisions, thereby violating legal, constitutional provisions and the European Convention on Human Rights (hereinafter: ECHR).

23. The Applicants allege that their right to property as guaranteed by Article 46 [Protection of Property] of the Constitution and Article 1

[Protection of Property] of Protocol No. 1 of ECHR has been violated. The Applicants also allege that Article 36 of the Law No. 03/L-154 on Property and Other Real Rights has been violated.

24. The Applicants allege that their rights guaranteed by Article 31 [Right to Fair and Impartial Trial] of Constitution, under paragraphs 1 and 3, have been violated because they: "*...objected the assessment of the house based on the expertise conducted by the expert who was appointed by the court, with a view to having an expertise conducted by construction experts from the faculty of construction in Prishtina, or a super expertise to be conducted, this right was denied by the court categorically, so that our request was not even entered in the court's records...".*

25. Finally, the Applicants request from the Court to assess the legality and constitutionality of the decisions of regular courts and to restore their right to property which was allegedly denied to them by the regular courts in an arbitrary manner.

Assessment of the admissibility of Referral

26. The Court notes that in order to be able to adjudicate the Applicants' Referral, it is necessary to first examine whether all admissibility requirements laid down in the Constitution, the Law and further specified in the Rules of Procedure have been met.

27. With regard to the Applicants' Referral, the Court refers to Article 113.7 of the Constitution, which establishes:

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

28. In the present case, the Court notes that the Applicants have exhausted all legal remedies, as required by Article 113.7 of the Constitution.

29. 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. 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".

30. The Court takes into account Rule 36 (1) b) of the Rules of Procedure, which provides:

"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...".

31. In this respect, the Court also refers to Rule 27 (6) of the Rules of Procedure, which establishes:

"A time period prescribed by the Constitution, the law or these Rules shall be calculated as follows:

[...]

(4) when a period is expressed in months and days, the period shall be first calculated in whole months and then in days;

(5) when a period is to be calculated, periods shall include Saturdays, Sundays and official holidays;

(6) when a time period would otherwise end on a Saturday, Sunday or official holiday, the period shall be extended until the end of the first following working day".

32. The Court notes that the Referral has been submitted on 29 April 2013, whereas the Judgment of the Supreme Court was served on them on 28 December 2012.

33. In the concrete case, the Court notes that the Applicants have failed to submit their Referral on 28 April 2013, because it was Sunday, and according to the Rule 27 (6) of the Rules of Procedure, in such cases, the Referral must be submitted in the first working day following the Sunday, and actually the Applicants did so.

34. It results that the Referral is within the time limit, because it is submitted within the deadline of four (4) months as prescribed by the Law and the Rules of Procedure.

35. Regarding the allegation raised in the Referral, the Court 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 manifestly ill-founded".*

36. The Court considers that Applicants have not provided any *prima facie* evidence indicating that the proceedings conducted before the regular courts were biased or tainted by arbitrariness; in addition Applicants' allegations raise issues of facts and law which are full jurisdiction of the regular courts.

37. The Constitutional Court reiterates that it is not a fact finding court. The Constitutional Court wishes to emphasize that the correct and complete determination of the factual situation is full jurisdiction of the regular courts and 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 see case KI86/11, Applicant Milaim Berisha, Resolution on Inadmissibility of 5 April 2012).

38. In addition, the Referral does not show 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 for 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, Report of the European Commission of Human Rights of 10 July 1991).

39. The fact that the Applicants do not agree with the outcome of the case cannot of itself raise an arguable claim for breach of Article 31 [Right to Fair and Impartial Trial] and Article 46 [Protection of Property] of the Constitution (See Case Mezotur-Tiszazugi Tarsulat vs. Hungary, No.5503/02, ECtHR, Judgment of 26 July 2005).

40. Under these circumstances, the Applicants have not substantiated their allegation of the violation of Article 31 [Right to Fair and Impartial Trial] and Article 46 [Protection of Property] of the Constitution, because the presented facts do not in any way show that the regular courts have denied their constitutionally guaranteed rights.

41. Consequently, the Referral is manifestly ill-founded and it must be rejected as 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 Constitution, Article 47 of the Law, and Rule 36 (1) c) of the Rules of Procedure, on 18 November 2013, unanimously

DECIDES

I. TO REJECT the Referral as Inadmissible;

II. TO NOTIFY the Parties of this Decision;

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

IV. TO DECLARE this Decision immediately effective.

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

KI96/13, Branko Radec, Resolution of 3 February 2014 - Constitutional Review of the Decision, PZ. no. 169/12, of the Court of Appeal in Pristina, of 21 January 2013.

Case KI96/13, decision of 3 February 2014

Key words: individual referral, manifestly ill-founded.

The applicant, Branko Radec, filed a Referral pursuant to Article 113.7 of the Constitution of Kosovo challenging the Decision, PZ. no. 169/12, of the Court of Appeal in Pristina, dated 21 January 2013, as being taken in violation of the Constitution because the "actions of the courts in the Republic of Kosovo have violated [his] rights to enjoy [his] personal property and rights to safety because there is a duality in the administrative decisions of court." In addition, the Applicant claims that the "state has taken over responsibility to protect the property of all its citizens and at the same time it is the successor of international institutions in Kosovo and legally it is impossible that nobody is responsible for the damage that cause to [him] during the riots in 2004."

On the issue of the admissibility of the Referral, the Court held, that the Referral was inadmissible because the Applicant failed to submit evidence that the relevant proceedings were in any way unfair or tainted by arbitrariness. Hence, the Court held that the Referral was manifestly ill-founded pursuant to Rule 36 (1.c) of the Rules of Procedure.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI96/13
Applicant
Branko Radeč
Constitutional Review of the Decision, PZ. no. 169/12, of the Court of Appeal in Pristina, dated 21 January 2013.

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

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

Applicant

1. The Referral is submitted by Mr. Branko Radeč (hereinafter: the "Applicant"), residing in Belgrade, Serbia.

Challenged decision

2. The Applicant challenges the Decision, PZ. no. 169/12, of the Court of Appeal in Pristina of 21 January 2013, which was served on the Applicant on 5 March 2013.

Subject matter

3. The Applicant requests the constitutional review of the Decision, PZ. no. 169/12, of the Court of Appeal, which allegedly violates Articles 3 [Equality Before the Law], 19 [Applicability of International Law], 24 [Equality Before the Law], 31 [Right to Fair and Impartial Trial], 32 [Right to Legal Remedies], 46 [Protection of Property], 53 [Interpretation of Human Rights Provisions], 54 [Judicial Protection of Rights], 56 [Fundamental Rights and

Freedoms During a State of Emergency], and 156 [Refugees and Internally Displaced Persons] of the Constitution of the Republic of Kosovo (hereinafter: the "Constitution") and Articles 6 [Right to a Fair Trial], 8 [Right to Respect for Private and Family Life], 13 [Right to an Effective Remedy], and 14 [Prohibition of Discrimination] of the European Convention on Human Rights (hereinafter: the "ECHR"). Additionally, the Applicant further alleges that Article 1 of Protocol 1 [Enforcement of Certain Rights and Freedoms not included in Section I of the Convention] and Protocol 12 [General Prohibition of Discrimination] of the ECHR have also been violated.

Legal basis

4. The Referral is based on Article 113.7 of the Constitution, Article 47 of the Law, No. 03/L-121, on the Constitutional Court of the Republic of Kosovo of 15 January 2009 (hereinafter: the "Law") and Rule 56.2 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the "Rules of Procedure").

Proceedings before the Court

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

6. On 5 August 2013, the President of the Constitutional Court 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 5 September 2013, the Applicant was notified of the registration of the Referral and was asked to supply the following documents to the Court:

    a. The Decision of the Court of Appeal in Pristina Pz. no. 169/12, dated 21 January 2013;
    b. The Ruling of the Municipal Court in Vushtrri, dated 15 October 2010;
    c. The Claim for compensation of damage to the Municipal Court in Vushtrri; and
    d. The Appeal against the Ruling of the Municipal Court in Vushtrri.

8. On 14 October 2013, the Court received the requested documents from the Applicant.

9. On 21 October 2013, the Court notified the Court of Appeal in Pristina of the registration of the Referral.

10. On 2 December 2013, the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

11. On 25 May 2004, the Applicant submitted a claim with the Municipal Court in Vushtrri against the Municipality of Vushtrri, Provisional Institutions of Self-Governance in Kosovo, and the Government of Kosovo, seeking compensation for damaged property. In the complaint, the Applicant alleged that *"after the arrival of KFOR in Kosovo, the buildings that are located in the mentioned plot have been completely destroyed and the immovable property was stolen and destroyed, the orchard, acacia plantation and the forest were cut down, and the agricultural land is used by unauthorized persons."*

12. On 15 October 2010, the Municipal Court in Vushtrri (P. no. 303/2004) issued a decision on the Applicant's claim. In the Decision, the court determined that the claim of the Applicant was withdrawn for failure to pay the mandatory court filing fees. The Municipal Court in Vushtrri held that: *"A warning was submitted to the claimant in relation to the payment of the court claim fee through the notification table of the court on 29.09.2010, but the same until now did not pay the claim fee pursuant to Article 3 item 1 and 10 item 1 of Administrative Instruction. Therefore the court pursuant to Article 253, item 5 of the LCP [Law on Contested Procedure] decided as in the enacting clause of this Ruling."*

13. On 21 January 2013, the Court of Appeal in Pristina (PZ. no. 169/12) rejected the Applicant's appeal as not grounded and confirmed the decision of the Municipal Court in Vushtrri (P. no. 303/2004 of 15 October 2010). The Court of Appeal held that: *"The court [Municipal Court in Vushtrri] submitted to the claimants the warning to pay the claim fee through the notification board of the court since 29.09.2010, but the same did not pay the claim fee,*

which is defined pursuant to Article 3, item 1 and 10 of administrative instruction, thus the first instance court pursuant to Article 253, item 5, of the LCP [Law on Contested Procedure], decided as in the enacting clause of the challenged Ruling. . . . [The] court considers that the appeal of the claimants are not grounded, because the first instance court has undertaken several actions toward the claimants with the aim that they pay the court claim fee, missing on the order to pay the court feeds of date 27.01.2010, correspondence addressed to the Ministry of Justice, Office for International Cooperation of date 03.02.2010, Ruling dated 29.09.2010 etc, but the claimants did not pay the court claim fees and pursuant to the provision of Article 253.4 of the LCP, it is envisaged that the claimant submits evidence on the payment of court claim fee, whereas pursuant to Article 253.5, it is envisaged that if the appropriate court claim fee is not paid, even after the court's warning, and if there are no candidates for exclusion, it will be considered that the claim has been withdrawn, at this point it is worth mentioning that the claimant upon the proposal for exclusion did not submit any evidence, that is not even a certificate on the financial status of the competent authority, in the mean time with the respective provisions of the administrative instruction no.2008/2 on the unification of court fees."

Applicant's allegations

14. The Applicant alleges that the *"actions of the courts in the Republic of Kosovo* have *violated [his] rights to enjoy [his] personal property and rights to safety because there is a duality in the administrative decisions of court."* In addition, the Applicant claims that the *"state has taken over responsibility to protect the property of all its citizens and at the same time it is the successor of international institutions in Kosovo and legally it is impossible that nobody is responsible for the damage that cause to [him] during the riots in 2004."*

15. The Applicant further alleges that the following Articles of the Constitution rights have been violated:

    a. Article 3 [Equality Before the Law], arguing that *"the members of the Serbian people are not equally treated as the other citizens of Kosovo."*

b. Article 19 [Applicability of International Law], arguing that in conjunction with Article 1 of Protocol 1 of the European Convention on Human Rights, his right to enjoy his property was violated because it has been destroyed for over 10 years and he is unable to *"realize [his] right to just compensation."*

c. Article 24 [Equality Before the Law], arguing *"that pursuant to the same factual and legal grounds the same court with one decides and with the other rejects due to nonpayment of court taxes which that court is not factually or formally to pay."*

d. Article 31 [Right to Fair and Impartial Trial], arguing that because Article 24 was violated, Article 31 was also violated *"considering that two Judgments from one court on the same matter are in fact contradicting each other."*

e. Article 32 [Right to Legal Remedies], claiming that the documents he provided *"prove that the procedures conducted on the compensation of material damage pursuant to destroyed immovable property by terrorist acts were selectively suspended – only for the members of Serbian nationality."*

f. Article 46 [Protection of Property], arguing that by not receiving compensation from the appropriate authorities back in 2004, he has suffered material damage, which the Applicant claims is in violation of his constitutional right.

g. Article 54 [Judicial Protection of Rights], arguing that he has *"been discriminated by the courts because my proceeding was suspended because of not paying the court tax – this severely impaired my access to court – which even pursuant to the practices of European Court on Human Rights presents a violation of the Convention."*

h. Article 56 [Fundamental Rights and Freedoms During a State of Emergency].

i. Article 102 [General Principles of the Judicial System], arguing that in cases similar to his, where there is a Serbian national involved, there is a question of whether

"the judicial power is not impartial or apolitical. When citizens of Serbian nationality are in question a series of specific questions in the context of Kosovo arise – it is not always clear who are the bearers of responsibilities, although it is clear that the internally displaces persons have been expelled from their homes, which were subsequently destroyed, and when it is necessary the bearer of the compensation of the damage, then this is factually impossible, which makes meaningless the rights of displaced persons."

It is the position of the Applicant that, as a general rule, *"internally displaced persons enjoy the same rights as any other citizen of the state of their residence, when it is implemented on the situation of the internally displaced persons in Kosovo, this would mean that they can realize their property rights as any other citizen of Kosovo."* However, despite this, the Applicant argues that *"citizens of Serbian nationality [are] not equally treated by the relevant national and international bodies, and their requests remain unanswered."*

To further support this allegation, the Applicant notes that claims submitted by internally displaced individuals from Kosovo are "*submitted against UNMIK and KFOR, as well as provisional institutions in Kosovo"* in order to receive just compensation for damages that occurred to their property, which was the result of the *"NATO bombings in 1999, as well as riots in March 2004."* The Applicant's claim, among thousands of others, were "frozen" at the request of the Director of UNMIK Department of Justice (letter sent to all municipal and district court presidents and to the President of the Supreme Court of Kosovo on 26 August 2004). The purpose of the "freeze" was determine how best to handle the influx of claims. (See para. 15 Human Rights Advisory Panel Opinion dated 23 February 2011, Case No. 27/08, et al.). The Human Rights Advisory Panel determined that this suspension of proceedings was in direction violation of Article 6 § 1 of the European Convention on Human Rights and the right to a fair trial.

j. Article 156 [Refugees and Internally Displaced Persons], arguing that the *"[d]ecisions of official authorities and*

courts in the Republic of Kosovo do not protect my rights guaranteed by Article 156 of the constitution but directly violate with the challenged and contradictory decisions rendered against me." The Applicant draws attention to the fact that the processing of his case, among numerous others of factually similar backgrounds, were commenced only recently to then be rejected. The issue that the Applicant draws attention to is *"who is responsible for the return of the property and the compensation of destroyed property."*

The Applicant further argues that simply because there are *"18.000 claims [that] remain unsolved and are often described as [a] burden to the Kosovo justice that have to be rescinded as soon as possible. It seems that the rights of those that have initially submitted the claims are not a priority."* In other words, a burden on the judicial system is not a satisfactory reason to deny an individual his constitutionally guaranteed rights and freedoms. *"[T]he courts in Kosovo have started rejected such claims, while at the same time the poor applicants of the claim, internally displaced persons, give significant amounts of money for court expenses in their attempts to realize their rights."*

k. Article 53 [Interpretation of Human Rights Provisions], arguing that *"there are numerous examples of the decisions that confirm that in my case several human rights have been violated by the courts of Kosovo."*

l. Article 54 [Judicial Protection of Rights], claiming that the *"Legislation and creation of institutions, processes undertaken in Kosovo have not sufficiently processed specific needs of internally displaced persons in relation to their requests, and they have not provided the appropriate institutional framework."* The Applicant further alleges that since *"the justice system does not recognize specific obstacles that internally displaced persons face, the right to a fair trial and most of fundamental rights guaranteed by national law have become empty promises."* In a lengthy argument outlined in the Referral, the Applicant claims that being required to pay court fees is a hindrance on his right to equal access to courts.

The Applicant argues that there are typically three obstacles to court access: i) the use of the official language; ii) the court fee system; and iii) the *"factual impossibility to participate in the court proceeding"* for internally displaced persons. The Applicant argues that when dealing with a facially neutral law or institutional practice, discrimination can either be direct or indirect. The Applicant acknowledges that indirect discrimination before the courts is often more subtle than direct discrimination, but both are *"equally dangerous of principles of equal protection of rights."*

In citing the UN Human Rights Committee of the Ninetieth Session, General Comment No. 32, the Applicant points out that *"The right of access to courts and tribunals and equality before them is not limited to citizens of States parties, but must also be available to all individuals, regardless of nationality or statelessness, or whatever their status, whether asylum seekers, refugees, migrant workers, unaccompanied children or other persons, who may find themselves in the territory or subject to the jurisdiction of the State party. A situation in which an individual's attempts to access the competent courts or tribunals are systematically frustrated de jure or de facto runs counter to the guarantee of article 14, paragraph 1, first sentence. This guarantee also prohibits any distinctions regarding access to courts and tribunals that are not based on law and cannot be justified on objective and reasonable grounds. The guarantee is violated if certain persons are barred from bringing suit against any other persons such as by reason of their race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."* (See para. 9 of General Comment No. 32 on Article 14 of the ECHR, http://www. refworld. org/docid/ 478b2b2f2.html).

16. The Applicant also alleges that the following Articles of the European Convention on Human Rights have been violated:

    a. Article 6, paragraph 1 [Right to Fair Trial] provides that *"In the determination of his civil rights and obligations . . . against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial*

tribunal established by law." The Applicant argues that his right to a fair trial has been violated. In support of his allegation, the Applicant draws the Court's attention to several ECHR cases where such Article 6(1) violations have been addressed.

In the case of Kutić v. Croatia, the ECHR held that the referral was admissible as to the issue of what is a reasonable time for which proceedings can be stayed. (See Kutić v. Croatia, no. 48778/99, 4 October 2001). In Golder v. The United Kingdom, the court rationalized the fact *"that the right of access constitutes an element which is inherent in the right stated by Article 6 para. 1, ... [which also] secures to everyone the right to have any claim relating to his civil rights and obligations brought before a court or tribunal."* (See Golder v. The United Kingdom, no. 4451/70, § 36, 21 February 1975).

In further support of his arguments, the Applicant refers the Court to the case of Ashingdane v. The United Kingdom (See Ashingdane v. The United Kingdom, no. 8225/78, § 57, 28 May 1985), which held that *"[i]t must still be established that the degree of access afforded under the national legislation was sufficient to secure the individual's 'right to a court,' having regard to the rule of law in a democratic society."* In Airey v. Ireland, the ECHR notes that the purpose of the Convention is not to guarantee *"rights that are theoretical or illusory but rights that are practical and effective."* (See Airey v. Ireland, no. 6289/73, § 24, 9 October 1979). In the case of De Cubber v. Belgium, the ECHR determined that a restrictive interpretation of Article 6(1) *"would not be consonant with the object and purpose of the provision, bearing in mind the prominent place which the right to a fair trial holds in a democratic society within the meaning of the Convention."* (See De Cubber v. Belgium, no. 9186/80, § 30, 26 October 1984).

b. Article 13 [Right to an Efficient Legal Remedy] provides that *"Everyone whose rights and freedoms . . . shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity*." The Applicant is arguing that based on the submitted facts, *"none of the supervising authorities of the responding party, or other authority, organization or authorized individual, did not*

find appropriate to react and remove from the justice system of the responding party this discriminating situation, with which for one group of Kosovo citizens, ethnically determined with their Serbian ethnical background, is practically impossible to protect their rights provided by the European Convention." The Applicant clearly argues that because he is of Serbian, he has not been afforded equal treatment by the Kosovo authorities in seeking an effective legal remedy to his situation, as such seeking the assistance of the Court to resolve this matter.

The Applicant draws the Court's attention to Tolstoy Miloslavsky v. The United Kingdom where the ECHR determined that *"the right of access to the courts secured by Article 6 para. 1 may be subject to limitations in the form of regulation by the State . . . the State enjoys a certain margin of appreciation. However, the Court must be satisfied, firstly, that the limitations applied do not restrict or reduce the access left to the individual in such a way or to such an extent that the every essence of the right is impaired. Secondly, a restriction must pursue a legitimate aim and there must be a reasonable relationship of proportionality between the means employed and the aim sought to be achieved."* (See Tolstoy Miloslavsky v. The United Kingdom, no. 18139/91, § 59, 13 July 1995). In the Applicant's argument, he draws the Court's attention back to Kutić v. Croatia (which is a factually similar case to the Applicants: property destroyed in 1994 due to bombings, party is now seeking compensation for damages, court stayed proceedings indefinitely), where the ECHR held that the referral was admissible. (See Kutić v. Croatia, no. 48778/99, 4 October 2001).

By appearing to have done extensive research on the subject matter, the Applicant argues that *"the responding party has most crudely violated the rights of this referral's applicant pursuant to Article 6 of European Convention (the right to a fair trial) and the right pursuant to Article 13 of the European Convention on the protection of human rights and fundamental freedom (the right to an efficient legal remedy) and alternatively are violated the rights of the referral applicant provided in Article 8 of the European Convention (the right to home), Article 1 Protocol I of European Convention (the right to peacefully enjoy property) and*

there could also be implied the violation of the rights provided in Article 14 of the European Convention (prohibition of discrimination).”

c. Article 8 [Right to Respect the Home] provides that *“(1) Everyone has the right to respect for his ... home ... (2) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”*

The Applicant argues that, according to the facts presented in the Referral as evidence, *“the responding party with its actions has violated [his] ... right on the right to respect of home, which is guaranteed with Article 8 of the Convention. The responding party did not do anything to protect the property of the referral’s applicant and the same.”* The Applicant comes to the conclusion that since the respondents failed to protect his property and has subsequently been prevented from obtaining compensation for the property damage, he can only conclude that it has been done *“with the possible political goal of ethnic cleansing and prevention of the return.”*

The Applicant argues that according to the ECHR in *Kroon and Others v. The Netherlands*, *“the essential object of Article 8 is to protect the individual against arbitrary action by the public authorities ... [and a] fair balance ... has to be struck between the competing interests of the individual and of the community as a whole.”* (See Kroon and Others v. The Netherlands, no. 18535/91, § 31, 27 October 1994). In determining whether there has been an Article 8 violation, the Applicant refers the Court’s attention to the ECHR case, Niemetz v. Germany, which discuses the applicability of Article 8 with regards to a business. (See Niemetz v. Germany, no. 13710/88, §§ 30-31, 16 December 1992). The reason this is relevant to the Applicant’s case is because the property in question was used as for profit and not just farmed for personal use.

In referring to the Sub-Commission (Resolution 1998/26) of Housing and Property Restitution in the Context of the

Return of Refugees and Internally Displaced Persons, the Commission noted that the *"right of all returnees to the free exercise of their right to freedom of movement and to choose one's residence, including the right to be officially registered in their homes and places of habitual residence, their right to privacy and respect for the home, their right to reside peacefully in the security of their own home and their right to enjoy access to all necessary social and economic services, in an environment free of any form of discrimination."* Therefore, the Applicant argues that since he has this guaranteed right to use and enjoyment of his property, the respondents have violated this right by preventing him from receiving just compensation and ultimately in violation of Article 8 of the European Convention.

d. Protocol 1, Article 1 [Protection of Property] provides that *"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possession except in the public interest and subject to the conditions provided for by law and by the general principles of international law."* The Applicant argues that under this Article, the following rights have been violated: the *"right ton peaceful enjoyment of property, and later (with its complete destruction) he was prohibited to peacefully enjoy his right due to the destruction of property (the right to material and immaterial damage compensation and the right to conduct the procedure for the protection of this right)."*

   The Applicant therefore infers, by way of relying on the case of Loizidou v. Turkey where the ECHR states that *"by refusing her access to property 'has gradually, over the last sixteen years, affected the right of the applicant as a property owner and in particular her right to a peaceful enjoyment of her possessions, thus constituting a continuing violation of Article 1 [of Protocol I]* (See Loizidou v. Turkey, no. 15318/89, § 60, 18 December 1996; see also Report of the Commission of 8 July 1993, p. 21; Chrysostomos, Papachrysostomou and Loizidou v. Turkey, DR 68, p. 228).

e. Article 14 [Prohibition of Discrimination] provides that *"The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a*

national minority, birth or other status." The Applicant argues that for over eight (8) years he has not been able to *"realiz[e] [his] right to damage compensation due to the destruction of his homes, results in the violation of the right to peaceful enjoyment of the property, for which Republic of Kosovo is directly responsible."*

The ECHR in Pecevi v. FYR Macedonia determined *"that the State has a positive obligation to organize a system for enforcement of judgments that is effective both in law and in practice and ensures their enforcement without any undue delay. A delay in the execution of a judgment may be justified in particular circumstances. However, the delay may not be such as to impair the essence of the right protected under Article 6 § 1."* (See Pecevi v. The Former Yugoslav Republic of Macedonia, no. 21839/03, § 29, 6 November 2008; see also Fuklev v. Ukraine, no. 71186/01, §§ 83 and 84, 7 June 2005).

The Applicant also draws attention to the "Pinheiro Principles" established in The Housing and Property Restitution for Refugees and Displaced Persons Handbook. Principle 2 [The Right to Housing and Property Restitution] provides as follows: *"2.1 All refugees and displaced persons have the right to have restored to them any housing, land and/or property of which they were arbitrarily or un*lawfully deprived, *or to be compensated for any housing, land and/or property that is factually impossible to restore as determined by an independent, impartial tribunal. 2.2 States shall demonstrably priorities the right to restitution as the preferred remedy for displacement and as a key element of restorative justice. The right to restitution exists as a distinct right, and is prejudiced neither by the actual return nor non-return of refugees and displaced persons entitled to housing, land and property restitution."*

The Applicant additionally refers to Principle 21 [Compensation] of the Pineiro Principles, which states that *"21.1 All refugees and displaced persons have the right to full and effective compensation as an integral component of the restitution process. Compensation may be monetary or in kind. States shall, in order to comply with the principle of restorative justice, ensure that the remedy of compensation is only used when the remedy of restitution is not factually possible, or when the injured party knowingly and*

voluntarily accepts compensation in lieu of restitution, or when the terms of a negotiated peace settlement provide for a combination of restitution and compensation." (http://www.ohchr.org/Documents/Publications/pinheiro_principles.pdf)

f. Protocol 12, Article 1 [General Prohibition of Discrimination] provides that *"(1) The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. (2) No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1."*

The Applicant argues that under the principle of equality within Protocol 12 and throughout the European Convention, *"every party in the proceeding should have equal opportunities to present its arguments and that none of them cannot have any advantage in relation to its counterpart in the procedure."* The Applicant argues that he has not been afforded equal treatment and was subsequently discriminated against by having his claim withdrawn by the Municipal Court in Vushtrri.

In his argument, the Applicant concludes that under the European Convention for the Protection of Human Rights and Fundamental Freedoms a State must have an objective reason to prohibit him from seeking compensation for property damage. However, in this situation, the Applicant alleges that where *"a state that enables (consciously or unconsciously), respectively that is so badly organized that is not capable to prevent the stealing of the property that it has put under its rule, is responsible for the damage that has arisen as a result of that, and the question of its compensation by the real injurer cannot be put at the expense of the property owner and I would not want to come to conclusions on the intentions of acting bodies that had into consideration with that property, and how they acted towards the movable property of the applicant and similar."* The Applicant therefore asks the Court to consider the case of Veton Berisha and Ilfete Haziri: Constitutional Review of A.No.1053/2008 (See KI72/12, dated 7 December 2012), which held *"that the failure of the Supreme Court to provide*

clear and complete answers vis-à-vis crucial property submissions is in breach of the Applicants rights to be heard and right to a reasoned decision, as a component of the right to a fair and impartial trial." (See KI72/12 at § 63).

Admissibility of the Referral

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

18. In this respect, the Court refers to Rule 36 (1) c) of the Rules of Procedure which foresees that *"The Court may only deal with Referrals if (...) the Referral is not manifestly ill-founded."*

19. The Court emphasizes that it is not the task of the Constitutional Court to deal with errors of fact or law (legality) allegedly committed by the regular court, unless and in so far as they may have infringed rights and freedoms protected by the Constitution (constitutionality). Thus, this Court is not to act as a court of fourth instance, when considering the decisions taken by the regular courts. It is the role of regular courts to interpret and apply the pertinent rules of both procedural and substantive law (see, mutatis mutandis, García Ruiz v. Spain [GC], no. 30544/96, para. 28, European Court on Human Rights [ECHR] 1999-I).

20. In this respect, the Court notes that the Municipal Court in Vushtrri considered the claim of the Applicant withdrawn on the basis that the Applicant failed to pay the court fees. Pursuant to Article 253(5) of the Law on Contested Procedure (LCP), provides that *"If the plaintiff doesn't pay the court tax determined for the claim even after the notice is sent by the court, through there are no reason for freeing the plaintiff from paying the tax, the claim will be considered as withdrawn."*

21. In the decision, the Municipal Court referenced the Administrative Instruction No. 2008/02 on Unification of Court Fees, Articles 3(1) and 10(1). Article 3(1) provides that *"Determining court fees, which should be paid at the time of filing an application, is done on the basis of the application's contest, actually nature of the application."* Article 10(1) provides a fee scale that relates to the amount in dispute for *"All the submissions in which the value of the claim is measurable, including any case related to monetary*

debts. Immovable or movable property, damages, contracts of monetary value, inheritance and civil execution of monetary debts."

22. The Court of Appeal referred to Article 6.5 of the Administrative Instruction, which provides that *"If fees are not paid on the date they are due, the Court shall* provide *a notice to the person required to pay the fees, giving a final date by* which *all fees due, including the additional fee required under Sections 6.4 and 10.25 must be paid. 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."* Furthermore, the Court of Appeal held that the Municipal Court in Vushtrri has taken action in order to notify the Applicant, such as notifying the Ministry of Justice, Office for International Cooperation and it also held that the Applicant has not provided any evidence on why the Applicant should be exempted from paying the Court fee.

23. Therefore, the Court cannot conclude that the relevant proceedings were in any way unfair or tainted by arbitrariness. Both the Municipal Court and the Court of Appeal dismissed followed the relevant rules and procedures and reasoned their decisions.

24. Therefore, pursuant to Rule 36 (1) c) of the Rules of Procedure, the Referral is inadmissible as manifestly ill-founded.

FOR THESE REASONS

The Constitutional Court, pursuant to Rule 36 (1) c) and Rule 56 (2) of the Rules of Procedure, on 3 February 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 immediately effective.

Judge Rapporteur	**President of the Constitutional Court**
Ivan Čukalović	Prof. Dr. Enver Hasani

KI146/13, Idriz Neziri, Resolution of 19 November 2013 - Constitutional Review of the Decision of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo related matters, of 23 November 2012

Case KI146/13, decision of 19 November 2013

Key words: Individual referral, out of time.

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

On 13 September 2013, the Applicant filed the Referral with the Constitutional Court of the Republic of Kosovo, whereby he requsted from the Court the constitutional review of the Decision of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters.

The Applicant alleges that the said decision violates his fundamental rights, in particular Article 31 of the Constitution of Kosovo.

After reviewing the documentation, the Court noted that the Applicant had missed the deadlines provided by the Law and the Rules of Procedure.

In this regard, the Court concludes that the Applicant's Referral is out of time.

Taking into account all the circumstances of the submitted Referral, the Constitutional Court of Kosovo rejected the Referral as inadmissible for review.

RESOLUTION ON INADMISSIBILITY
in
Case no. KI146/13
Applicant
Idriz Neziri
Constitutional review of the Decision of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo related matters, ASC-11-0035, 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
Kadri Kryeziu, Judge and
Arta Rama-Hajrizi, Judge

Applicant

1. The Applicant is Mr. Idriz Neziri, Municipality of Fushë-Kosovë (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges the Decision of the Appellate Panel of the Supreme Court of Kosovo on Privatization Agency of Kosovo related matters (hereinafter: Appellate Panel of Special Chamber) ASC-11-0035, of 23 November 2012, which was served on Applicant on 10 January 2013.

Subject matter

3. The Subject matter is constitutional review of the decision, which allegedly deprives the Applicant from realizing the right to the 20% share from the privatization of the Socially Owned Enterprise "Ramiz Sadiku" (hereinafter: SOE "Ramiz Sadiku"), in Prishtina.

Legal basis

4. The Referral is based on Articles 113.7 of the Constitution, Articles 47 of the Law, No. 03/L-121, on the Constitutional Court of the Republic of Kosovo of 15 January 2009 (hereinafter: the Law) and Rule 56 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 13 September 2013, the Applicant filed the Referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 24 September 2013, the President by decision GJR. KI146/13 appointed Judge Kadri Kryeziu as Judge Rapporteur. On the same day, the President by decision KSH. KI146/13 appointed the Review Panel composed of Judges: Robert Carolan (Presiding), Almiro Rodrigues and Ivan Čukalović.

7. On 11 October 2013, the Court notified the Applicant and the Special Chamber of the Supreme Court on the registration of Referral.

8. On 19 November 2013, the Review Panel considered the Report of Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

Summary of the facts

9. At some time (which was not specified in the Referral) Applicant was in employment relationship with SOE "Ramiz Sadiku", as a storekeeper.

10. On 27 June 2006, SOE "Ramiz Sadiku" has completed the privatization process.

11. On 24 February 2010, the Applicant filed a complaint with Special Chamber of the Supreme Court against the final list of employees which was compiled by the Privatization Agency (hereinafter: the Agency), because he as a former employee was not in the list.

12. In the complaint to the Special Chamber of the Supreme Court, the Applicant stated that he was in employment relationship with SOE "Ramiz Sadiku" in the position of the storekeeper, that he missed the legal time limit for filing appeal against the decision of the Agency, because he did not have access on the archive of the enterprise, so that he could not provide on time the necessary documentation, by which he would justify his allegations.

13. On 24 February 2011, the Trial Panel of the Special Chamber issued the Decision [SCEL-09-0001], rejecting the Applicant's complaint as inadmissible.

14. In the reasoning of its Decision the Trial Panel of the Special Chamber stated that: *„taking into account that the complaint was filed after the expiration of legal time limit (the time limit expired on 27 March 2009), there is no possibility to return to the previous situation and that the complaint of the Applicant to be considered as it was filed within legal time limit. As a result, the Trial Panel rejects the Applicant's compliant as inadmissible."*

15. On 8 April 2011, the Applicant filed an appeal to the Appellate Panel of the Special Chamber against the decision of the Trial Panel of the Special Chamber [SCEL-09-0001], of 24 February 2011.

16. On 23 November 2012, the Appellate Panel of the Special Chamber rendered the Decision [ASC-11-0035], rejecting the Applicant's appeal as ungrounded.

17. In the reasoning of its Decision the Appellate Panel of the Special Chamber stated that: *The Applicant filed appeal against the final list of employees on 24 February 2010, which is considered as out of legal time limit. The Trial Panel of the Special Chamber rejected the Applicant's appeal as inadmissible due to failure of meeting the deadlines. The Applicant filed appeal to the Appellate Panel of the Special Chamber, where he repeated the allegations from the complaint, which he filed to the Trial Panel of the Special Chamber, whereas he did not submit any relevant evidence, by which he would justify his allegation. Therefore, the stance of Appellate Panel of the Special Chamber is that the Applicant's complaint to be rejected as ungrounded. "*

Applicant's allegations

18. The Applicant alleges that the said decisions violate his fundamental rights and especially Article 31 of the Constitution of Kosovo, because the courts have not decided the merits of his appeals.

19. The Applicant addresses the Constitutional Court, by requesting:

> *„That the Court quashes the Decisions of the Special Chamber of the Supreme Court of Kosovo [SCEL-09-0001] of 21 February 2011 and of the Appellate Panel of the Special Chamber [ASC-11-0035], of 23 November 2012, as unlawful and obliges the Special Chamber that regarding this legal matter decides on merits, so that I am entitled to the 20 % share, same as other employees I used to work with ".*

Assessment of admissibility of the Referral

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

21. In that regard, the Court notes that Article 113 of the Constitution provide:

> *"7. Individuals are authorized to refer violations by public authorities of their individual rights and freedoms guaranteed by the Constitution, but only after exhaustion of all legal remedies provided by law."*

22. The Court notes that the Applicant filed complaint to the Special Chamber of the Supreme Court, respectively with the Trial Panel of the Special Chamber, as well as with the Appellate Panel of the Special Chamber, by which he met the requirements from Article 113 of the Constitution, and therefore the Applicant is the authorized party to file Referral before this Court.

23. The Court also refers to 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. In all other cases, the deadline shall be counted from the day when*

the decision or act is publicly announced. If the claim is made against a law, then the deadline shall be counted from the day when the law entered into force."

24. 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."

25. Based on the submitted documents, the Court concludes that the Applicant submitted Referral to the Court on 13 September 2013, whereas the last decision of the Appellate Panel of the Special Chamber was served on him on 10 January 2013, which means 8 months and 3 days after the expiration of legal time limit provided by Article 49 of the Law and Rule 36 (1) b) of the Rules of Procedure.

26. It follows that the Applicant's Referral is out of time.

27. Based on the foregoing, the Referral should be rejected as inadmissible for review, because it is not in accordance with Article 49 of the Law and Rule 36. (1) b) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 20 of the Law and Rule 36 (1) b) of the Rules of Procedure, on 19 November 2013, unanimously

DECIDES

I. TO REJECT the Referral as Inadmissible;

II. TO NOTIFY the Parties of this Decision;

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

IV. This Decision is effective immediately.

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

KO18/14, Vesna Mikić and 20 other Deputies of the Assembly of the Republic of Kosovo, Resolution of 10 February 2014 - Request to "[...] interpret the provisions of the Constitution of Kosovo regarding the reserved seats for the representatives of the communities that do not constitute the majority in Kosovo

Case KO18/14, decision of 10 February 2014

Key words: abstract control, request for interpretation, non-authorized party.

The applicants filed a Referral pursuant to Article 113 of the Constitution of Kosovo with the request to "[...] interpret the provisions of the Constitution of Kosovo regarding the reserved seats for the representatives of the communities that do not constitute the majority in Kosovo."

On the issue of the admissibility of the Referral, the Court held, that the Referral was inadmissible because the Applicants are 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.

RESOLUTION ON INADMISSIBILITY
in
Case No. KO18/14
Applicants
Vesna Mikić and 20 other Deputies of the Assembly of the Republic of Kosovo
Request to *"[...] interpret the provisions of the Constitution of Kosovo regarding the reserved seats for the representatives of the communities that do not constitute the majority in 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.

Applicants

1. The Applicants are Vesna Mikić, Petar Miletić, Jelena Bontić, Kostić Biserka, Saša Milosavljević, Jasmina Živković, Emilija Rređepi, Albert Kinolli, Danush Ademi, Saša Đokić, Hamza Balje, Milivoje Stojanović, Vesimir Stojanović, Xhevdet Neziraj, Müfera Şinik, Fikrim Damka, Enis Kervan, Boban Todorović, Murselj Haljilji, Etem Arifi, Goran Marinković, all of them deputies of the Assembly of the Republic of Kosovo (hereinafter: the "Applicants").

Subject matter

2. The subject matter of the Referral is the request to "interpret the provisions of the Constitution of the Republic of Kosovo (hereinafter: the "Constitution") regarding the reserved seats for the representatives of the communities that do not constitute the majority in Kosovo.", namely, whether *"[...] the communities are*

entitled to one more mandate of reserved seats together with guaranteed seats, pursuant to Article 148, Chapter XIV [Transitional Provisions for the Assembly of Kosovo] dated 15.06.2008 for next mandate respectively the upcoming General Elections that will be held during 2014."

Legal basis

3. The Referral is based on Article 113 of the Constitution 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

4. On 31 January 2014, the Applicants submitted the Referral to the Court.

5. On 3 February 2014, the President of the Court by Decision, No. GJR. KO18/14, appointed Judge Snezhana Botusharova as Judge Rapporteur. On the same date, the President of the Court by Decision, No. KSH. KO18/14, appointed the Review Panel composed of Judges Altay Suroy (Presiding), Almiro Rodrigues and Arta Rama-Hajrizi.

6. On 4 February 2014, the Court notified the Applicants of the registration of the Referral and informed the Assembly of the Republic of Kosovo (hereinafter: the "Assembly") of the Referral.

7. On 10 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.

Applicants' statements

8. The Applicants are asking the Court to interpret whether the communities not in the majority in Kosovo are entitled to benefit from the system of reserved seats for one more mandate of the Assembly of the Republic of Kosovo, namely following the upcoming parliamentary elections in 2014. Their request is related with Article 148 of Chapter XIV [Transitional Provisions] of the Constitution.

9. The Applicants refer to Article 3, paragraph 2 of the Comprehensive Proposal for the Kosovo Status Settlement which provides: *"For the first two electoral mandates upon the adoption of the Constitution, the Assembly of Kosovo shall have twenty (20) seats reserved for representation of Communities that are not in the majority in Kosovo, as follows: Ten (10) seats shall be allocated to the parties, coalitions, citizens' initiatives and independent candidates having declared themselves representing the Kosovo Serb Community and ten (10) seats shall be allocated to other Communities as follows: the Roma community one (1) seat; Ashkali community one (1) seat; the Egyptian community one (1) seat; and one (1) additional seat will be awarded to either the Roma, the Ashkali or the Egyptian community with the highest overall votes; Bosniak community three (3) seats; Turkish community two (2) seats; and Gorani community one (1) seat. Any seats gained through elections shall be in addition to the ten (10) reserved seats allocated to the Kosovo Serb Community and other Communities respectively."*

10. The Applicants further refer to Article 148 [Transitional Provisions for the Assembly of Kosovo] of the Constitution which provides that: *"For the first two (2) electoral mandates, the Assembly of Kosovo shall have twenty (20) seats reserved for representation of Communities that are not in the majority in Kosovo, as follows: Ten (10) seats shall be allocated to the parties, coalitions, citizens' initiatives and independent candidates having declared themselves representing the Kosovo Serb Community and ten (10) seats shall be allocated to other Communities as follows: the Roma community, one (1) seat; the Ashkali community, one (1) seat; the Egyptian community, one (1) seat; and one (1) additional seat will be awarded to either the Roma, the Ashkali or the Egyptian community with the highest overall votes; the Bosniak community, three (3) seats; the Turkish community, two (2) seats; and the Gorani community, one (1) seat. Any seats gained through elections shall be in addition to the ten (10) reserved seats allocated to the Kosovo Serb Community and other Communities respectively."*

11. In this respect, the Applicants claim that *"Notwithstanding paragraph 1 of this Article, the mandate existing at the time of entry into force of this Constitution will be deemed to be the first electoral mandate of the Assembly, provided that such mandate continues for a period of at least two (2) years from the date of entry into force of this Constitution."* Thus, the Applicants consider that *"[...] the first mandate cannot be treated as a*

complete mandate, because pursuant to the Comprehensive Proposal for the Kosovo Status Settlement it is stated after the Adoption of the Constitution and the mandate was shortened."

12. In addition, the Applicants allege that *"[...] the shortening of the mandate and its retroactive application is in contradiction to human rights and rights of communities respectively, the decisions pursuant to the Constitution and the Comprehensive Proposal for the Kosovo Status Settlement apply for two mandates and only after the adoption of the Constitution."*

Admissibility of the Referral

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

14. In this respect, the Court shall examine whether the Applicants are an authorized party to submit the respective Referral.

15. In the case at hand, the Applicants are seeking an interpretation of the method of application of certain provisions of the Constitution regarding the reserved seats for the representatives of the communities that do not constitute the majority in Kosovo. In particular, the Applicants are asking whether the communities are entitled to one more mandate of reserved seats together with guaranteed seats, pursuant to Article 148 [Transitional Provisions for the Assembly of Kosovo] of the Constitution for the next mandate in respect to the upcoming General Elections that will be held during 2014.

16. 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."*

17. The Court notes that the Applicants ask for an interpretation of the applicability of a constitutional provision related to the next parliamentary elections. The constitutional provision in question is Article 148 of the Transitional Provisions, which was deleted from the Constitution of Kosovo by Decision of the Assembly No. 04-V-436, dated 07 September 2012.

18. The Applicants specifically claim that Article 148 was intended to apply for two electoral mandates of the Assembly of Kosovo, and that the first electoral mandate should not be counted as the sitting mandate at the time of the entry into force of the Constitution. In the Applicants' reasoning, this would imply that the system of reserved seats for members of non-majority communities contained in Article 148 would continue to apply following the next elections for the Assembly of Kosovo scheduled for 2014. The Applicants argue that if the system of reserved seats is not followed in the next mandate of the Assembly this would constitute a violation of the human rights of non-majority communities. The Applicants do not specify what human rights would be violated nor how these rights would be violated.

19. Alternatively, the Applicants could be understood to be seeking an abstract interpretation of the meaning of the deletion of Article 148 from the Constitution, namely that its provisions regarding its applicability to the mandates of the Assembly would somehow have survived the deletion of this article and still apply today. However, even in this understanding, the Applicants' request for interpretation lacks any constitutional basis. 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 Deputies of the Assembly to bring such a Referral before the Court.

20. The Court reiterates that according 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).

21. Moreover, the Court also reiterates that according 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."*

22. In this respect, the Court notes that the competencies of the constitutional state bodies are to be exercised according to the provisions of the Constitution.

23. The Court having in mind the quoted provisions of the Constitution concludes that the Applicants are not an authorized party to bring such a request.

24. Consequently, the Applicants' 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 10 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**
Snezhana Botusharova	Prof. Dr. Enver Hasani

KI135/13, KI137/13, KI138/13, Isuf Isufi, Tahir Sejdiu and Abedin Halimi, Resolution of 2 December 2013 - 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 KI135/13, KI137/13, KI138/13 decision of 2 December 2013

Key words: Individual referral, joinder of referrals, property right, out of time.

The Applicants submitted the Referral in accordance with Article 113.7 of the Constitution of Kosovo, whereby they requested the 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.

The subject matter of the Referrals is the constitutional review of the decision, which denied to the Applicants the entitlement to a share of proceeds allegedly acquired from the privatization of the Socially Owned Enterprise "Ramiz Sadiku" Prishtina.

The Applicants allege that the Kosovo Privatization Agency and the Special Chamber violated their rights guaranteed by the Constitution, because they had contributed to the SOE "Ramiz Sadiku" for many years, and, therefore, are allegedly entitled to a share of proceeds from the privatization of said SOE. The Applicants do not invoke any constitutional provision in particular.

The Court noted that the Applicants have filed their Referrals on 3 September 2013, whereas the final decision of the Appellate Panel of the Special Chamber was served on them on 29 April 2013. Thus, 29 August 2013 was the last day of the deadline for the Applicants to file the Referral.

Based on this, the Court rejected the Referrals as out of time.

RESOLUTION ON INADMISSIBILITY
in
Cases Nos.
KI135/13
KI137/13
KI138/13
Applicants
Isuf Isufi, Tahir Sejdiu and Abedin Halimi
Constitutional review of the Decision ASC-11-0069 of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo, dated 22 April 2013

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

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

The Applicants

1. The Referrals KI135/13, KI137/13 and KI138/13 were submitted, respectively, by Mr. Isuf Isufi, Mr. Tahir Sejdiu and Mr. Abedin Halimi, all from Podujevo (hereinafter, the Applicants).

Challenged decisions

2. The Applicants challenge the Decision ASC-11-0069 of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo, dated 22 April 2013, and related with the Judgment SCEL-09-0001 of the Trial Panel of the Special Chamber, dated 10 June 2011. The last decision was served on the Applicants on 29 April 2013.

Subject matter

3. The subject matter of the Referrals is the constitutional review of the challenged decision, which denied to the Applicants the entitlement to a share of proceeds allegedly acquired from the privatization of the Socially Owned Enterprise "Ramiz Sadiku" Prishtina (hereinafter, SOE "Ramiz Sadiku"). The Applicants *"believe that (...) human rights and labor rights have been violated and (...) have been discriminated"*.

Legal basis

4. The Referrals are based on Article 113 (7) of the Constitution of the Republic of Kosovo (hereinafter, the Constitution), Articles 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 Rules 29 and 37 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 3 September 2013, the Applicants have submitted their referrals with the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).

6. On 24 September 2013, the President of the Constitutional Court appointed Judge Almiro Rodrigues as Judge Rapporteur and the Review Panel composed of Judges Snezhana Botusharova (presiding), Kadri Kryeziu and Arta Rama-Hajrizi.

7. On 8 October 2013, the President ordered the Joinder of the Referral KI 137 and KI 138 to the Referral KI 135/13.

8. On 9 October 2013, in accordance with Rule 37 of the Rules of Procedure, the Court notified the Applicants about the registration and joinder of the Referrals. On the same date, the Court communicated the Referrals to the Special Chamber. The Applicants did not file any request in relation to the joinder of the Referrals.

9. On 31 October 2013, the Court requested to the Special Chamber additional documents.

10. On 4 and 13 November 2013, the Special Chamber replied to the Court's request.

11. On 2 December 2013, after having considered the Report of the Judge Rapporteur, the Review Panel made a recommendation to the Court on the Inadmissibility of the Referral.

Summary of facts

12. In March 2009, the Applicants started judicial proceedings with the Trial Panel of the Special Chamber in order to ensure their alleged right to be included in the list of employees entitled to a share of proceeds from the privatization of the SOE "Ramiz Sadiku", which was privatized on 27 June 2006.

13. Finally, on 22 April 2013, the Appellate Panel of the Special Chamber of the Supreme Court (Judgment ASC-11-0069) rejected the appeals of the Applicants and upheld the Judgment of the Trial Panel of the Special Chamber, establishing that the Applicants did not fulfill the requirements of Section 10.4 of UNMIK Regulation 2003/13 as amended as they reached the retirement age prior to the privatization of the SOE "Ramiz Sadiku".

Applicants' allegations

14. The Applicants claim that *"they have worked in the SOE "Ramiz Sadiku" in Prishtina for many years until 28 February 1990 whereby Serbian forces coercively removed them from work and discriminated them".*

15. The Applicants allege that the Kosovo Privatization Agency and the Special Chamber violated their rights guaranteed by the Constitution, because they had contributed to the SOE "Ramiz Sadiku" for many years, and, therefore, are allegedly entitled to a share of proceeds from the privatization of said SOE. The Applicants do not invoke any constitutional provision in particular.

Assessment of admissibility

16. The Court first examines whether the Applicants have fulfilled the admissibility requirements laid down in the Constitution, the Law and the Rules of Procedure.

17. In this respect, the Court refers to Article 113 (7) of the Constitution, which establishes:

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

18. However, 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".

19. The Court further 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...".

20. The Court notes that the Applicants have filed their Referrals on 3 September 2013, whereas the final decision of the Appellate Panel of the Special Chamber was served on them on 29 April 2013. Thus, 29 August 2013 was the last day of the deadline for the Applicants to file the Referral.

21. The Court considers that the Applicants have filed their referrals with the Court four (4) days later than the legal deadline prescribed by Article 49 of the Law and Rule 36 (1) b) of the Rules of procedure.

22. It follows that the Referrals are out of time.

23. Therefore, the Referrals must be rejected as inadmissible in accordance with 113 (7) of the Constitution, Article 49 of the Law and Rule 36 (1) b) of the Rules of Procedure

FOR THESE REASONS

The Constitutional Court pursuant to Article 113 (7) of the Constitution, Article 49 of the Law, and Rule 36 (1) b) of the Rules of procedure, on 2 December 2013, unanimously:

DECIDES

I. TO REJECT the Referrals as inadmissible;

II. TO NOTIFY the Parties of this Decision;

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

IV. TO DECLARE this Decision effective immediately.

Judge Rapporteur
Almiro Rodrigues

President of the Constitutional Court
Prof. r. Enver Hasani

KI186/13, Kosovo Energy Corporation, Resolution of 5 December 2013 - Constitutional Review of the Judgment Rev. no. 151/2013, of the Supreme Court of the Republic of Kosovo, of 5 June 2013

Case KI186/13, decision of 5 December 2013

Key words: individual referral, civil dispute, right to work, manifestly ill-founded referral.

In the present case, the Applicant claimed that the Supreme Court adjudicated based on laws that were not in force, thus its judgment is unlawful and unfair and as such should be quashed. Thus, the Applicant alleged that the challenged decision violated 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.

In this context, the Applicant does not accurately clarify how and why the allegation "applying other acts that were not in force" constitutes a constitutional violation of his fundamental right to a fair and impartial trial. Moreover, the above extensive quotation of the decision of the Supreme Court shows that the challenged decision provided extensive and comprehensive reasoning of the facts of the case and of its findings.

With regards to the Applicant's allegations on the violation of Article 102.3 of the Constitution, "courts shall adjudicate based on the Constitution and the law," 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, since the Applicant has not brought any argument or presented any proof that the Supreme Court disrespected the provision in question. In terms of the allegation by the Applicant on the "violations of legal provisions", the Court finds that such allegations are of a legal nature, and as such they do not represent any constitutional ground of violation of fundamental rights guaranteed by the Constitution.

As a result, the Court finds that the Applicant's Referral does 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 decision. Therefore, pursuant to Rule 36 (2) b) and d) of the Rules of Procedure, the Referral of the Applicant must be declared as manifestly ill-founded.

RESOLUTION ON INADMISSIBILITY
in
Case no. KI186/13
Applicant
Kosovo Energy Corporation
Constitutional Review of the Judgment of the Supreme Court of the Republic of Kosovo Rev. no. 151/2013, of 5 June 2013

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

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

Applicant

1. The Applicant is the Kosovo Energy Corporation (hereinafter: Applicant), duly represented by Mrs. Shukrije Miftari, Lawyer.

Challenged decision

2. The Applicant challenges the Judgment Rev. no. 49/2012 of the Supreme Court of the Republic of Kosovo, dated 3 June 2013 (hereinafter: Challenged Decision), which was served upon the Applicant on 28 July 2013.

Subject matter

3. The subject matter is constitutional review of challenged decision, in relation to alleged violations of Article 31 [Right to a Fair and Impartial Trial] and Article 102, paragraph 3 [General Principles] of the Constitution.

Legal basis

4. Article 113.7, in conjunction with Article 21.4 of the Constitution of the Republic of Kosovo (hereinafter: Constitution), Article 47 of the Law no. 03/L-121 on the Constitutional Court of the Republic of Kosovo, of 16 December 2008, entered into force on 15 January 2009 (hereinafter: Law), and Rule 56 (2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: Rules of Procedure).

Proceedings before the Court

5. On 28 October 2013, the Applicant filed the referral with the Court.

6. On 31 October 2013, the President of the Court, by decision GJR.KI186/13 appointed Judge Snezhana Botusharova as Judge Rapporteur. On the same date, the President of the Court, by Decision KSH.KI186/13 appointed the Review Panel, consisting of Judges: Robert Carolan (Presiding), Almiro Rodrigues (Member) and Prof. dr. Enver Hasani (Member).

7. On 14 November 2013, the Court notified the Applicant with the registration of referral, and requested additional documentation. On the same date, the Supreme Court was also notified.

8. On 5 December 2013, the Review Panel reviewed the report of the Judge Rapporteur, and recommended to the Court the inadmissibility of the Referral.

Summary of facts

9. On an unspecified date, Mr. A. Th. (hereinafter: Employee) initiated in judicial proceeding on a labor dispute against the Applicant as employer.

10. The Employee was employed with the Applicant with a fixed-term contract.

11. On 11 December 2009, the Applicant issued a written warning (Minutes No. 1498) to the Employee, due to non-fulfillment of performance and failure in fulfilling job requirements.

12. On 2 April 2010, the Applicant notified the Employee (Decision No. 499/1) that the employment contract was to be terminated "*due to Article 11, item (ë), (ç), Article 11.4 item (b) of UNMIK Regulation no. 2001/27 on Essential Labour Law in Kosovo, and Article 8.1, 8,2 and 8.3 of the Regulation No. 3 on KEK District Operations.*

13. On 6 April 2010, the employee filed a request for review of the Decision no.499/1 terminating working relationship.

14. On 12 April 2010, the Director of Supply Division (Decision no. 85) rejected the request of the employee to review the termination of his employment contract, without providing any reasons for such refusal.

15. The Employee filed a claim with the Municipal Court in Prizren, arguing that the abovementioned decisions were unlawful and requesting its annulment.

16. On 23 May 2011, the Municipal Court in Prizren (C. No. 309/2010) rejected as ungrounded the Employee's claim.

17. The Employee filed an appeal with the District Court in Prizren, *"due to substantial violations of the contested procedure provisions, erroneous and incomplete determination of factual situation and erroneous application of the substantive law."*

18. On 24 February 2011, the District Court in Prizren (Ac. no. 362/2011), rejected the complaint of the employee, and upheld the judgment of the Municipal Court in Prizren, thereby reasoning:

> *"Pursuant to the finding of the District Court in Prizren, the challenged Judgment does not contain essential violations of the provisions of the contested procedure pursuant to Article 182, paragraph 2 of the LCP, which this court takes care of ex officio. The challenged Judgment is clear, concrete and has no contradictions and contains sufficient reasons on all decisive facts in this legal matter. In its reasoning proper factual and legal acts are provided which are accepted as correct and legal by this court as well. ... Thus the rendered conclusions are grounded on the administered evidences and those not only have been correctly proven but also have been reasoned in full and clearly. The reasons that are provided in the challenged Judgment are accepted by this court as well."*

19. The Employee filed a revision with the Supreme Court. The Employee *"filed a revision 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."*

20. On 5 June 2013 the Supreme Court of Kosovo (Rev. 151/2013), approved as grounded the Employee's revision request, 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 the provision of Article 215 of the Law on Contested Procedure (LCP) has found that: The Revisions are grounded.*
>
> *Pursuant to this factual situation of the matter the Supreme Court found that such a legal stance of the lower instances courts cannot be accepted as correct and legal because pursuant to this court's finding on the confirmed factual situation the material right had been erroneously applied when both courts found that the claimant's statement of claim is not grounded and as such rejected it, which is why the Revision of the claimant and his authorized representative had to be approved as grounded, the challenged Judgments changed and the claimant's statement of claim approved as described in the enacting clause of this Judgment.*
>
> *The Supreme Court of Kosovo, finds as grounded the claims of the claimant and his authorized representative provided in the Revision that the lower courts did erroneously apply the material right against the claimant when they rejected the statement of claim to annul as illegal the Decisions on the termination of the employment contract, since due to these violations the respondent did not conduct a disciplinary procedure, because pursuant to the provisions of Article 112 of the Law on Employment Relation of Kosovo no.12/1989 that was applicable pursuant to UNMIK Regulation no.1999/24 until the Law on Labor of the Republic of Kosovo no.03/L-212 entered into force in December 2010, and with the provision of Article 99.1 repealed UNMIK Regulation no.2001/27 on the Basic Law on Labor in Kosovo. The respective amendments of the Law on Employment Relation in the SAP Kosovo of 1989*

and the Law on Labor of 1977, provide that the authorized authorities are obliged to submit the request for initiating the disciplinary procedure within 8 days after being notified on the termination of the work duties, or any other violation of work discipline and its perpetrator, whereas pursuant to the provision of Article 113, paragraph 2 it is envisaged that prior to imposing the disciplinary measure of dismissal from work, the work leading authority respectively the appointed employee with special authorizations and responsibilities is obliged to interrogate the employee.

Pursuant to Article 11 of the employment contract established between the claimant as employee and the respondent as employer it is provided that the employment contract is terminated pursuant to Articles 11 and 12 of the Basic Law on Labor in Kosovo, the collective agreement and KECs Rules of Procedure.

Pursuant to Article 24 of the general collective contract it is envisaged that the disciplinary commission is appointed by the employer, respectively the competent authority with a general act of the employer, whereas the respondent with the Regulation on disciplinary and material responsibility rendered on 10.10.200. In part II of this Regulation defines in detail the provisions for the implementation of the disciplinary procedure. This Regulation was not repealed with Regulation no.3 of date 30.11.2009. Furthermore, the provisions of Regulation 2001/27 on the Basic Law on Labor in Kosovo do not repeal the Law on Employment Relation no.12/1989 of the SAPK.

The Supreme Court of Kosovo, on the grounds of the reasons mentioned above and the data in the case file found that the claimant's statement of claim is grounded and since the lower instance courts have erroneously applied the material right the Judgments of those two courts had to be changed and the claimant's statement of claim as such approved as in the enacting clause of this Judgment."

Applicant's allegations

21. The Applicant claims that "the 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".

22. 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.

23. 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 Judgment of Supreme Court of Kosovo Rev.no.368/2011 of 2.5.2013."*

Admissibility of the Referral

24. 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.

25. In that respect, the Court refers to Articles 113.7 and 21.4 of the Constitution.

> *113.7 "Individuals are authorized to refer violations by public authorities of their individual rights and freedoms guaranteed by the Constitution, but only after exhaustion of all legal remedies provided by law."*

Article 21 [General Principles]

[...]

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

26. 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."

27. 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."

28. The Court notes that the Applicant alleges mainly: (a) the violation of Articles 31 and 102.3 of the Constitution, and (b) the violation of the legal provisions.

29. 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 this specific constitutional right was violated by the challenged decision, which allegedly adjudicated "*by applying other acts that were not in force*".

30. The Court notes 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.

31. In this regard, the Court refers to Article 31 [Right to a Fair and Impartial Trial] of the Constitution, which clearly provides that:

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

32. 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."*

33. In this context, the Applicant does not accurately clarify 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.

34. Moreover, the above extensive quotation of the decision of the Supreme Court shows that the challenged decision provided extensive and comprehensive reasoning of the facts of the case and of its findings.

35. Furthermore, the dissatisfaction with the decision 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 the Referral to be grounded.

36. In sum, 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.

37. With regards to the Applicant's allegations on the violation of Article 102.3 of the Constitution, *"courts shall adjudicate based on the Constitution and the law,"* 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, since the Applicant has not brought any argument or presented any proof that the Supreme Court disrespected the provision in question.

38. In terms of the allegation by the Applicant on the "*violations of legal provisions*", the Court finds that such allegations are of a legal nature, and as such they do not represent any constitutional ground of violation of fundamental rights guaranteed by the Constitution.

39. In fact, the Court 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.

40. 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, paragraph. 28, European Court for Human Rights [ECtHR] 1999-I).

41. 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.

42. As a result, the Court finds that the Applicant's Referral does 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 Decision.

43. Therefore, pursuant to Rule 36 (2) b) and d) of the Rules of Procedure, the Referral of the Applicant must be declared as manifestly ill-founded.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, in compliance with Article 48 of the Law, and in compliance with Rule 36

(2) b) and d) and Rule 56 (2) of the Rules of Procedure, on 5 December 2013, 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**
Snezhana Botusharova	Prof. Dr. Enver Hasani

KI138/11, Nazife Xhafolli, Judgment of 4 February 2014 - Constitutional Review of the Judgment of the Supreme Court Rev. no. 492/2008, of 10 March 2009

Case KI138/11, decision of 4 February 2014

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

The Applicant alleges her rights to property and to fair trial have been violated by the decision of KEK unilaterally annulling their Agreements. The Applicant further claims that they have not been able to remedy such violation before the regular courts.

In addition, the Applicant claims that KEK should continue to pay the specified amount even after the death of her spouse until the functioning of the Invalidity Pension Fund.

The Court notes that in the present case, as in the similar cases, the Applicant's deceased husband from the year 2006 until his death suffered from the unilateral annulment of their Agreements signed by KEK. The Applicant raised the same argument as the previous Applicants and it is well known that the Pension and Invalidity Insurance Fund has not been established to date and there is a continuing situation. Thus as the circumstance on the basis of which the Applicants complain continued, the four months period prescribed in Article 49 of the Law is inapplicable to these cases.

The Constitutional Court also notes that the Applicant's deceased husband S.XH was not older than 65 years at the time of his death. In fact, according to the Note issued by the Ministry of Labour and Social Welfare on 15 May 2009, only persons who have reached the pensions age of 65 and who have at least 15 years of working experience are entitled to pension in a monthly amount of 82 Euro.

The Constitutional Court, on 5 December 2013, unanimously declares the Referral partly admissible and finds that there has been a violation of Article 46 of the Constitution of the Republic of Kosovo in conjunction with Article 1 Protocol 1 to the European Convention on Human Rights for the period until 1 May 2008 as well as violation of Article 31 of the Constitution in conjunction with Article 6 of the European Convention on Human Rights for the period until 1 May 2008.

JUDGMENT
in
Case No. KI138/11
Applicant
Nazife Xhafolli
Constitutional Review of the Judgment of the Supreme Court Rev. no. 492/2008, dated 10 March 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 Ms Nazife Xhafolli (hereinafter, the Applicant).

Challenged decision

2. The Challenged Decision is the Judgment of the Supreme Court, Rev. no. 492/2009, dated 10 March 2009 received by the Applicant on an unspecified date.

Subject matter

3. The subject matter of the Referral is the review of the constitutionality of the challenged Judgment of the Supreme Court, which allegedly violated the right to property and to a fair trial of the Applicant, as guaranteed by Article 46 of the Constitution, in conjunction with Article 1 Protocol 1 to the European Convention on Human Rights (hereinafter, the ECHR),

and Article 31 of the Constitution, in conjunction with Article 6 of the ECHR.

The subject matter of the Referral is the review of the constitutionality of the challenged Judgment of the Supreme Court, which allegedly violated the right to property and to a fair, as guaranteed by Article 46 of the Constitution, in conjunction with Article 1 Protocol 1 to the European Convention on Human Rights (hereinafter, the ECHR), and Article 31 of the Constitution, in conjunction with Article 6 of the ECHR.

The present case is similar to the following cases already decided by the Constitutional Court (hereinafter, the identical cases):

a) Case No. KI40/09, "Imer Ibrahimi and 48 other former employees of Kosovo Energy Corporation against 49 Individual Judgments of the Supreme Court of the Republic of Kosovo";

b) Case No. KI58/09, "Gani Prokshi and 15 other former employees of the Kosovo Energy Corporation against 16 Individual Judgments of the Supreme Court of the Republic of Kosovo";

c) Case No. KI08/10, "Isuf Mërlaku and 25 other former employees of the Kosovo Energy Corporation against 17 individual Judgments of the Supreme Court of the Republic of Kosovo";

d) Case No. KI76/10, "Ilaz Halili and 19 other former employees of the Kosovo Energy Corporation" and

e) Case No. KI132/10, "Istref Halili and 16 other former employees of the Kosovo Energy Corporation against 17 individual Judgments of the Supreme Court of the Republic of Kosovo".

4. The Constitutional Court found in all those identical cases that there has been a violation of Article 46 of the Constitution of the

Republic of Kosovo (Protection of Property), in conjunction with Article 1 Protocol 1 to the ECHR, as well as of Article 31 of the Constitution (Right to Fair and Impartial Trial), in conjunction with Article 6 of the ECHR in relation to some of those Applicants.

5. Consequently, the Court decided to declare invalid the Judgments delivered by the Supreme Court in those identical cases and remand those cases to the Supreme Court for reconsideration in conformity with the judgment of this Court.

Legal basis

6. The Referrals are based on Article 113 of the Constitution of the Republic of Kosovo (hereinafter referred to as the Constitution), Article 20 of the Law No. 03/L-121 on the Constitutional Court of the Republic Kosovo (hereinafter, the Law) and Section 56 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter, the Rules of Procedure).

Proceedings before the Court

7. On 21 October 2011, the Applicant filed the Referrals with the Constitutional Court. At the time of submission, the referral was filed with certain deficiencies (i.e. not signed). After communication with the Applicant, the referral form was signed in mid year of 2013. The referral was reviewed upon its completion by the Applicant.

8. The President of the Court appointed Judge Kadri Kryeziu as Judge Rapporteur and the Review Panel composed of Judges Altay Suroy (Presiding), Ivan Cukalovic and Enver Hasani.

9. On 5 December 2013, after having considered the report of Judge Rapporteur, the Review Panel made a recommendation to the Court on the admissibility of the Referral.

Summary of the facts

10. In general, the facts of this Referral are similar to those cases abovementioned under paragraph 4.

11. In fact, in the course of 2001 and 2002, the Applicant's late husband signed an Agreement for Temporary Compensation of

Salary for Termination of Employment Contract with their employer Kosovo Energy Corporation (hereinafter, KEK).

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

13. Furthermore, Article 2 of the Agreement specified that the amount to be paid monthly to the Applicant's late husband was to be 206 German Marks.

14. In addition, Article 3 of the Agreement specified that "payment shall end on the day that the Kosovo Pension-Invalidity Insurance Fund enters into operation. On that day onwards, the beneficiary may realize his/her rights in the Kosovo Pension and Invalidity Insurance Fund (the Kosovo Pension Invalidity Fund), and KEK shall be relieved from liabilities to the User as per this Agreement".

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

16. On 25 July 2006, the KEK Executive Board annulled the above mentioned Decision on the Establishment of the Supplementary Pension Fund and terminated the funding and functioning of the Supplementary Pension Fund, with effect from 31 July 2006.

17. According to the Decision of 25 July 2006, all beneficiaries were guaranteed full payment in line with the Fund Statute. The Decision further stated that KEK employees that are acknowledged

as labour disabled persons by the Ministry of Labour and Social Welfare shall enjoy rights provided by the Ministry.

18. On 14 November 2006, KEK informed the Central Banking Authority that "decision on revocation of the KEK Pension Fund is based on decision of the KEK Executive Board and the Decision of the Pension Managing Board… due to the financial risk that the scheme poses to KEK in the future".

19. In the summer of 2006, KEK terminated the payment stipulated by the Agreement without any notification.

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

21. On 14 December 2007 the Municipal Court in Prishtina approved the Applicants' claims (Judgment C. nr. 2216/06) and ordered monetary compensation. The Municipal Court of Prishtina found that the conditions provided by Article 3 of the Agreements have not been met. Article 3 of the Agreements provides for salary compensation until exercise of the Applicants' right, "which means an entitlement to a retirement scheme".

22. KEK appealed against the judgments of the Municipal Court to the District Court, arguing, *inter alia,* that the Municipal Court judgment was not fair, because the Agreements were signed with the Applicants because of the invalidity of the Applicants and that they cannot claim continuation of their working relations because of their invalidity. KEK reiterated that the Court was obliged to decide upon the UNMIK Regulation 2003/40 on the promulgation of the Law on Invalidity Pensions according to which the Applicants were entitled to an invalidity pension.

23. On 21 July 2008, the District Court (Judgment Ac.nr. 391/2008) rejected as ungrounded the appeals of KEK

24. KEK submitted a revision to the Supreme Court, arguing an alleged essential violation of the Law on Contested Procedure and erroneous application of material law. KEK repeated that the Applicants were entitled to the pension provided by the 2003/40 Law and that because of humanitarian reasons it continued to pay

monthly compensation after the Law entered into force. KEK further argued that the age of the applicant was not relevant but that his invalidity was.

25. On 1 May 2008, the Applicant's husband S. XH. passed away.

26. On 22 September 2008, the Municipal Court in Prishtina (Decision T. nr. 356/2008) declares the Applicant as the sole inheritor of her late husband's movable property.

27. On 10 March 2009 the Supreme Court (Judgment Rev.nr. 492/2008) rejected as unfounded the S. XH. lawsuit and quashed the Judgments of the District and Municipal Court. The Supreme Court concluded that the termination of employment was lawful pursuant to Article 11.1 of UNMIK Regulation 2001/27 on the Basic Labour Law in Kosovo.

28. In the Judgment of the S. XH. (Rev. nr. 492/2008 dated 10 March 2009), the Supreme Court stated*: "Taking into account the undisputed fact that the respondent party fulfilled the obligation towards the plaintiff, which is paying salary compensation according to the specified period which is until the establishment and functioning of the Invalidity and Pension Insurance Fund in Kosovo effective from 1 January 2004, the Court found that the respondent party fulfilled the obligation as per the agreement. Thus the allegations of the plaintiff that the respondent party has the obligation to pay him the temporary salary compensation after the establishment of the Invalidity and Pension Insurance Fund in Kosovo are considered by this Court as unfounded because the contractual parties until the appearance of solving condition- establishment of the mentioned fund have fulfilled their contractual obligations…*".

29. On 15 May 2009, Ministry of Labour and Social Welfare issued the following note: "*The finding of the Supreme Court of Kosovo, in its reasoning of e.g. Judgment Rev. No. 454/2008, that in the Republic of Kosovo there is a Pension and Invalidity and Pension Insurance Fund which is functional since 1 January 2004 is not accurate and is ungrounded. In giving this statement, we consider the fact that UNMIK regulation 2003/40 promulgates the Law No 2003/213 on the pensions of disabled persons in Kosovo, which regulates over permanently disabled persons, who may enjoy this scheme in accordance with conditions and criteria as provided by this law. Hence let me underline that the provisions*

of this Law do not provide for the establishment of a Pension and Invalidity Insurance in the country. Establishment of the Pension and Invalidity Insurance Fund in the Republic of Kosovo is provided by provisions of the Law on pension and Invalidity Insurance funds, which is in the process of drafting and approval at the Government of Kosovo." The same note clarified that at the time of writing that note, the pension *inter alia* existed "*Invalidity pension in amount of 45 Euro regulated by the Law on Pensions of Invalidity Persons (beneficiaries of these are all persons with full and permanent Invalidity)" as well as "contribution defined pensions of 82 Euro that are regulated by Decision of the Government (the beneficiaries of these are all the pensioners that have reached the pensions age of 65 and who at least have 15 years of working experience)*".

Applicant's allegations

30. The Applicant claims that the termination of the payment is in contradiction to the signed Agreement.

31. The Applicant also claim that it is well known that the Kosovo Pension Invalidity Fund has not been established yet. On the other hand, in the original case No. KI40/09, KEK contested the Applicants' allegations, arguing that it was widely known that the Invalidity Pension Fund had been functioning since 1 January 2004.

32. According to KEK, the Applicant's late husband was automatically covered by the national invalidity scheme pursuant to UNMIK Regulation No 2003/40 on Promulgation of the Law on Invalidity Pensions in Kosovo (Law No 2003/23).

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

34. KEK further argued that the Applicant did not contest the Instructions to invalidity pension and signature for early

termination of employment pursuant to the conclusion of the Invalidity Commission.

35. In sum, the Applicant claims that their rights to property and to fair trial have been violated by the decision of KEK unilaterally annulling their Agreements. The Applicants further claim that they have not been able to remedy such violation before the regular courts.

36. In addition, the Applicant claim that KEK should continue to pay the specified amount even after the death of her spouse until the functioning of the Invalidity Pension Fund.

Admissibility of the Referral

37. The Court first examines whether the Applicant has fulfilled the admissibility requirements as laid down in the Constitution and the Law.

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

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

39. The Court also refers to Article 47.2 and 49 of the Law. Article 47.2 provides that *"The individual may submit the referral in question only after he/she has exhausted all legal remedies provided by the law"*. Article 49 provides that "*The referral should be submitted within a period of four (4) months (...)"*.

40. The Court notes that in the present case, as in the similar cases, the Applicant's late husband from the year 2006 until his death suffered from the unilateral annulment of their Agreements signed by KEK. The Applicant raised the same argument as the Applicants in the earlier that it is well known that the Pension and Invalidity Insurance Fund has not been established to date and there is a continuing situation. Thus as the circumstance on the basis of which the Applicants complain continued, the four months period prescribed in Article 49 of the Law is inapplicable to these cases.

41. The Constitutional Court also notes that the Applicant's late husband S.XH was not older than 65 years at the time of his death. In fact, according to the Note issued by the Ministry of Labour and Social Welfare on 15 May 2009, only persons who have reached the pensions age of 65 and who have at least 15 years of working experience are entitled to pension in a monthly amount of 82 Euro.

42. The substance of this Note was confirmed by the representative of the Ministry at the public hearing that the Constitutional Court held on 30 April 2010 in the case of "Ibrahimi and others".

43. The question that needs to be examined in this case is whether the Applicant can be considered to have "a victim status".

44. In this relation the Court notes that a person may also be able to claim that she is directly affected as a consequence of a violation of the rights of her spouse, complaining that damage to her late husband's property also affected her own property.

45. Thus the Court considers that the Applicant has the victim status taking into account the fact that the complaint in question can be considered to be transferable whilst also taking into account the Decision of the Municipal Court in Prishtina (Decision T. nr. 356/2008) declaring the Applicant as the sole inheritor of her late husband's movable property.

46. Therefore, the Referral of the Applicant is partly admissible.

Substantive aspects of the Referral (in relation to period 2006-2008) i. As regards the Protection of Property

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

48. At the outset, Article 46 and 53 of the Constitution, and Article 1 of Protocol No. 1 of the ECHR should be recalled.

    Article 53 [Interpretation of Human Rights Provisions] of the Constitution establishes:

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

Article 46 [Protection of Property] of the Constitution reads:

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

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

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

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

50. Furthermore, "possessions" can be either "existing possessions" or assets, including claims, in respect of which the applicant can argue that he or she has at least a "legitimate expectation" of obtaining effective enjoyment of a property right. By way of contrast, the hope of recognition of a property right which it has

been impossible to exercise effectively cannot be considered a "possession" within the meaning of Article 1 of Protocol No. 1, nor can a conditional claim which lapses as a result of the non-fulfillment of the condition" (see the judgements in the identical cases).

51. The question that needs to be examined in this case is whether the circumstances of the case, considered as a whole, confer on the Applicant a title to a substantive interest protected by Article 1 of Protocol No. 1 to the ECHR. (See the judgements in the identical cases).

52. The Court notes that, at the time of concluding the Agreements between the Applicant's late husband and KEK, these type of agreements have been regulated namely by Article 74 (3) the Law on Contract and Torts (Law on Obligations) published in Official Gazette SFRJ 29/1978 and amended in 39/1985, 45/1989, 57/1989.

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

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

53. Therefore, the crux of the matter is whether the rescinding condition under which the Agreement was signed has been met. The Answer to that question will allow the Constitutional Court to assess whether the circumstances of this Referral, considered as a whole, confer on the Applicant a title to a substantive interest protected by Article 1of Protocol No. 1 to the ECHR.

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

55. In this respect, the Court also notes that, according to the Ministry of Labour and Social Welfare, the establishment of the Pension and Invalidity Insurance Fund, was to be provided by the Law on Pension and Invalidity Insurance Funds. This was in the process of drafting and approval with the Government of Kosovo.

56. The Constitutional Court considers that the Applicant's late husband, when signing the Agreements with KEK, had a legitimate expectation that they would be entitled to a monthly indemnity until the Pension and Invalidity Insurance Fund was established.

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

58. Therefore, the Constitutional Court considers that the Applicant's late husband had a "legitimate expectation" that the claim would be dealt in accordance with the applicable laws, in particular the above quoted provisions of the Law on Contract and Torts and the Law on Pension and Invalidity Insurance in Kosovo, and consequently upheld (see the judgements in the identical cases).

59. However, the unilateral cancellation of the Agreement, prior to the rescinding condition having been met, breached S.XH's pecuniary interests which were recognized under the law and which were subject to the protection of Article 1 of Protocol No. 1. (see the judgements in the identical cases).

60. Consequently, the Constitutional Court concludes that there is a violation of Article 46 of the Constitution in conjunction Article 1 of Protocol 1 to the ECHR.

ii. As regards the right to fair trail

61. The Applicant further complain that they have not been *able to the remedy violation of their property rights before the regular courts.*

62. The Court refers to Article 31 [Right to Fair and Impartial Trial] of the Constitution and Article 6 of the ECHR.

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

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

Article 6 of the ECHR reads:

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

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

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

65. According to the jurisprudence of the European Court of Human Rights, Article 6 paragraph 1 of the ECHR obliges courts to give reasons for their judgments, but cannot be understood as requiring a detailed answer to every argument. The extent to which this duty to give reasons applies may vary according to the nature of the decision.

66. Moreover, it is necessary to take into account, *inter alia*, the diversity of the submissions that a litigant may bring before the courts and the differences existing in the Contracting States with regard to statutory provisions, customary rules, legal opinion and the presentation and drafting of judgments. Thus the question whether a court has failed to fulfil the obligation to state reasons, deriving from Article 6 of the Convention, can only be determined in the light of the circumstances of the case (see the judgements in the identical cases).

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

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

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

70. However, the Court considers that the Supreme Court, by neglecting the assessment of this point altogether, even though it was specific, pertinent and important, fell short of its obligations under Article 6 para 1 of the ECHR (See the identical cases).

71. Before the foregoing, the Constitutional Court concludes that there has been a violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR.

72. With regards to the period after 1 May 2008 and in relation to the reasoning of the Constitutional Court in its previous Judgments related to former employees of KEK, the latter cannot be applied to the present applicant after 1 May 2008 (the date when the Applicant's late husband passed away) for the reason that the Applicant was not a signatory of the agreement signed with KEK and as such is of non-transferable nature (See Resolution on Inadmissibility in the case of Vahide Hasani and 8 others dated 22 January 2012).

FOR THESE REASONS
THE COURT UNANIMOUSLY DECIDES:

I. TO DECLARE Admissible in part the Referral KI138/11 filed by the Applicant Nazife Xhafolli

II. TO FIND THAT:

a) There has been a violation of Article 46 of the Constitution of the Republic of Kosovo in conjunction with Article 1 Protocol 1 to the European Convention on Human Rights for the period until 1 May 2008;
b) There has been violation of Article 31 of the Constitution in conjunction with Article 6 of the European Convention on Human Rights for the period until 1 May 2008;

III. TO DECLARE INVALID the judgment delivered by the Supreme Court Rev. no. 492/2009, dated 10 March 2009;

IV. TO REMAND the Judgment to the Supreme Court for reconsideration in conformity with the judgment of this Court, pursuant to Rule 74 (1) of the Rules of Procedure;

V. TO ORDER the Supreme Court to submit information to the Constitutional Court about the measures taken to enforce this Judgment of the Constitutional Court in accordance with Rule 63 (5) of the Rules of Procedure;

VI. TO NOTIFY the Judgment to the Parties;

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

VIII. TO DECLARE this Judgment immediately effective;

IX. TO REMAIN seized of the matter pending compliance with that Order.

Done at Prishtina this day of 4 February 2014

Judge Rapporteur
Kadri Kryeziu

President of the Constitutional Court
Prof. Dr. Enver Hasani

KI185/13, Kosovo Energy Corporation, Resolution of 18 February 2014 - Constitutional Review of the Decision Rev. No. 368/2011 of the Supreme Court of the Republic of Kosovo, of 2 May 2013.

Case KI185/13, decision of 18 February 2014

Key words: individual referral, right to fair and impartial trial, manifestly ill-founded.

The applicant, Kosovo Energy Corporation, filed a Referral pursuant to Article 113.7 and Article 21.4 of the Constitution of Kosovo challenging the Decision Rev. No. 368/2011 of the Supreme Court of the Republic of Kosovo, of 2 May 2013 as being taken in violation of Article 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo because the regular court adjudicated the case based on a law that was not in force.

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 (2) b) of the Rules of Procedure.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI185/13
Applicant
Kosovo Energy Corporation
Constitutional Review of the Decision Rev. No. 368/2011 of the Supreme Court of the Republic of Kosovo, dated 2 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 Referral was submitted by the Kosovo Energy Corporation (hereinafter, the Applicant), with the principal place of business in Pristina, which is represented by Mr. Bilall Fetahu, a lawyer from Pristina.

Challenged decision

2. The Applicant challenges the Decision Rev. No. 368/2011 of the Supreme Court of Kosovo, dated 2 May 2013, which was served upon the Applicant on 9 July 2013.

Subject matter

3. The subject matter is the constitutional review of the Challenged Decision, which allegedly violated the Applicant's right to a fair and impartial trial as guaranteed by Article 31 of the Constitution.

Legal basis

4. 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 Court

5. On 28 October 2013, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).

6. On 31 October 2013, the President of the Court appointed Judge Almiro Rodrigues as Judge Rapporteur and the Review Panel composed of Judges Altay Suory (Presiding), Kadri Kryeziu and Arta Rama-Hajrizi.

7. On 15 November 2013, the Court notified the Applicant of the registration of the Referral and requested the power of attorney, which the Applicant had not yet submitted. On the same date, the Supreme Court and third party, P.D., was informed of the registration of the Referral with a copy of the Referral.

8. On 6 December 2013, the Applicant submitted the power of attorney stating that the Applicant is represented by Mr. Bilall Fetahu.

9. On 13 December 2013, the Applicant further submitted additional documents.

10. 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

11. On an unspecified date, Mr. P.D. (hereinafter, the Employee) initiated judicial proceedings on a labor dispute against the Applicant as employer.

12. The Employee was employed by the Applicant for an indefinite period (Employment Contract No. 9260/0 of 1 February 2010) until either party terminated the contact.

13. On 25 March 2010, the Applicant issued a final written warning (Minutes No. 532) to the Employee *"due to non-fulfillment of performance for 3 (three) last months and that is in December 2009, January and February 2010"*.

14. On 19 November 2010, the Applicant notified the Employee (Nofitication No. 2399) 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"*.

15. On 29 November 2010, the Director of the Supply Division (Decision No. 2399 of 12 November 2010 and Decision No. 417 of 29 November 2010) rejected the request of the employee to review the termination of his employment contract.

16. The Employee filed a claim with the Municipal Court in Gjakova, arguing that the abovementioned decisions were unlawful and requesting its annulment.

17. On 7 April 2011, the Municipal Court (C. No. 560/10) rejected as ungrounded the Employee's claim.

18. The Employee filed an appeal with the District Court in Peja, *"due to substantial violations of the contested procedure provisions, erroneous and incomplete determination of factual situation and erroneous application of the substantive law"*.

19. On 30 September 2011, the District Court (Ac. No. 253/2011) upheld the Municipal Court decision (C. No. 560/10 of 7 April 2011) and rejected the Employee's appeal. 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".

20. The Employee 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".*

21. On 2 May 2013, the Supreme Court of Kosovo (Rev. No. 368/2011) approved as grounded the Employee's revision request, 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, Decision no. 417 of 29.11.2010, 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 no. 532 on 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

22. 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"*.

23. 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.

24. 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 Judgment of Supreme Court of Kosovo Rev. no. 368/2011 of 2.5.2013"*.

25. Furthermore, based on the submitted additional documents on 13 December 2013, 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"*.

26. 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"*.

27. 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".

28. To support its claim the Applicant refers to the Supreme Court Judgment Rev. no. 379/11 of 2 May 2013 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.

29. 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 […]".*

30. 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 Referral

31. 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.

32. 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.

33. 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.

34. 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:

(e) the Referral is not prima facie justified, or
(f) the presented facts do not in any way justify the allegation of a violation of the constitutional rights, or
(g) the Court is satisfied that the Applicant is not a victim of a violation of rights guaranteed by the Constitution, or
(h) the Applicant does not sufficiently substantiate his claim."

35. 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.

36. The Court, before entering into the Applicant's allegation, reiterates that it has decided several cases on labour disputes, namely KI 26/09, KI 39/09, KI 70/10 and KI 25/10 .

37. In case KI 26/09 (See case KI 26/09, *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. _

38. In case KI 39/09 (See case KI 39/09, *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.

39. In case KI 70/10 (See case KI 70/10, *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.

40. 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 KI 25/10, *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".

...

41. 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.

42. 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.

43. 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.

44. 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.

45. 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.

46. 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".*

47. 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".*

48. 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".*

49. Moreover, the above quotation of the decision of the Supreme Court shows that the challenged decision provided extensive and comprehensive reasoning of the facts of the case and of its findings.

50. Furthermore, the dissatisfaction with the decision 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.

51. 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.

52. 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.

53. 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.

54. 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.

55. 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).

56. 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.

57. In sum, the Court cannot observe arguments and evidence that the challenged Decision Rev.No. 368/2011 of the Supreme Court of

Kosovo, dated 2 May 2013, was rendered in a manifestly unfair and arbitrary manner.

58. As a result, the Court finds that the Applicant's Referral does 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 Decision.

59. 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 18 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 immediately effective.

Judge Rapporteur	**President of the Constitutional Court**
Almiro Rodrigues	Prof. Dr. Enver Hasani

KI06/14, Olga Petrović, Svetolik Patrnogić, Vesna Dejanović and Miroslava Ivanović, Decision on Interim Measures of 10 February 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 10 February 2014.

Key words: Individual referral, unauthorized party, non-exhaustion of legal remedies.

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, in its session held on 4 July 2014, unanimously 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.

DECISION ON INTERIM MEASURES
in
Case No. KI06/14
Applicants
Olga Petrović, Svetolik Patrnogić, Vesna Dejanović and Miroslava Ivanović
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
Kadri Kryeziu, Judge and
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.

Challenged Decision

2. 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

3. The subject matter is the request for constitutional review of the Judgment of the Basic Court, Pc. No. 559/10 of 18 September 2013, which they have not attached to the referral.

4. 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.

5. In addition, the Applicants request 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

6. The Referral is based on Article 113.7 of the Constitution, Article 22 and 27 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo, 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 20 January 2014, the Applicants submitted the Referral to the Court.

8. On 31 January 2014, the President of the Court based on Decision GJR. KI06/14 appointed Judge Kadri Kryeziu as Judge Rapporteur.

9. 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.

10. On 10 February 2014, the Constitutional Court informed the Applicants of the registration of the Referral. 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 an authorization letter for the fourth Applicant, Ms. Miroslava Ivanić.

11. On the same date, the Court also notified the Municipal Court in Ferizaj on the Referral.

12. 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.

Brief Summary of the Facts

13. 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 Patrnogić Julijana consists of the property 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 Patrnogić Julijana.

14. According to the Applicants, on 18 September 2013, the Basic Court in Ferizaj issued the challenged judgment Pc 559/10. The Applicants claim that in the proceedings before the Basic Court in Ferizaj they were represented by the temporary representative Mr. Hilmi Piraja, attorney from Ferizaj. They also claim that they could not establish contact with the temporary representative, who did not provide them with a copy of the challenged judgment.

15. On 27 November 2013, the Notary Nexhat Sh. Qorroli informed the attorney Miloš Petković from Štrpce as the authorized representative of the legal inheritors of the late Julijana Patronogić, 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".*

Assessment of the Request for Interim Measures

16. In order for the Court to grant interim measure pursuant to Rule 55 (4) of the Rules of Procedure, it must find, namely, that:

> *"(a) the party requesting interim measures has shown a prima facie case on the merits of the referral and, if admissibility has*

not yet been determined, a prima facie case on the admissibility of the referral;

(b) the party requesting interim measures has shown that it would suffer unrecoverable damages if the interim relief is not granted; and
(...)
If the party requesting interim measures has not made this necessary showing, the Review Panel shall recommend denying the application."

17. In this respect, the Court notes that the Applicants have not provided any arguments nor have the Applicants shown any evidence as to why and how the interim measure is necessary to avoid any risk of irreparable damage, or whether such a measure is in the public interest, as required by Article 27 of the Law. Therefore, the Court concludes that the request for interim measures must be rejected as ungrounded.

18. This conclusion does not preclude the Constitutional Court's assessment on the admissibility of the Referral.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 27 of the Law, and in accordance with Rules 55 (4) and 56 (3) of the Rules of Procedure, on 10 February 2014, unanimously,

DECIDES

I. TO REJECT the request for interim measures;

II. TO NOTIFY this Decision to the Parties; and

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

IV. This Decision is effective immediately.

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

KI14/14 Abdyl Islami, Resolution of 26 February 2014 - Constitutional Review of the Judgment of the Supreme Court, Pml. No. 225/2013, of 18 December 2013

Case KI14/14, decision of 26 February 2014

Key words: Individual referral, Request for interim measure, manifestly ill-founded.

The Judgment of the Supreme Court (Pml. No. 225/2013, of 18 December 2013), is related to rejection of the request of the Applicant for protection of legality as ungrounded, while by judgments of the lower instance courts the Applicant was found guilty of having committed the criminal offence of serious offence against traffic safety, and for the same was sentenced to imprisonment.

The Applicant alleges that the Judgment of the Supreme Court, and the judgments of the Court of Appeals and the Municipal Court in Prishtina, have violated his rights guaranteed by the Constitution of the Republic of Kosovo, namely Article 31 [Right to Fair and Impartial Trial] of the Constitution and Article 6 [Right to a Fair Trial] of the European Convention for Human Rights.

In addition, the Applicant requests the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) to impose an interim measure until a decision is rendered by the Court, namely to suspend the execution of the Judgment of the Kosovo Court of Appeals (PA1. No. 1081/2012, of 12 September 2013), which sentenced the Applicant to imprisonment for a period of one (1) year.

The Constitutional Court declared the Referral inadmissible for being manifestly ill- founded, because the facts presented by the Applicant have in no way justified the allegation of violation of constitutional rights, and that the Applicant has failed to sufficiently prove such allegations, on how and why the mentioned judgments have violated his rights guaranteed by the Constitution. In addition, the Constitutional Court decided to reject the Applicant's request for Interim Measure for being manifestly ill-founded.

RESOLUTION ON INADMISSIBILITY

in
Case No. KI14/14
Applicant
Abdyl Islami
Constitutional Review of the Judgment of the Supreme Court, Pml. No. 225/2013, 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
Kadri Kryeziu, Judge and
Arta Rama-Hajrizi, Judge

The Applicant

1. The Applicant is Mr. Abdyl Islami (hereinafter: the Applicant), residing in Prishtina.

Challenged decision

2. The Applicant challenges the Judgment of the Supreme Court, Pml. No. 225/2013, of 18 December 2013, which was served on the Applicant on 10 January 2014.

Subject matter

3. The subject matter is the request for constitutional review of the Judgment of the Supreme Court, Pml. No. 225/2013, of 18 December 2013, and the Judgments of the Municipal Court in Prishtina (P. No. 1823/2012, of 16 July 2012), and the Court of Appeals (PA1. No. 1081/2012, of 12 September 2013). The above-mentioned judgment of the Supreme Court is related to rejection of the request of the Applicant for protection of legality as

ungrounded, while by judgments of the lower instance courts the Applicant was found guilty of having committed the criminal offence of serious offence against traffic safety, and for the same was sentenced to imprisonment.

4. Apart from the foregoing, the Applicant requires from the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) to impose an interim measure until a decision is rendered by the Court, namely to suspend the execution of the Judgment of the Kosovo Court of Appeals (PA1. No. 1081/2012, of 12 September 2013), which adjudicated the Applicant to imprisonment for a period of one (1) year.

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 No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (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 28 January 2014, the Applicant filed a referral with the Court.

7. On 31 January 2014, the President, by Decision GJR. KI14/14, appointed Judge Arta Rama-Hajrizi as Judge Rapporteur. On the same date, the President, by Decision KSH. KI14/14, appointed the Review Panel composed of judges: Altay Suroy (Presiding), Snezhana Botusharova and Kadri Kryeziu.

8. On 31 January 2014, the Constitutional Court notified the Applicant of the registration of the referral. On the same date, the Court also notified the Supreme Court of the referral.

9. On 7 February 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 and to reject the request for interim measures.

Facts of the case

10. On 24 January 2003, the Applicant, while driving a vehicle in traffic, hit a pedestrian, and, due to injuries suffered from the

impact of the vehicle, the pedestrian died one hour later in hospital.

11. From 24 January 2003 to 6 February 2003, the Applicant was held in detention.

12. On 25 March 2003, the Municipal Public Prosecution in Prishtina filed an indictment against the Applicant, based on the criminal offence of serious offence against traffic safety, as per Article 171 paragraph 5, in conjunction with Article 165 paragraph 3, in conjunction with paragraph 1 of the Criminal Law of Kosovo.

13. On 14 February 2011, the Municipal Court in Prishtina (Judgment P. No. 497/2003) found the Applicant guilty, thereby sentencing him to imprisonment for a period of two (2) years.

14. Following the Applicant's appeal, on 21 June 2011, the District Court in Prishtina (Ruling AP. No. 78/2011) approved as grounded the complaint of the Applicant, thereby annulling the Judgment of the Municipal Court (Judgment P. No. 497/2003, of 14 February 2011), and remanded the case for retrial.

15. The Applicant has not filed with the Court the Judgment of the Municipal Court in Prishtina (P. No. 497/2003, of 14 February 2011) and the Ruling of the District Court in Prishtina (AP. No. 78/2011, of 28 June 2011).

16. After the case was remanded for retrial, the Municipal Court in Prishtina ordered a super-expertise.

17. On 16 July 2012, the Municipal Court in Prishtina, upon holding court hearings, hearing of the parties and after taking expert opinions, by Judgment P. no. 1823/2012, found the Applicant guilty of a serious criminal offence against traffic safety, as per Article 171 paragraph 5, in conjunction with Article 165 paragraph 3, in conjunction with paragraph 1 of the Criminal Law of Kosovo, and sentenced him to imprisonment for a period of two (2) years, thereby counting also the time spent in detention.

18. The Municipal Court in Prishtina had reached the conclusion:

[...]

"Upon determining the punishment the court took into consideration all the circumstances that impact the type and severity of the punishment. The court took into consideration the mitigating circumstances for the accused Avdyl Islami, that he is a family man, father of one child, that he has not been sentenced before, that there is no other criminal procedure being conducted against him, whereas the court considered as aggravating circumstances the motive and the location where the criminal offense was perpetrated and the same for the criminal offense as stated in the indictment was imposed the imprisonment of 2 (two) years duration as it is convinced that the effect of the punishment will be achieved with this punishment."

"From the facts confirmed above the court found that the actions of the accused Avdyl Islami include all substantial elements of the criminal offense Aggravated offense against traffic safety pursuant to Article 171, paragraph 5 in conjunction to Article 165, paragraph 3 in conjunction to paragraph 1 of the LPK, and the court found the accused guilty of this criminal offense, after previously finding that he is criminally responsible."

19. The Applicant filed an appeal against the Judgment of the Municipal Court in Prishtina, claiming that the aforementioned Judgment contained substantial violations of the criminal procedure provisions, alleging that the enacting clause of the Judgment was unclear and incomprehensible, and had not provided sufficient reasoning on relevant facts. The Applicant also complained of an erroneous and incomplete determination of the factual situation.

20. On 12 September 2013, the Kosovo Court of Appeals, by Judgment PA1. No. 1081/2012, decided to partially approve the complaint of the Applicant, and to amend the Judgment of the Municipal Court in Prishtina (P. No. 1823/2011, of 18 July 2012), regarding the part of decision on the sentence of imprisonment, thereby imposing on the Applicant an imprisonment sentence of one (1) year.

21. Upon reviewing the allegations raised by the Applicant, the Kosovo Court of Appeals found that:

[...]

"The Criminal Panel of the Appeal Court, by considering the appealed judgment pursuant to Article 394 para. 1 item 1.1. of CPCK, noticed ex-officio and came to conclusion that the appealed judgment does not contain essential violations of the criminal procedure provisions from Article 384 para.1 item 1.12 of CPCK, because the enacting clause of the challenged judgment is clear, comprehensible and as such in consistency with itself and with the presented reasons. In the enacting clause of the appealed judgment, in the factual description, are provided all reasons regarding the decisive facts and the circumstances that constitute essential elements of the criminal offence, the serious offence against the traffic safety from Article 171 para.5 in conjunction with Article 165 para.3 in conjunction with para. 1 of the CLK, applied pursuant to UNMIK Regulation 24/1999, which elements are determined during the main court hearing and after the end of the same, the accused was found guilty."

[...]

"the appealed judgment does not contain violations, alleged by the defence of the accused, because the first instance court assessed correctly all evidence that was presented during the holding of the court hearing, such as the statement of the accused, the statements of the witnesses, the material evidence from the case file has been assessed, therefore the first instance court concluded that the accused on the critical day has committed the serious criminal offence against the traffic safety from Article 171 para. 5 in conjunction with Article 165, para. 3, in conjunction with para. I, of the CLK."

[...]

22. Considering the above, the Court of Appeals concluded as the following:

[...]

"Since by the appeal of the defence of the accused, the judgment is appealed regarding the decision on punishment, alleging that by the first instance court were overestimated the aggravating circumstances, without assessing the mitigating circumstances, such as relative long time from the commission of the criminal offence and until now, that the accused is family

person, the panel of the Court of Appeals, after the assessment of the case file and these circumstances, came to conclusion that by partly approving the appeal of the defence counsel of the accused is modified the decision on punishment, so that the accused was imposed the punishment of imprisonment in duration of 1 (one) year, being convinced that by the imposed punishment will be achieved the effect and the purposes of the punishment, provided by Article 41 (the old one 34) of the CCK."

23. On 5 December 2013, the Applicant, claiming erroneous application of substantive law in the Judgment of the Municipal Court in Prishtina (P. No. 1823/11, of 18 July 2012) as amended by the Judgment of the Court of Appeals, filed a request for protection of legality with the Supreme Court.

24. In his request for protection of legality, the Applicant claimed [...] "*Only over speeding, without other unlawful and dangerous actions for other participants in traffic, in no case does imply that the person committed the criminal offence from Article 171 in conjunction with Article 165 of CLK. In the present case moving with the speed of over 40km/h can only be qualified as a traffic offence but not as a criminal offence*." The applicant concludes his request by stating the following: *"The actions of the convicted in the present case do not consist of elements of the criminal offence, hence the challenged judgments must be altered or quashed as proposed above, since they deal with violation of the criminal law to the detriment of the convicted, by applying the criminal law without being able to determine a violation of provisions Article 171 and 165 of the CLK."*

25. On 18 December 2013, the Supreme Court rendered the Judgment (Pml. No. 225/2013), thereby rejecting as ungrounded the request for protection of legality.

26. In its judgment, the Supreme Court found the following:

[...]

"From the case files and the factual description of the criminal offence it results that the actions of the defendant meet the elements set by provisions of Article 165 paragraph 1 of the CLK, while these actions resulted with the death of a person, the offence was qualified in compliance with provisions of

Article 171 paragraph 5 of the CLK, therefore qualifying it as a criminal offence can't be put in doubt by anything.

From the above mentioned reasons, the Supreme Court of Kosovo didn't approve the allegations of the referral for protection of legality that in this case we only deal with a traffic offence, because as it was mentioned above, as a result of disregarding the provisions that govern the road traffic - excessive speeding, caused the death of pedestrian Xhemajl Lluzha, therefore we are not presented with a misdemeanor, but with a criminal offence as it was correctly determined by the first and second instance Courts, which is also confirmed by this Court."

Applicant's allegations

27. The Applicant alleges that the Judgment of the Supreme Court, and the judgments of the Court of Appeals and the Municipal Court in Prishtina, have violated his rights guaranteed by the Constitution, namely Article 31 [Right to Fair and Impartial Trial] of the Constitution and Article 6 [Right to Due Process] of the European Convention for Human Rights (hereinafter: ECHR).

28. In this regard, the Applicant alleges the following:

[...]

"The judgment of Municipal Court in Prishtina, p.no.1823/2012, the judgment of Court of Appeals in Prishtina, PA 1.no.1081/2012, and the judgment of Supreme Court of Kosovo, Pml.no.225/2013, in no moment take into consideration any of the requests of the defense in order to provide a fair trial and for the equality of parties in the procedure. In fact all these judgments by being focused allegedly only on the determination of the factual situation and the implementation of criminal law, they are not even based on giving the evaluations of proposals and requests of defense counsel of the now applicant-convict."

[...]

"The court in no moment made efforts to provide a complete expertise, which should be based on all circumstances in relation to causing of accident, from scene of event, and

circumstances in the field as well as technical conditions of the vehicle."

29. The Applicant addresses the Court the following request:

"- that the request is declared admissible
- to be determined that there were violations of Article 31 of the Constitution of Kosovo (the right to fair and impartial trial) and Article 6 of European Convention for Human Rights (the right to duly process).
- to be pronounced invalid the judgment of Supreme Court of Kosovo, Pml.no.225/2013 of 18 December 2013, judgment of Court of Appeals in Prishtina, PA1.no. 1081/2012 and Judgment of Municipal Court in Prishtina, P.no.1823/2012,
- to remand the case for retrial".

Admissibility of the Referral

30. In order to be able to adjudicate the Applicant's Referral, the Court must first 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.

31. In this regard, Article 113 paragraph 7 of the Constitution, provides that:

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

32. Apart from the foregoing, Article 49 of the Law provides that *"The referral should be submitted within a period of four (4) months. The deadline shall be counted from the day upon which the claimant has been served with a court decision."*

33. In this concrete case, the Court notes that the Applicant has exhausted all legal remedies available by law. The Court also notes that he was served the Judgment of the Supreme Court of Kosovo, Pml. No. 225/2013, on 10 January 2014, and that he filed his Referral with the Court on 28 January 2014.

34. Therefore, the Court considers that the Applicant is an authorized party, and that he has exhausted all legal remedies available

according to applicable law, and that the referral was filed within the timeline of four months.

35. However, 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."*

36. The Applicant alleges that the Judgment of the Supreme Court, Pml. No. 225/2013, and the judgments of lower instance courts, have violated his rights guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution and Article 6 [Right to Due Process] of the ECHR.

37. In relation to the proceedings before the regular courts, the Applicant alleges that: *"The court in no moment made efforts to provide a complete expertise, which should be based on all circumstances in relation to causing of accident, from scene of event, and circumstances in the field as well as technical conditions of the vehicle."*

38. In relation to the allegations made by the Applicant before the regular courts, the Court notes that the Municipal Court, upon remand of the case for retrial by the District Court in Prishtina (Decision AP. No. 78/2011, of 21 June 2011), ordered a super-expertise. As a result of this, and upon holding court hearings, hearing of parties, and upon assessment of the experts, this Court, by Judgment (P. No. 1823/2012, of 16 July 2012), found the Applicant guilty of the criminal offence.

39. In its Judgment, the Municipal Court concluded:

> *"From the facts confirmed above the court found that the actions of the accused Avdyl Islami include all substantial elements of the criminal offense Aggravated offense against traffic safety pursuant to Article 171, paragraph 5 in conjunction to Article 165, paragraph 3 in conjunction to paragraph 1 of the LPK, and the court found the accused guilty of this criminal offense, after previously finding that he is criminally responsible."*

40. In this regard, the Constitutional Court reiterates that in accordance with the Constitution, it is not its duty to act as a fourth-instance court when considering the decisions taken by regular courts. It is the role of regular courts to interpret and apply the pertinent rules of both procedural and substantive law (See *mutatis mutandis*, García Ruiz v. Spain, No. 30544/96, ECtHR, Judgment of 21 January 1999; see also case KI70/11, Applicants Faik Hima, Magbule Hima and Bestar Hima, Inadmissibility Resolution of 16 December 2011).

41. The Constitutional Court can only consider whether the evidence is presented in the right way and whether the proceedings in general, viewed in their entirety, were held in such a way that the Applicant has had a fair trial (See *inter alia,* case Edwards v. United Kingdom, No. 13071/87, Report of the European Commission for Human Rights, adopted on 10 July 1991).

42. Based on the case files, the Court notes that the reasoning provided by the Judgment of the Supreme Court is clear, and after reviewing all of the proceedings, the Court also found that the regular court proceedings were in no way unfair or arbitrary (See *mutatis mutandis,* Shub v. Lithuania, No. 17064/06, ECtHR decision of 30 June 2009).

43. Furthermore, the Supreme Court in its judgment finds, that [...]"*From the case files and the factual description of the criminal offence it results that the actions of the defendant meet the elements set by provisions of Article 165 paragraph 1 of CLK, while these actions resulted with the death of a person, the offence was qualified in compliance with provisions of Article 171 paragraph 5 of the CLK, therefore qualifying it as a criminal offence can't be put in doubt by anything."*

44. For the foregoing reasons, the Court considers that the facts presented by the Applicant have in no way justified the allegation of violation of constitutional rights, and that the Applicant has

failed to sufficiently prove such allegations, on how and why the mentioned judgments have violated his rights guaranteed by the Constitution.

Request for interim measure

45. The Applicant requires from the Court *"to render a decision TO ALLOW the interim measure until the time of retrial, so that the applicant will not be based on beginning of serving the sentence"*

46. *In relation to such a request for interim measure, the Applicant claims that: [...]* "The request for allowance of an interim measure is reasonable and based on the fact that now after the finalization of all procedures before the regular courts, it is expected that very soon the applicant starts serving the sentence."

47. In order that the Court allow an interim measure, in accordance with Rule 55 (4) of the Rules of Procedure, it needs to determine 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.*
>
> *(...)*
>
> *If the party requesting interim measures has not made this necessary showing, the Review Panel shall recommend denying the application".*

48. As concluded above, the Referral is inadmissible, and therefore, there is no *prima facie* case for imposing an interim measure and for these reasons, the request for an interim measure is manifestly ill-founded.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 27 of the Law, and Rules 36 (2), b) and d), and 55 (4) of the Rules of Procedure, on 26 February 2014 , unanimously:

DECIDES

I. TO DECLARE the Referral as Inadmissible;

II. TO REJECT the Request for Interim Measures;

III. TO NOTIFY this Decision to the Parties;

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

V. TO DECLARE this Decision effective immediately

Judge Rapporteur
Arta Rama-Hajrizi

President of the Constitutional Court
Prof. Dr. Enver Hasani

KI23/14, Social Sports Culturaland Economic Center, Resolution of 10 February 2014 - Constitutional Review of the Judgments of the Special Chamber of the Supreme Court, ASC-09-0101 and ASC-09-0084, of 13 September 2012

Case KI 23/14, decision of 10 February 2014

Key words: individual referral, violation of constitutional rights and freedoms, Articles 24, 31, 32, and 41, request for interim measure, inadmissible referral.

The Applicant filed its Referral based on Article 113.7 of the Constitution of Kosovo, claiming that its constitutional rights and freedoms have been violated by the judgments of regular courts of all instances. The Applicant states that the regular courts of all instances have violated its rights and freedoms guaranteed by Article 24 [Equality Before the Law], Article 31 [Right to Fair and Impartial Trial], Article 32 [Right to Legal Remedies], and Article 41 [Right of Access to Public Documents]

The Applicant requests the constitutional review of the Judgments of the SCSC, ASC--09-0101 and ASC-09-0084, of 13 September 2012. By the abovementioned judgments, the SCSC ordered the Applicant to compensate the material damages of sixteen claimants caused by a fire at the premises of the Applicant in Prishtina. In addition, the Applicant requests from the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) to impose an interim measure suspending the execution of the Judgments of the SCSC until a decision is rendered by the Court.

The concludes that the referral is out of time and recalls that the four (4) month legal deadline, under Article 49 of the Law and Rule 36 (1) of the Rules of Procedure is to promote legal certainty, by insuring that the cases raising issues under the Constitution are dealt within a reasonable time and that past decisions are not continually open to challenge.

As regards the request for interim measure, the Court found that it was inadmissible, reasoning that there is no *prima facie* case for imposing an interim measure, therefore the request was rejected. Due to the reasons mentioned above, the Court decided to reject the Referral of the Applicant as inadmissible.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI23/14
Applicant
Social Sports, Culturaland Economic Center
Review of the Judgments of the Special Chamber of the Supreme Court, ASC-09-0101 and ASC-09-0084, dated 13 September 2012

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

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

Applicant

1. The Applicant is the Social Sports, Cultural and Economic Center in Prishtina hereinafter: (the Applicant) represented by the Acting Director, Mr. Bajram Uka

Challenged decision

2. The Applicant challenges the Judgments of the Special Chamber of the Supreme Court (hereinafter: the SCSC), ASC-09-0101 and ASC-09-0084, dated 13 September 2012, which were served upon the Applicant on 28 September 2012.

Subject matter

3. The subject matter is the request for constitutional review of the Judgments of the SCSC, ASC-09-0101 and ASC-09-0084, of 13 September 2012. The above-mentioned judgments of the SCSC ordered the Applicant to compensate the material damages of

sixteen claimants caused by a fire at the premises of the Applicant in Prishtina.

4. In addition, the Applicant requests from the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) to impose an interim measure suspending the execution of the Judgments of the SCSC until a decision is rendered by the Court.

Legal basis

5. The Referral is based upon Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), Articles 27 and 47 of the Law No. 121/03 on the Constitutional Court of the Republic of Kosovo (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 7 February 2014, the Applicant filed a referral with the Court.

7. On 7 February 2014, the President, by Decision GJR.KI23/14, appointed Judge Snezhana Botusharova as the Judge Rapporteur. On the same date, the President, by Decision KSH. KI23/14, appointed the Review Panel composed of judges: Almiro Rodrigues (Presiding), Ivan Cukalovic and Enver Hasani.

8. On 7 February 2014, the Constitutional Court notified the Applicant of the registration of the referral.

9. On 10 February 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

10. On 25 February 2000, a fire occurred at the premises of the Applicant (Social Sports, Cultural and Economic Center) in Prishtina.

11. Between 2004 and 2005, sixteen (16) claimants lodged their claims with the SCSC seeking damages from the Applicant, for the goods that were inside the warehouses they rented, which were destroyed by the fire.

12. On 13 September 2012, according to the Judgments of the Appellate Panel of the SCSC (ASC-09-0101 and ASC-09-0084) *"on 18 August 2006 the SCSC (Judgments nos. unknown), issued individual verdicts in these case by declaring in principle the first defendant liable for damages that the claimants have suffered and further decided that a liquidation commission will be appointed by the Kosovo Trust Agency who will determine the final amount of damages suffered by the claimants."*

13. Furthermore, the Appellate Panel held that *"On 7 September 2007, the SCSC was notified that the liquidation commission has never been appointed and based on the request of the claimants it was decided that an expert will be appointed to assess the amount of the damages, followed by supplementary Judgments in each case."*

14. On 18 February 2009, the Privatization Agency expressed the intention to join the lawsuit on the Applicant's side before the SCSC.

15. On 15 October 2009, the Trial Panel of the SCSC in the joint cases of five (5) claimants (SCC-05-0080, SCC-06-0029, SCC-06-0470, SCC-06-0482 and SCC-06-0524), ordered the Applicant to pay compensation for material damages.

16. On 29 October 2009, the Trial Panel of the SCSC in the joint cases of eleven (11) claimants (SCC-04-0011, SCC-04-0012, SCC-04-0098, SCC-04-0116, SCC-04-0121, SCC-04-0199, SCC-04-0028, SCC-05-0067, SCC-05-0072 and SCC-05-0073) ordered the Applicant to pay compensation for material damages.

17. The Trial Panel of the SCSC in their Judgments decided *"to treat the lawsuit of the PAK as a counter-lawsuit. It further rejected the lawsuit as ungrounded."*

18. The Applicant filed an appeal against these Judgments of the Trial Panel of the Special Chambers, thereby claiming that the aforementioned Judgments contained substantial violations of the Law on Contested Procedure. The Applicant also complained of erroneous and incomplete determination of the factual situation.

19. On 18 September 2012, the Appellate Panel of the SCSC (Judgments ASC-09-0101 and ASC-09-0084) partially approved the appeal submitted by the Applicant, and the Judgments of the

Trial Panel dated 15 October and 29 October 2012 were modified in the way that the amount that the Applicant was ordered to pay was lowered.

20. The SCSC found that:

> *[…]*
>
> *"At the time when the fire occurred there were no specialized companies to offer insurance of goods in Kosovo and such companies were created only after 5 October 2001 when UNMIK Regulation No. 2001/25 was promulgated. The responsibility of the Social Sports, Cultural and Economic Center in Prishtina is therefore intact even though the Claimants did not insure the goods in accordance with the contract.*
>
> *Pursuant to the first paragraph of Article 376.2 of the Law on Obligations, a claim for damages for loss caused shall expire three years after the party sustaining injury or loss became aware of the injury and loss and of the tort-feasor. As at the time of the fire it was unclear who the tort-feasor was, it is reasonable instead to use the general time limit of five years as stipulated in the second paragraph".*

21. On 18 October 2012, the Applicant, claiming erroneous application of substantive law in the Judgments of the Appellate Court (ASC-09-0101 and ASC-09) filed a request for revision with the SCSC. However, according to the Applicant this request has still not been forwarded to the Supreme Court for consideration.

Applicant's allegations

22. The Applicant alleges that the Judgments of the SCSC, have violated itit rights guaranteed by the Constitution, namely Article 24 [Equality Before the Law] in conjunction with Article 7 of the European Convention for Human Rights (hereinafter: ECHR), Article 31 [Right to Fair and Impartial Trial] in conjunction with Article 6 and 13 of the ECHR, Article 32 [Right to Legal Remedies] in conjunction with Article 8 of the ECHR and Article 41 [Right of Access to Public Documents].

23. In this regard, the Applicant alleges that:

[…]

"he was denied the right of access to public documents because he was not allowed to submit before the Special Chamber the Police Report which states that the fire was accidental and that the cause of the accident is still yet unknown"

[…]

"that the Special Chamber of the Supreme Court by not submitting the request for revision to the Supreme Court is preventing the Applicant to exhaust all legal remedies and thus has violated the Law on Contested Procedure, The Law on the Special Chamber of the Supreme Court. The Law on Obligations, and Article 21 and 22 of the Law on Courts for the reasons that the Supreme Court has the exclusive authority to deal with extraordinary remedies submitted against the decisions of regular courts."

Assessment of admissibility of the Referral

24. The Court observes that, in order to be able to adjudicate the Applicants 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.

25. 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 (…)."

26. 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 …".

27. Under these circumstances, the Court notes that the Judgments that are challenged by the Applicant are dated 13 September 2012, served on the Applicant on 28 September 2012, whereas the Referral was submitted on 7 February 2014, when it should have been submitted no later than 28 January 2013.

28. Thus the Court considers that 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 one year and a half after the date of service of the challenged decisions.

29. Therefore, the Court concludes that the referral is out of time.

30. The Court recalls that 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, ECtHR, Decision of 25 August 2005).

31. In relation to the allegation made by the Applicant regarding the attempt to "exhaust all legal remedies" and that this request for revision is being held by the SCSC the Court notes that Article 10 paragraph 14 of the Law on the Special Chamber of the Supreme Court which stipulates *that "All Judgments and Decisions of the appellate panel are final and not subject to any further appeal."* Thus the Applicant could have submitted the referral before the Constitutional Court within four months from the date on which the Judgments of the Appellate Panel of the SCSC were served to it.

Request for Interim Measure

32. The Applicant request from the Court *"to render a decision granting the interim measure until the Constitutionality Review of Judgments ASC-09-0101 and ASC-09-0084, dated 13 September 2012, by the Constitutional Court in order to avoid the Applicant to pay the compensation amounting 2.770.000 plus the specified interest as the amount is extremely high and unbearable taking into account that the Basic Court in Prishtina has issued Order E.nr.341/2013, dated 31 January 2014, on the execution of the Judgments of the SCSC."*

33. Furthermore, the Applicant claims that *"the execution of the above mentioned Judgments will cause financial hardship for the Applicant and possibly cause the privatization of the enterprise if an interim measure is not granted."*

34. In that respect, the Court refers to Rule 55(4) of the Rules of Procedure, which foresees 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.*
> *(...)*
> *If the party requesting interim measures has not made this necessary showing, the Review Panel shall recommend denying the application."*

35. As concluded above, the Referral is inadmissible. Consequently, there is no *prima facie* case for imposing an interim measure. Therefore, the request for an interim measure is rejected.

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 55 (5) of the Rules of Procedure, on 10 February 2014, unanimously

DECIDES

I. TO DECLARE the Referral as Inadmissible;

II. TO REJECT the request for an Interim Measure

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

IV. This Decision is effective immediately.

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

KI158/13, Prend Prenkpalaj, Resolution of 23 Jnuary 2014 - Constitutional Review of the Decision, P. nr. 13/09, of the Municipal Court of Prizren, of 16 April 2010

Case KI158/13, decision of 23 January 2014

Key words: individual referral, individual rights and freedoms, out of time referral

The Applicant filed Referral based on Article 113.7 of the Constitution of Kosovo, by alleging that by Judgment P. no. 13/09, of the Municipal Court in Prizren, were violated his rights guaranteed by the Constitution, without specifying what right has been violated to him.

Based on the case file, the Court held that the Applicant filed his Referral on 14 October 2013, while the last decision, Ap. no. 102/2010, the District Court in Prizren, was served upon him on 6 November 2010. The Applicant submitted his Referral after the expiry of the time limit prescribed by Article 49 of the Law and Rule 36 (1) b) of the Rules of Procedure. As such, the Referral was declared inadmissible by the Court, due to non-compliance with the deadlines for challenging the decisions of public authorities.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI158/13
Applicant
Prend Prenkpalaj
Constitutional Review of the Decision, P. nr. 13/09, of the Municipal Court of Prizren, dated 16 April 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 Referral is submitted by Mr. Prend Prenkpalaj (hereinafter: the "Applicant"), residing in village Zym, Municipality of Prizren.

Challenged decision

2. The Applicant challenges the Decision, P. nr. 13/09, of the Municipal Court in Prizren, dated 16 April 2010, which was served on the Applicant on 28 April 2010.

Subject matter

3. The Applicant requests the constitutional review of the Decision, P. nr. 13/09, of the Municipal Court in Prizren, which allegedly violates his human rights as guaranteed by the Constitution. However the Applicant did not specify which constitutional provision has allegedly been violated, but only stated that *"The right of the party to receive a just decision within a reasonable time has been violated, because the accused party in this*

particular case has not been punished because the case was not addressed in time by the institution."

Legal basis

4. The Referral is based on Article 113.7 of the Constitution, Article 47 of the Law, No. 03/L-121, on the Constitutional Court of the Republic of Kosovo of 15 January 2009 (hereinafter: the "Law") and Rule 56 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the "Rules of Procedure").

Proceedings before the Court

5. On 14 October 2013, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the "Court").

6. On 4 November 2013, the President of the Constitutional Court appointed Judge Snezhana Botusharova as Judge Rapporteur and the Review Panel composed of Robert Carolan (Presiding), Almiro Rodrigues and Enver Hasani.

7. On 4 November 2013, the Applicant was notified of the registration of the Referral.

8. On 14 November 2013 the Applicant was asked to supply additional documents to the Court, which were mentioned in the referral, but not attached to it.

9. On 21 November 2013, the Court received the requested documents from the Applicant.

10. On 23 January 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 17 October 2008, judge V. D. from the Municipal Court in Prizren rendered the decision P. nr. 1096/02 on suspension of criminal proceedings initiated by the Applicant against P. P., N. P.

and Xh. P., who were joint defendants charged with the crime of grave injury against the Applicant.

12. In its decision, judge V. D. from the Municipal Court of Prizren stated that *"According to the provisions of Article 95 paragraph 1.4 of Law on Criminal Procedure, for this type of crime is foreseen a relative prescription..."*

13. On 08 January 2009 a review panel composed of three judges from the Municipal Court in Prizren decided on the appeal of the Applicant as an injured party filed against the decision P. nr. 1096/02, and rendered decision Kp. Nr. 66/08 approving the appeal of the Applicant as grounded and returned the case for retrial.

14. On 25 August 2009, judge V. D. from the Municipal Court in Prizren decided on the case rendering decision P. nr. 13/09, which is identical with the previous decision P. nr. 1096/02.

15. On an unspecified date during 2009, the Applicant filed an appeal with the District Court in Prizren against the decision of Municipal Court in Prizren P. nr. 13/09, alleging *"violations of provisions of criminal law"*. Similarly, the Municipal Public Prosecutor filed an appeal against the same decision of the Municipal Court, alleging *"erroneous verification of the factual situation and violation of criminal law provisions"*.

16. On 15 October 2009, District Court in Prizren adopted decision Ap. nr. 125/2009, which rejected the appeal of Municipal Public Prosecutor as ungrounded and dismissed the appeal of the Applicant as not allowed.

17. On an unspecified date, the Applicant submitted to the Supreme Court a request for the protection of legality, alleging "*essential violations of the provisions of criminal procedure, and erroneous application of material law"*

18. On 16 April 2010, the Municipal Court in Prizren rendered the decision P. nr. 13/09, rejecting as not allowed the request of the Applicant for protection of legality.

19. The Municipal Court in its decision explained that *"The Supreme Court of the Republic of Kosovo has forwarded the request for the protection of legality submitted by the injured party Prend*

Prenkpalaj, to the Municipal Court, for further proceeding based on its competence." [...] "*The court finds that the injured party, Prend Prenkpalaj is unauthorized party for initiating the protection of legality. Pursuant to Article 452 Para 1 of the Code of Criminal Procedure of Kosovo, the request for protection of legality can be submitted by Public Prosecutor of Kosovo, the defendant and his representative...*"

20. On an unspecified date the Applicant filed an appeal with the District Court in Prizren against decision P. nr. 13/09 of the Municipal Court in Prizren.

21. On 22 October 2010 the District Court adopted decision Ap. Nr. 102/2010, rejecting the appeal as ungrounded.

Applicant's allegations

22. The Applicant alleges that the *"The right of the party to receive a just decision within a reasonable time has been violated, because the accused party in this particular case has not been punished because the case was not addressed in time by the institution."*

Preliminary Assessment on the Admissibility of the Referral

23. The Court notes that to be able to adjudicate upon the Applicant's complaint, 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.

24. In this regard, the Court refers to the Article 113.7 of the Constitution, which provides that:

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

25. The Court also notes the 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 (...)".

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

"(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...".

27. Based on the case file, the Court finds that the Applicant filed his referral on 14 October 2013, while the last decision Ap. Nr. 102/2010 of the District Court in Prizren was served upon him on 06 November 2010. The Applicant filed his referral with the Court after the expiry of the time limit prescribed by Article 49 of the Law, and Rule 36 (1) b) of the Rules of Procedure.

28. Notwithstanding the fact that the Applicant in his Referral expressly challenges Decision, P. nr. 13/09, of the Municipal Court in Prizren, dated 16 April 2010, the Court notes that the Applicant challenged that Decision at the District Court in Prizren, from where he received Decision Ap. Nr. 102/2010. The Court considers this to be the last decision and as the date from when the deadline of 4 months starts running.

29. 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 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, ECtHR, Decision of 25 August 2005).

30. Therefore, the Court concludes that the Referral has been filed out of time.

FOR THESE REASONS

Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 20 of the Law, Rule 36 (1) b) and Rule 56 (2) 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

III. TO PUBLISH the 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**
Snezhana Botusharova	Prof. Dr. Enver Hasani

KI65/12, Fuad Gjakova, Resolution of 2 December 2013 - Constitutional Review of the Decision Ac.no. 246/2011, of the District Court in Peja, of 5 July 2011

Case KI65/12, decision of 2 December 2013.

Key words: Individual Referral, out of time.

The Applicant claims that he has been dismissed from work "without any reason" and thus he should be reinstated to his previous position. In addition, the Applicant requests compensation of his salary from the time of his dismissal until his return.

The Applicant, filed the Referral with the Court on 3 July 2012, which means that the Referral was submitted after the deadline of four (4) month period, provided by Article 49 of the Law and the Rule 36 (1) b) of the Rules of Procedure. It follows that the Referral is out of time.

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 2 December 2013, unanimously declares the Referral inadmissible as out of time.

RESOLUTION ON INADMISSIBILITY

in
Case No. KI65/12
Applicant
Fuad Gjakova
Constitutional Review of the Decision of the District Court in Peja Ac.no. 246/2011 dated 5 July 2011

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

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

Applicants

1. The Referral was submitted by Mr. Fuad Gjakova (hereinafter: the "Applicant"), residing in Peja.

Challenged decisions

2. The Applicant challenges the Decision, Ac.no. 246/2011 of the District Court in Peja, dated of 5 July 2011, which was served on him on 28 July 2011.

Subject matter

3. The subject matter is the constitutional review of the challenged Decision, which allegedly "is wrongful and unfair".

4. The Applicant does not specify any constitutional provisions.

Legal basis

5. 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 of 15 January 2009 (hereinafter: the "Law") and Rule 56 (2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the "Rules of Procedure").

Proceedings before the Court

6. On 6 July 2012, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).

7. On 4 September 2012, the President of the Constitutional Court, with Decision No. GJR. KI65/12, appointed Judge Altay Suroy as Judge Rapporteur. On the same date, the President of the Constitutional Court, with Decision No. KSH. KI65/12, appointed the Review Panel composed of Judges Ivan Čukalović (Presiding), Kadri Kryeziu and Arta Rama-Hajrizi.

8. On 5 June 2013, the Court of Appeal was notified of the Referral.

9. On 2 December 2013, after having considered the report of Judge Rapporteur, the Review Panel made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

10. The applicant was in an employment relationship with the Kosovo Energy Corporation (hereinafter, KEK) as a foreman in the Disconnection Network Division.

11. On 14 January 2008 KEK – Manager of the Network Unit in Peja (Decision No.33) temporarily suspended the Applicant because of his refusal to complete task assigned to him. The Applicant filed an appeal to the Disciplinary Committee.

12. On 28 January 2008, the Disciplinary Committee of second instance (Decision no.476) rejected the complaint submitted by the Applicant as unfounded. In addition an oral hearing was scheduled on 28 March 2008.

13. On 28 March 2008, the Disciplinary Committee of the Network Unit in Peja (Decision no.361) terminated the working relationship of the Applicant immediately after the final decision becomes final.

The Applicant filed a complaint against this decision to the Disciplinary Committee of second instance.

14. On 3 April 2008, the Disciplinary Committee of second instance (Decision no.1932) rejected the complaint submitted by the Applicant as unfounded.

15. On 23 April 2008, following the final decision of the Disciplinary Committee of second instance, the Applicant is notified his working relationship is terminated.

16. On 8 April 2008, the Applicant filed a claim for the right to work with the Municipal Court in Peja.

17. On 1 September 2009, the Municipal Court in Peja (Decision C.no. 183/09) approved the complaint as founded and obliged KEK to reinstate the Applicant to his previous position. KEK filed a complaint with the District Court in Peja against the decision of the Municipal Court

18. On 9 February 2010, the District Court in Peja (Decision Cano. 398/09) approved the complaint as founded. The District Court annulled the decision of the lower instance court and sent the case back for retrial to the first instance court.

19. On 18 May 2010, the Municipal Court in Peja (Decision C.no. 84/10) rejected the complaint as unfounded. The Applicant filed a complaint with the District Court in Peja against the decision of the Municipal Court.

20. On 28 May 2010, the District Court in Peja (Decision Ac.no.270/2010) rejected the complaint submitted by the Applicant as unfounded. The Applicant filed a request for revision against this decision.

Applicants' allegations

21. The Applicants claim that he has been dismissed from work *"without any reason"* and thus he should be returned to his previous position. In addition the Applicant requests compensation of his salary from the time of his dismissal until his return.

Assessment of the admissibility

22. 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.

23. 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 [...]"*.

24. The Court also refers to Rule 36 (1) b) of the Rules of Procedure reading: *"The Court may only deal with Referrals if the Referral is filed within four months from the date on which the decision on the last effective remedy was served on the Applicant"*.

25. In the present case, the Court notes that the final court decision for the Applicant is the Decision of the District Court in Peja Ac.No. 246/2011 dated 6 July 2011, which was served on him on 28 July 2011. The Applicant, filed the Referral with the Court on 3 July 2012, which means that the Referral was submitted after the deadline of four (4) month period, provided by Article 49 of the Law and the Rule 36.1 (b) of the Rules of Procedure. It follows 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 2 December 2013, 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

KI88/12, Emrije Asllani, Resolution of 2 December 2013 - Constitutional Review of the Notification of the State Prosecutor, Kzz. no. 65/09, of 29 April 2009

Case KI88/12, decision of 2 December 2013

Key words: individual referral, criminal case, denial of the right to a fair trial, out of time.

The Referral of the Applicant is based on Article 113.7 of the Constitution of Kosovo. The Applicant in the referral specifically challenges the Decision of the Municipal Court in Prizren, stating that his right to a fair trial was denied. However, the final decision in this case is the Notification of the State Prosecutor, Kzz.no. 65/09, dated 29 April 2009.

The Applicant did not mention or specify any legal provisions, which has been allegedly violated.

The Applicant was an injured party in the proceedings against A. L. where she alleges “that everything was done in favour of A. L.” and thus requests that the case be sent back for retrial before the first instance court".

As regards the admissibility of the Referral, which was submitted by the Applicant, the Constitutional Court, pursuant to Article 49 of the Law on Constitutional Court and Rule 36, item 1 (b) of the Rules of Procedure ascertained that the Referral is to be rejected as out of time because the Applicant did not respect the time limit for submitting the referral, which, pursuant to the above mentioned Articles, is 4 months. Based on what is stated above, the Court decided to reject the Referral of the Applicant as inadmissible.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI88/12
Applicant
Emrije Asllani
Constitutional Review of the Notification of the State Prosecutor,
Kzz. no. 65/09 dated 29 April 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 Ms Emrije Asllani (hereinafter: the "Applicant"), residing in Recan.

Challenged decision

2. The Applicant in the referral specifically challenges the Decision of the Municipal Court in Prizren K. no. 130/06 dated 17 March 2008 C. no. 215/06 March 2008 and Decision of the District Court in Prizren Kz. no. 71/98 dated 13 October 2008, which were received by the Applicant on an unspecified date.

3. However, the final decision in this case is the Notification of the State Prosecutor, Kzz. no. 65/09 dated 29 April 2009.

Subject matter

4. The subject matter is the constitutional review of the challenged Decision which allegedly denies the applicant the right to a fair trial.
5. The Applicant does not specify any constitutional provisions.

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 of 15 January 2009 (hereinafter: the "Law") and Rule 56 (2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the "Rules of Procedure").

Proceedings before the Court

7. On 2 October 2012, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).

8. On 2 November 2012, the President of the Constitutional Court, with Decision No. GJR. KI88/12, appointed Judge Altay Suroy as Judge Rapporteur. On the same date, the President of the Constitutional Court, with Decision No. KSH. KI88/12, appointed the Review Panel composed of Judges Snezhana Botusharova (Presiding), Ivan Čukalović and Arta Rama-Hajrizi.

9. On 2 December 2013, after having considered the report of Judge Rapporteur, the Review Panel made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

10. The applicant was and injured party in the case against A. L.

11. On 17 March 2008 the Municipal Court in Prizren (Judgment P. no. 130/2006) found A. L. guilty of the Criminal Offence "causing light bodily harm" as per Article 153.2 of the CCK.

12. On 13 October 2008 the District Court in Prizren (Judgment Kz. no. 71/2008) amended the Judgment of the Municipal Court dated 17 March 2008 thereby rejecting the claim against A. L. The Applicant as an injured party submitted a request for the

protection of legality.

13. On 22 January 2009, the Municipal Court in Prizren (Decision K. no. 130/06) rejected the request for protection of legality submitted by the Applicant. The Applicant filed a complaint against this decision to the District Court in Prizren.

14. On 25 March 2009, the District Court in Prizren (Decision Kz. no. 22/09) approved the complaint of the Applicant and quashed decision of the Municipal Court in Prizren, K. no. 130/06 dated 2009 *"ordering the first instance court to send the case file to the Kosovo Public Prosecutor in Prishtina, as an authorized and competent authority to decide requests for protection of legality"*

15. On 29 April 2009, the State Prosecutor notified the Applicant (Kzz. no. 65/09) it will not file a request for the protection of legality as there are "no legal grounds for filing such request".

Applicants' allegations

16. The Applicant was an injured party in the proceedings against A. L. where she alleges "*that everything was done in favour of A. L. and thus requests that the case is sent back for retrial before the first instance court".*

17. The Applicant does not invoke any constitutional provision in particular.

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. 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 […]"* .

20. The Court also refers to Rule 36 (1) b) of the Rules of Procedure reading: *"The Court may only deal with Referrals if the Referral is*

filed within four months from the date on which the decision on the last effective remedy was served on the Applicant".

21. In the present case, the Court notes that the final decision for the Applicant is the decision of the District Court in Prizren Kz. no. 22/09) dated 25 March 2009 in followed by the notification of the State Prosecutor dated 20 April 2009. The Applicant, filed the Referral with the Court on 2 October 2013, which means that the Referral was submitted after the deadline of four (4) month period, provided by Article 49 of the Law and the Rule 36.1 (b) of the Rules of Procedure. 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 2 December 2013, 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

KI117/12/A, K119/12/A, KI121/12/A, KI138/12, Nexhmije Brezhnica, Fatmire Bardhi, Feriha Shala, Rifat Sadiku, Resolution of 19 November 2013 - Constitutional Review of the Decision of the District Court in Mitrovica Ac. no. 130/12 dated 17 September 2012, Ac. no. 1070/2012, of 2 May 2013, Ac. no. 138/12 dated 9 July 2012, Ac. no. 1068/2012, of 2 May 2013

Cases KI117/12/A, K119/12/A, KI121/12/A, KI138/12, decision of 19 December 2013

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
in
Cases No.
KI117/12/A, K119/12/A, KI121/12/A, KI138/12
Applicant
Nexhmije Brezhnica, Fatmire Bardhi, Feriha Shala, Rifat Sadiku
Constitutional Review of the Decision of the District Court in Mitrovica Ac. no. 130/12 dated 17 September 2012, Ac. no. 1070/2012 dated 2 May 2013, Ac. no. 138/12 dated 9 July 2012, Ac. no. 1068/2012 dated 2 May 2013

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

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

Applicants

1. The Referrals were submitted by the following Applicants:
KI117/12/A Nexhmije Salihu Brezhnica residing in Mitrovca
KI119/12/A Fatmire Bardhi residing in Vushtrri
KI121/12/A Feriha Shala residing in Vushtrri
KI138/12 Rifat Sadiku residing in Vushtrri

Challenged decisions

2. The Applicants in the referral specifically challenge the collective 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 decisions in these cases are the following decisions of the District Court in Mitrovica as listed below.

   a. KI117/12/A, Nexhmije S. Brezhnica Ac. nr. 130/12 dated 17 September 2012, which was received by the Applicant on an unspecified date;

   b. KI119/12/A, Fatmire Bardhi Ac. Nr. 1070/2012 dated 2 May 2013, which was received by the Applicant on an unspecified date;

   c. KI121/12/A, Feriha Shala Ac. nr. 138/12 dated 9 July 2012, which was received by the Applicant on an unspecified date;

   d. KI138/12, Rifat Sadiku Ac. nr. 1068/2012 dated 2 May 2013, which was 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 Referral is 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 of 15 January 2009 (hereinafter: the "Law") and Rule 56 (2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the "Rules of Procedure").

Proceedings before the Court

7. The Applicants have submitted their referrals on 20 November 2012, 21 November 2012, 23 November 2012 and 31 December 2012

8. On 6 December 2012, 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, with Decision No. KSH. KI117/12, appointed the Review Panel composed of Judges Snezhana Botusharova (Presiding), Ivan Čukalović and Arta Rama-Hajrizi.

9. On 19 April 2013, the Referral was communicated to the Basic Court in Vushtrri (hereinafter: Basic Court).

10. On 17 October 2013, the Basic Court in Vushtrri submitted to the Court the Decisions of the Municipal Court in Vushtrri and District Court in Mitrovica which were not initially submitted by the Applicants.

11. On 31 October 2013, the Court notified the Applicants regarding the submitted documents by the Basic Court in Vushtrri.

12. On the same date, in compliance with Rule 37 of the Rules of Procedure, the Court informed the Applicants on the joinder of referrals.

13. The Applicants have not filed any objection against the decision on the joinder of referrals.

14. On 18 November 2013, 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

15. The applicants were employed as workers of the Socially Owned Enterprise “Cyqavica” until the year 1992.

16. According to the documents submitted, based on the collective Judgment of the Municipal Court in Vushtrri C 215/05 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.

17. The Applicant 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.

18. On 29 September 2006, the Municipal Court in Vushtrri decided on the execution of the Judgment C.no.215/05 dated 3 July 2006

(e.g the Decision E.no.206/08 dated 12 February 2008 in the case of the first Applicant Nexhmije Salihu Brezhnica). 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.

19. However, on 21 August 2008, the Municipal Court in Vushtrri rendered each applicant a decision to cancel the Execution procedure (e.g Decision E.no.762/06 dated 29 September 2006 in the case of the first Applicant Nexhmije Salihu Brezhnica).

20. 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".*

21. Against the decision of the Municipal Court in Vushttri (e.g the Decision E.nr.206/08 dated 12 February 2008 in the case of the first Applicant Nexhmije Salihu Brezhnica) the Applicants filed an appeal with the District Court in Mitrovica.

22. The District Court in Mitrovica rejected the appeal of the Applicants' and upheld the decisions of the Municipal Court (e.g Decision Ac.nr.130/12 dated 17 September 2012 in the case of the first Applicant Nexhmije Salihu Brezhnica). 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

23. The Applicants claim that they have worked in the SOE "Cyqavica" in Vushtrri until year 1991 whereby Serbian forces coercively removed them from work and discriminated them.

24. The Applicants allege that their rights guaranteed by the Constitution were violated because they are entitled to a share of proceed 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 Prvisions] and 54 [Judicial Protection of Rights] of the Constitution.

Assessment of the admissibility

25. 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.

26. In this respect, the Court refers to Rule 36.1.c of the Rules of Procedure which foresees that *"The Court may only deal with Referrals if (...) the Referral is not manifestly ill-founded."*

27. 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 regular court, unless and in so far as they may have infringed rights and freedoms protected by the Constitution (constitutionality). Thus, this Court is not to act as a court of fourth instance, when considering the decisions taken by the regular courts. It is the role of regular courts to interpret and apply the pertinent rules of both procedural and substantive law (see, mutatis mutandis, García Ruiz v. Spain [GC], no. 30544/96, para. 28, European Court on Human Rights [ECHR] 1999-I).

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

29. 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.

30. The Court notes that the District Court in Mitrovica sufficiently reasoned its Decision to reject the appeal of the Applicant referring to the UNMIK Regulation 2002/13 regarding the jurisdictional competence of the Special Chamber over Socially Owned Enterprises administered by the Kosovo Privatization Agency. 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).

31. Moreover, with reference to cases adjudicated by the Court regarding suspension of the execution procedure, specifically with reference to the case No. KI 08/09, Independent Union of Workers of IMK Steel Factory in Ferizaj, Judgment of 17 December 2010, the Court considers that based on the documents submitted and completed proceedings, this Referral differs from the aforementioned case for the following reason: The Municipal Court with its Decisions decided to cancel the execution procedure, due to the fact that the SOE "Cyqavica" in Vushtrri is under the Jurisdiction of the Privatization Agency of Kosovo. As said above the SOE in accordance with the aforementioned legislation are exclusive jurisdictional competence of the Special Chamber.

32. Furthermore, the Court reiterates that the Applicants are 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.

33. 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).

34. In sum, the Applicants did not show why and how their rights as guaranteed by the Constitution have been violated. A mere statement that the Constitution has been violated cannot be considered as a constitutional complaint. Thus, pursuant to Rule

36.1.c of the Rules of Procedure, the Referral is manifestly ill-founded and therefore it is inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Rules 36 (1) a) and 56 (2) of the Rules of Procedure, on 19 November 2013, 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

KI11/12, Zef Lekaj, Resolution of 3 December 2013 - Constitutional Review of the Decision Rev. no. 235/08, of the Supreme Court of Kosovo, of 5 September 2011

Case KI11/12, decision of 3 December 2013

Key words: Individual Referral, manifestly ill-founded.

The Applicant claims that he has worked in the SOE "EEK" for 25 years until 1991 and that "the allegations for using work tools contrary to the normative acts and obstructing other employees is a pure fact of discrimination against him and all other Albanian employees in general".

The Applicant alleges that the "Decisions of the Municipal Court in Prishtina, District Court in Prishtina and the Supreme Court of Kosovo present a failure of equality and the right to a fair and impartial trial". The Applicant refers to Article 24 [Equality before the Law] and 31 [Right to Fair and Impartial Trial] of the Constitution.

The Court notes that the Applicant did not substantiate a claim on constitutional grounds and did not provide evidence that his fundamental rights and freedoms have been violated by the regular courts.

Thus, pursuant to Rule 36 (1) c) of the Rules of Procedure, on 3 December 2013, the Referral is manifestly ill-founded and therefore, it is inadmissible.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI11/12
Applicant
Zef Lekaj
Constitutional Review of the Decision of the Supreme Court of Kosovo Rev. no. 235/08 dated 5 September 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. Zef Lekaj (hereinafter: the "Applicant"), residing in Prishtina, who is represented by Mr. Gani Tigani, a practicing lawyer from Prishtina.

Challenged decision

2. The Applicant challenges the Judgment of the Supreme Court, Rev. no.235/2008, dated of 5 September 2011, which was served on him on 7 October 2011.

Subject matter

3. The subject matter is the constitutional review of the challenged Decision which allegedly "is a failure of equality and the right to a fair and impartial trial"

4. In this respect, the Applicant claims that Articles 21 [General Principles], 24 [Equality Before the Law] and 31 [Right to Fair and Impartial Trial], of the Constitution were violated.

Legal basis

5. The Referral is 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 of 15 January 2009 (hereinafter: the "Law") and Rule 56 (2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the "Rules of Procedure").

Proceedings before the Court

6. On 6 February 2012, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter, the "Court").

7. On 7 February 2012, the President of the Constitutional Court, with Decision No. GJR. KI11/12, appointed Judge Kadri Kryeziu as Judge Rapporteur. On 10 October 2013, the President of the Constitutional Court, with Decision No. KSH. KI11/12, appointed the new Review Panel composed of Judges Robert Carolan (Presiding), Ivan Čukalović and Enver Hasani after the term of office of Judge Iliriana Islami as Judge of the Court had ended.

8. On 5 June 2013, the Supreme Court was notified of the Referral.

9. On 3 December 2013, after having considered the report of Judge Rapporteur, the Review Panel made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

10. The applicant was in an employment relationship with the SOE "Electro-Economy of Kosovo" (hereinafter, EEK- now known as KEK) as a Dental Specialist in Prosthetics until the year 1991.

11. On 20 November 1991, the EEK notified the Applicant that his working relationship is terminated as of 21 November 1991 because of *"the usage of tools contrary to the normative act and for the obstruction of the other employees in completing their duties"*.

12. On 4 December 1991, the applicant submitted a complaint against this decision to the Temporary Authority of SOE "EEK" however the Applicant did not receive any reply to his complaint and thus submitted a claim to the Municipal Court in Prishtina.

13. On 22 November 1994, the Municipal Court in Prishtina (Decision C1. No. 2734/92) approved the complaint of the Applicant quashed decision no. 5590 dated 14 November 1991. The SOE "EEK" filed a complaint against this decision to the District Court in Prishtina.

14. On 29 September 1995, the District Court in Prishtina (Decision Ac. no. 394/95) rejected the complaint as unfounded and upheld the decision of the Municipal Court C1.no.2734/92 dated 22 November 1994. The SOE "EEK" filed a revision with the Supreme Court against the decision of the Municipal Court and District Court in Prishtina.

15. On 3 June 1996, the Supreme Court of Serbia (Decision Rv. 586/96) approved the revision as founded. The Supreme Court annulled the decisions of the lower courts and sent the case back for retrial to the first instance court.

16. On 4 February 2005, the Municipal Court (Decision C1. No. 46/03) rejected the complaint as unfounded. The Municipal Court held that *"the employment relationship was terminated pursuant to Article 2, paragraph 1 and 4 of the Law on amending and supplementing the law on Employment Relationship in special circumstances which was applicable in the concrete case"*. The Applicant filed a complaint against this decision to the District Court in Prishtina.

17. On 21 November 2007, the District Court in Prishtina (Ac. no. 359/05) rejected the complaint as unfounded. The District Court held *"the lower instance court has rightfully confirmed the factual state and has rightfully implemented the substantive law*." The Applicant filed a revision with the Supreme Court of Kosovo against the decision of the Municipal Court and District Court in Prishtina.

18. On 5 September 2011, the Supreme Court of Kosovo (Rev. no. 235/2008) rejected the revision of the Applicant as unfounded. The Supreme Court held *"the lower instance courts have confirmed the factual situation in a right and complete manner and as a result they have rightfully implanted the provisions of*

the contested procedure and substantive law. The lower instance courts rightfully rejected as unfounded the allegations of the Applicant that the termination of the employment relationship was unlawful pursuant to Article 2 paragraph 1 and 4 of the Law on the amending and supplementing of the Law on employment relationship in special circumstances, which was applicable at that time "

Applicants' allegations

19. The Applicants claim that he has worked in the SOE "EEK" for 25 years until the year 1991 and that *"the allegations for using work tools contrary to the normative acts and obstructing other employees is a pure fact of discrimination against him and all other Albanian employees in general"*.

20. The Applicant alleges that the *"Decisions of the Municipal Court in Prishtina, District Court in Prishtina and the Supreme Court of Kosovo present a failure of equality and the right to a fair and impartial trial"*. The applicant calls upon Article 24 [Equality before the Law] and 31 [Right to Fair and Impartial Trial] of the Constitution.

Assessment of the admissibility

21. 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.

22. In this respect, the Court refers to Rule 36.1.c of the Rules of Procedure which foresees that *"The Court may only deal with Referrals if (…) the Referral is not manifestly ill-founded."*

23. 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 regular court, unless and in so far as they may have infringed rights and freedoms protected by the Constitution (constitutionality). Thus, this Court is not to act as a court of fourth instance, when considering the decisions taken by the regular courts. It is the role of regular courts to interpret and apply the pertinent rules of both procedural and substantive law (see, *mutatis mutandis,* García Ruiz v. Spain [GC], no. 30544/96, para. 28, European Court on Human Rights [ECHR] 1999-I).

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

25. 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.

26. The Court notes that the Supreme Court of Kosovo provided the Applicant with a well reasoned judgment why the revision was rejected which explains why the termination of the employment relationship was not "*unlawful pursuant to Article 2 paragraph 1 and 4 of the Law on the amending and supplementing of the Law on employment relationship in special circumstances, which was applicable at that time*".

27. 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).

28. In sum, the Applicants did not show why and how their rights as guaranteed by the Constitution have been violated. A mere statement that the Constitution has been violated cannot be considered as a constitutional complaint. Thus, pursuant to Rule 36.1.c of the Rules of Procedure, the Referral is manifestly ill-founded and therefore it is inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Rules 36 (1) a) and 56 (2) of the Rules of Procedure, on 3 December 2013, 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**
Dr. Kadri Kryeziu	Prof. Dr. Enver Hasani

KI125/13, Mehmet Kahrimani, Resolution of 3 Devember 2013 - Constitutional Review of the decisions published by the Privatization Agency of Kosovo pertinent to the final lists of employees entitled to a share of proceeds from the privatization of the SOE "Ramiz Sadiku" and the SOE "Meto Bajraktari

Case KI125/13, decision of 3 December 2013

Key words: Individual Referral, property right, non-exhaustion of legal remedies.

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.

Furthermore, the Applicant asks the Court to change the PAK decision in relation to the lists of eligible employees, and to recognize his right to a share of proceeds from the privatization of the SOE "Ramiz Sadiku". The Applicant did not invoke any constitutional provision in particular.
Considering Applicant's allegations, the Court concluded that in the case at issue, the Applicant has not provided a final decision of a public authority within the view of Article 113.7 of the Constitution, and Article 47 of the Law.

It follows, that the Referral must be rejected as inadmissible due to non-exhaustion of all legal remedies as is prescribed by Article 113.7 of the Constitution, Article 47 of the Law and Rule 36 (1) a) of the Rules of Procedure .

RESOLUTION ON INADMISSIBILITY
in
Case No. KI125/13
Applicant
Mehmet Kahrimani
Constitutional Review of the decisions published by the Privatization Agency of Kosovo pertinent to the final lists of employees entitled to a share of proceeds from the privatization of the SOE "Ramiz Sadiku" and the SOE "Meto Bajraktari"

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. Mehmet Kahrimani (hereinafter "Applicant"), residing in Mitrovica.

Challenged decision

2. The Applicant challenges the decisions published by the Privatization Agency of Kosovo (hereinafter "PAK"), pertinent to the final lists of employees entitled to a share of proceeds from the privatization of the SOE "Ramiz Sadiku" Prishtina and the SOE "Meto Bajraktari" Mitrovica.

3. The final list of employees entitled to a share of proceeds from the privatization of the SOE "Meto Bajraktari", according to the Applicant was published on 8 March 2012. The date when the final

list of employees entitled to a share of proceeds from the privatization of the SOE "Ramiz Sadiku" is unspecified.

Subject matter

4. The Applicant requests constitutional review of the decisions published by PAK pertinent to the final lists of employees entitled to a share of proceeds acquired from the privatization of the SOE "Ramiz Sadiku" and SOE "Meto Bajraktari".

5. In this respect, the Applicant does not invoke any constitutional provision in particular.

Legal basis

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

Proceedings before the Court

7. On 16 August 2013, the Applicant submitted a Referral with the Constitutional Court of the Republic of Kosovo (hereinafter "Court").

8. On 30 August 2013, the President of the Court, by Decision No. GJR. KI125/13, appointed Judge Kadri Kryeziu as Judge Rapporteur. On the same date, the President of the Court, by Decision No. KSH. KI125/13, appointed the Review Panel composed of Judges Robert Carolan (Presiding), Almiro Rodrigues, and Ivan Čukalović.

9. On 24 September 2013, the Court notified the Applicant about the registration of the referral. On the same date, the Special Chamber of the Supreme Court of Kosovo (hereinafter "the Special Chamber"), was notified of the Referral.

10. On 30 September 2013, the Court asked the Applicant to submit decisions of the Special Chamber which according to the submitted

documents appears to be registered under case number SCEL-09-001-C1270.

11. On 2 December 2013, the President of the Court, based on Article 11 of the Law and Rule 9 (1) of the Rules of Procedure, by Decision No.KSH.KI 125/13, appointed Judge Enver Hasani as member of the Review Panel, instead of Judge Robert Carolan.

12. On 3 December 2013, after having considered the Report of the Judge Rapporteur, the Review Panel made a recommendation to the Court on the Inadmissibility of the Referral.

Summary of facts

13. At one point in time, the Applicant claims to have been employed as a worker of the SOE "Ramiz Sadiku" and SOE "Meto Bajraktari".

14. On 3 July 2013, the Applicant filed a complaint with the Special Chamber against the PAK decisions pertinent to the final list of eligible employees, who were entitled to a share of proceeds from the privatization of SOE "Ramiz Sadiku".

15. On 15 July 2013, the Special Chamber communicated the Applicant's complaint to the PAK.

16. On 26 July 2013, the PAK replied to the Special Chamber, stating that in accordance with the applicable law in Kosovo the Applicant ought to have complained with the Special Chamber within 20 days after the publication of the final list in the media. The PAK further stated that the final date to file a complaint with the Special Chamber against the final list was on 27 March 2009, whereas the Applicant had filed his complaint long time after deadline on 3 July 2013. The PAK proposed to the Special Chamber to dismiss the complaint of the Applicant as inadmissible.

17. In relation to the SOE "Meto Bajraktari", the Applicant mentions that on 8 March 2012, a list of employees entitled to a share of proceeds from the privatization of the said SOE was published in the daily newspaper "Koha ditore".

18. The Applicant, in relation to both SOE's "Ramiz Sadiku" and "Meto Bajraktari", has not provided any credible document to show that he has pursued the matter further with the Special Chamber. The Referral only contains an acknowledgment of receipt of a

document with the case number SCEL-09-0001-C1270, dated 26 July 2013.

Applicant's allegations

19. The Applicant alleges that he meets the criteria to be included in the eligible employee lists and by not being included in the lists; there was an *"erroneous application of substantive law."*

20. Furthermore, the Applicant asks the Court to change the PAK decision in relation to the lists of eligible employees, and to recognize his right to a share of proceeds from the privatization of the SOE "Ramiz Sadiku". The Applicant did not invoke any constitutional provision in particular.

Assessment of admissibility

21. 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 futher 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 further 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".*

24. The Court also takes into account 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…"*

25. The Applicant generally alleges that *"he meets the criteria to be included in the eligible employee lists and by not being included in the lists; there was an erroneous application of substantive law."*

26. The Court notes that the Applicant complained with the Special Chamber against the decisions of PAK pertinent to the final list of employees entitled to a share of proceeds from the privatization of the SOE "Ramiz Sadiku", however, whether he pursued his matter or not with the Special Chamber remains unknown.

27. From the submitted documents, the Court notes that in relation to the privatization of both SOE's "Ramiz Sadiku" and "Meto Bajraktari", the Applicant has not provided any decisions whose constitutionality may be assessed.

28. Furthermore, the Court notes that the Applicant was asked and given ample time to bring proof that he has exhausted all legal remedies, but he did not reply.

29. Bearing all the foregoing in mind, the Court ascertains that in the case at issue, the Applicant has not provided a final decision of a public authority within the view of Article 113.7 of the Constitution, and Article 47 of the Law.

30. The rationale for the exhaustion rule is to afford the authorities concerned, including the courts, the opportunity to prevent or put right the alleged violation of the Constitution. The rule is based on the assumption that the legal order of Kosovo will provide an effective remedy for the violation of constitutional rights. This is an important aspect of the subsidiary character of the Constitution (see case KI41/09, Applicant AABRIINVEST University L.L.C., Prishtina, Resolution on Inadmissibility of 21 January 2010, and *mutatis mutandis*, see case Selmouni vs. France, No. 25803/94, ECtHR, Decision of 28 July 1999).

31. It follows, that the Referral must be rejected as inadmissible due to non-exhaustion of all legal remedies as is prescribed by Article 113.7 of the Constitution, Article 47 of the Law and Rule 36 1. a) of the Rules of Procedure .

FOR THESE REASONS

The Constitutional Court pursuant to Article 113 (7) of the Constitution, Article 47 of the Law, and Rule 56.2 of the Rules of procedure, on 3 December 2013, unanimously:

DECIDES

I. TO REJECT the Referrals as inadmissible;

II. TO NOTIFY the Parties of this Decision;

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

IV. TO DECLARE this Decision effective immediately.

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

KI149/13, Lukë Kuzhnini, Resolution of 5 December 2013 - Constitutional Review of the Judgment PAKR. no. 1990/12, of the Appellate Court of Kosovo, of 7 May 2013.

Case KI149/13, decision of 5 December 2013.

Key words: Individual Referral, *prima facie.*

The Applicant claims that the Judgment PAKR no. 1990/12, of the Kosovo Court of Appeals, of 7 May 2013, violated his rights as guaranteed by the Constitution, Article 31 (Right to Fair and Impartial Trial), Article 21 (General Principles), Article 23 (Human Dignity), Article 24 (Equality before Law), Article 25 (Right to Life) and Article 29 (Right to Liberty and Security) of the Constitution.

The Constitutional Court reiterates that it is not its duty by the Constitution to act as a fourth instance court on rulings rendered by regular courts. It is the role of the latter to interpret and apply pertinent rules of procedural and material law.

The Court considers that the facts submitted by the Applicant have in no way justified the allegations of violation of his constitutional rights, and that the Applicant has failed to support in a sufficient manner his allegations.

Furthermore, the Applicant has not submitted any prima facie evidence to corroborate the violation of his constitutional rights.

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 20 of the Law, and Rule 36 (2) b) and d) of the Rules of Procedure, on 5 December 2013, unanimously declares the Referral inadmissible.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI149/13
Applicant
Lukë Kuzhnini
Constitutional Review of the Judgment of the Appellate Court of Kosovo, PAKR. no. 1990/12, of 7 May 2013

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

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

Applicant

1. The Applicant is Mr. Lukë Kuzhnini from the village of Smaq, Municipality of Prizren, serving imprisonment sentence in the Dubrava Prison, who authorised Mrs. Myrvete Çollaku, lawyer in Prizren, to represent him.

Challenged decision

2. The Applicant challenges the Judgment of the Kosovo Court of Appeals, PAKR, no. 1990/12, of 7 May 2013, which the Applicant claims to have received on 28 May 2013.

Subject matter

3. The subject matter of the Referral is constitutional review of the Judgment of Kosovo Court of Appeals, PAKR, no. 1990/12, of 7 May 2013, upon criminal proceeding in which the Applicant was found guilty of a criminal offence of Serious Murder, as per Article 147 par. 11, in conjunction with paragraph 4 of the Criminal Code of Kosovo (hereinafter: CCK), criminal offence of Unauthorised

Ownership, Control, Possession or Use of Weapons, as per Article 328, paragraph 2 of the CCK, and criminal offence of Falsifying Documents, as per Article 332, paragraph 3, in conjunction with paragraph 1 of the CCK, sentenced to imprisonment of fourteen years and six months.

Legal basis

4. The Referral is based on the 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: Law) and Rule 56.2 of the Rules of Procedure.

Proceedings before the Court

5. On 17 September 2013, the Applicant filed a Referral with the Constitutional Court of the Republic of Kosovo (hereinafter: Court).

6. On 24 September 2013, the President, by Decision GJR. no. 149/13, appointed Judge Altay Suroy as Judge Rapporteur. On the same date, the President, by decision no. KSH. 149/13, appointed the Review Panel consisting of the Judges Robert Carolan (Presiding), Ivan Čukalović and Enver Hasani.

7. On 9 October 2013, the Constitutional Court informed the Applicant and the Court of Appeals on the registration of Referral, and demanded from the representative of the Applicant to submit to the Court, as soon as possible, the proxy document showing her authorization to represent the Applicant before the Court.

8. On 14 October 2013, the representative of the Applicant filed her authorization with the Court.

9. On 5 December 2013, the Review Panel after having considered the report of Judge Rapporteur made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

10. On 23 July 2012, the District Court in Prizren, deciding as first instance court on the criminal offence of the Applicant, due to commission of criminal offence of Serious Murder, as per Article 147 par. 11, in conjunction with paragraph 4 of the Criminal Code of Kosovo (hereinafter: CCK), criminal offence of Unauthorized

Ownership, Control, Possession or Use of Weapons, as per Article 328, paragraph 2 of the CCK, and criminal offence of Falsifying Documents, as per Article 332, paragraph 3, in conjunction with paragraph 1 of the CCK, as per indictment of the District Prosecutor in Prizren, found the Applicant guilty as charged, and sentenced him to imprisonment of 14 years and six months.

11. On 7 May 2013, the Kosovo Court of Appeals, deciding upon complaint of the District Prosecutor in Prizren, and defense lawyers of the Applicant, rejected such complaints as ungrounded. The Complaint of the District Prosecutor in Prizren, was related to a lenient sentence thereby proposing that the Court of Appeals amends the judgment and imposes a longer imprisonment sentence. The defence counsels of the Applicant complained on grounds of erroneous and incomplete ascertainment of factual situation.

12. The Court of Appeals further found in its reasoning:

> *"According to evaluation of Court of Appeals, the court of first instance when imposing the type and height of punishment not only that it has concluded correctly and completely all circumstances, which impact on imposing the criminal sanction but assessed the same correctly, therefore having into account all abovementioned circumstances as well as circumstances of concrete case, way and circumstances under which were committed criminal offences then it comes out that the punishment pronounced to the accused by the judge of first instance is correct and legal, that it is in compliance with the level of criminal responsibility of the accused by the court of first instance is correct and lawful...".*

Applicant's allegations

13. The Applicant claims that the judgment of the Kosovo Court of Appeals, PAKR no. 1990/12, of 7 May 2013, was violated his rights as guaranteed by the Constitution, Article 31 (Right to Fair and Impartial Trial), Article 21 (General Principles), Article 23 (Human Dignity), Article 24 (Equality before Law), Article 25 (Right to Life) and Article 29 (Right to Liberty and Security) of the Constitution.

14. The Applicant claims that:

> "*The trial against Luke (Gjergj) Kuzhnini was not fair, since it was not objective, the facts of case were not assessed correctly, therefore it was decided already by prejudice since the proceeding of the case to police…".*

Assessment of admissibility of the Referral

15. For the Court to be able to review the Referral of the Applicant, it must first assess whether the Applicant has fulfilled the admissibility criteria as provided by the Constitution, and further specified by Law and Rules of Procedure.

16. The Court further refers to Article 113. 7 of the Constitution, which provides that:

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

In relation to such requirements, the Court notes that the Applicant is a natural person, and is an authorized party as per Article 113.7 [Jurisdiction and Authorized Parties] of the Constitution.

17. The Court must determine whether the Applicant, in compliance with requirements of Article 113 (7) of the Constitution, and Article 47 (2) of the Law, has exhausted all legal remedies. In this case, the Applicant has submitted evidence of exhaustion of all legal remedies available by applicable law.

18. The Applicant must also demonstrate fulfillment of requirements of the Article 49 of the Law, related to timely submission of Referral. It may be derived from the case files, and there is no evidence to counter the claim of the Applicant that the Judgment of the Kosovo Court of Appeals, PAKR, of 7 May 2013, was served on the Applicant on 28 May 2013, therefore, the Referral was submitted within the deadline of four months, as provided by the Law and the Rules of Procedure.

19. In relation to this Referral, the Court also takes note of the 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".

20. In this regard, the Constitutional Court reiterates that it is not its duty by the Constitution to act as a fourth instance court on rulings rendered by regular courts. It is the role of the latter to interpret and apply pertinent rules of procedural and material 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, Inadmissibility Resolution of 16 December 2011).

21. Therefore, the Court may only review whether the evidence has been presented in such a manner and the proceedings in general and viewed in their entirety have been conducted in such a way that the Applicant had a fair trial (see *mutatis mutandis*, Report of the European Commission for Human Rights, in the case Edwards v. United Kingdom, Application no. 13071/87, 10 July 1991).

22. Based on the case files, the Court notes that the reasoning provided with the Judgment of the District Court in Prizren is clear, and upon review of all proceedings, the Court also found that proceedings of the Court of Appeals were in no way unfair or arbitrary (see, *mutatis mutandis*, Shub v. Lithuania, no. 17064/06, ECtHR, Decision of 30 June 2009). Furthermore, the judgment of the Kosovo Court of Appeals, PAKR no. 1990/12, of 7 May 2013, is clear and justified properly. The Court finds that the Applicant has failed in presenting convincing arguments to support the alleged violations.

23. Furthermore, the Applicant has not submitted any *prima facie* evidence to corroborate the violation of his Constitutional rights (see Vanek v. Republic of Slovakia, ECtHR Resolution on Admissibility of Application no. 53363/99, of 31 May 2005).

24. For all reasons mentioned above, the Court is convinced that the facts submitted by the Applicant have in no way justified the

allegations of violation of his constitutional rights, and that the Applicant has failed in supporting his allegations.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 20 of the Law, and Rule 36 (2) b) and d) of the Rules of Procedure, on 5 December 2013, unanimously,

DECIDES

I. TO DECLARE the Referrals as inadmissible;

II. TO NOTIFY the Parties of this Decision;

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

IV. This Decision is effective immediately.

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

KI154/13, Beqir Halili, Resolution of 20 November 2013 - Constitutional Review of the Decision no. 1204, of the Trial Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters, of 8 April 2010

Case KI154/13, decision of 20 November 2013

Key words: individual referral, right to property, out of time.

The Applicant submitted his 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 paragraph 2 of the Rules of Procedure.

The Applicant has not specified in his Referral what decision of the Trial Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters he is challenging, and he has only mentioned the Decision No. 1204, which is a part of a collective decision of the Trial Panel of the Special Chamber, of 8 April 2010, which explicitly affects him.

The Applicant addressed the Court with the request that the Court recognizes his right to 20% since he is entitled to, because he was employed at Ramiz Sadiku for more than 4 (four) years. After the war I was not invited although several times I reported for work.

Based on the submitted documents, the Court concluded that the Applicant filed the Referral with the Court on 29 September 2013, whereas the last Decision of the Trial Panel of the Special Chamber was served on him on 13 July 2010, which means after the expiry of the legal deadline prescribed by Article 49 of the Law and Rule 36 (1) b) of the Rules of Procedure.

RESOLUTION ON INADMISSIBILITY
in
Case no. KI154/13
Applicant
Beqir Halili
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, no. 1204, of 8 April 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. Beqir Halili, from the village of Peran, Municipality of Podujeva (hereinafter: Applicant).

Challenged decision

2. The Applicant has not clarified in his Referral what decision of the Trial Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters (hereinafter: Trial Panel of the Special Chamber) he is challenging, and he has only mentioned the Decision No. 1204, which is a part of a collective decision of the Trial Panel of the Special Chamber, of 8 April 2010, which explicitly affects him.

Subject matter

3. The subject matter is the constitutional review of challenged decision, which has allegedly violated the rights of the Applicant from the employment relationship, as guaranteed by 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, of 15 January 2009 (hereinafter: Law) and Rule 56of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: Rules of Procedure).

Proceedings before the Court

5. On 4 October 2013, the Applicant filed a referral with the Constitutional Court of the Republic of Kosovo (hereinafter: Court).

6. On 9 October 2013, the President, by Decision no. GJR.KI. 154/13 appointed Judge Arta Rama Hajrizi as Judge Rapporteur. On the same day, the President by Decision no. KSH.143/13 appointed the Review Panel composed of judges: Altay Suroy (Presiding), Snezhana Botusharova and Kadri Kryeziu.

7. On 21 October 2013, the Court informed the Applicant and the Special Chamber of the Supreme Court on the registration of the Referral.

8. On 20 November 2013, the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility.

Summary of the facts

9. The Applicant had established an employment relationship with the Socially-Owned Enterprise Ramiz Sadiku (hereinafter: SOE Ramiz Sadiku) starting from 1 June 1986 until 28 February 1990.

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

11. On an unknown date, the Applicant filed a complaint with the Special Chamber of the Supreme Court against the final list of employees compiled by the Privatization Agency, since he as a former employee, was not part of such list.

12. In his complaint to the Special Chamber of the Supreme Court, the Applicant stated that he had missed the legal deadline for filing a complaint against the final list of employees entitled to a share of 20% of proceeds from the privatization of SOE Ramiz Sadiku, since he was under medical care at that moment.

13. On 8 April 2010, the Trial Panel of the Special Chamber rendered a collective decision, in which, under number 1204, there is a part of such a decision which explicitly affects the Applicant, thereby finding that the complaint of the Applicant is rejected as ungrounded.

14. In its reasoning of the decision, the Trial Panel of the Special Chamber noted that:

> *"Considering that the complaint of the Applicant was filed three (3) months after the expiry of deadline for filing complaints (the deadline of complaints had expired on 27 March 2009), there is no possibility of ensuring return to previous situation, or respectively that the complaint be reviewed as filed in due time. Having this in mind, the complaint of the applicant is rejected as ungrounded."*

Applicant's allegations

15. In his Referral, the Applicant does not clarify which of his constitutionally guaranteed rights were violated by the challenged decision but claims that the decision has violated rights from employment relationship as guaranteed by the Constitution.

16. The Applicant addressed the Court with the following demand:

> *„I wish to realize my right to benefit 20% since I am entitled to it because I was employed at Ramiz Sadiku for more than 4 years, because after the war I was not even invited although several times I reported for work but I was told that I would be notified."*

Assessment of the admissibility of the Referral

17. In order to be able to adjudicate the Applicant's Referral, it is necessary for the Court to first 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.

18. In this regard, the Court notes that Article 113.7 of the Constitution provides:

> *"7. Individuals are authorized to refer violations by public authorities of their individual rights and freedoms guaranteed by the Constitution, but only after exhaustion of all legal remedies provided by law".*

19. The Court also refers to Article 49 of the Law which reads:

> *"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."*

20. The Court takes also 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."*

21. Based on the submitted documents, the Court concludes that the Applicant filed the Referral with the Court on 29 September 2013, whereas the last Decision of the Trial Panel of the Special Chamber was served on him on 13 July 2010, which means after the expiry of the legal deadline prescribed by Article 49 of the Law and Rule 36 (1) b of the Rules of Procedure.

22. It therefore 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 20 of the Law, and Rule 36 (1) b) of the Rules of Procedure, on 20 November 2013, unanimously

DECIDES

I. TO DECLARE the Referral Inadmissible;

II. TO NOTIFY this decision to the Parties

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

IV. This Decision is effective immediately.

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

KI131/13, Luan Spahiu, Resolution of 19 November 2013 - Constitutional Review of the Judgment Rev. no. 313/2012, of the Supreme Court of Kosovo, of 17 April 2013

Case KI131/13, decision of 19 November 2013

Key words: Individual referral, manifestly ill-founded.

The Applicant alleges that his right to a fair trial has been violated. The Applicant claims that there has been violation of Article 31 of the Constitution in conjunction with Article 6 of the European Convention of Human Rights.

The Applicant has neither built a case on a violation of any of his rights guaranteed by the Constitution nor has he submitted any prima facie evidence on such a violation.

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, unanimously declared the Referral inadmissible, as manifestly ill-founded.

RESOLUTION ON INADMISSIBILITY

in
Case No. KI131/13
Applicant
Luan Spahiu
Constitutional Review of the Judgment of the Supreme Court of Kosovo,
Rev. no. 313/2012 dated 17 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
Arta Rama-Hajrizi, Judge

The Applicant

1. The Applicant is Mr. Luan Spahiu from Prizren.

Challenged Decision

2. The Applicant challenges the Judgment of the Supreme Court of Kosovo, Rev. no. 313/2012 dated 17 April 2013, which was served on him on an unspecified date.

3. The Applicant also challenges the Judgment of the District Court in Prizren Ac. No. 200/2011 dated 18 June 2012 and the Municipal Court in Prizren C. No. 780/09 dated 12 June 2010.

Subject Matter

4. The subject matter of the Referral submitted to the Constitutional Court (hereinafter: "the Court") is the constitutional review of the challenged decision, which allegedly was adopted in violation of

Article 31 of the Constitution in conjunction with Article 6 of the European Convention of Human Rights (hereinafter "the Convection").

Legal basis

5. The Referral is based on Art. 113.7 of the Constitution, Article 47 of the Law No. 03/L-121 on Constitutional Court, 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 23 August 2013, the Applicant submitted the Referral to the Court.

7. In his referral the Applicant also has submitted a petition for recusal of judges Kadri Kryeziu and Altay Suroy, as follows:

> *"I also demand from the Court to exempt judges Kadri Kryeziu and Altay Suroy Recepoglu in rendering the decision on the constitutional review of the two judicial acts, due to the reason that Y H. President of the Basic Court in Prizren, who exerted his influence in decisions on both courts, may influence the Constitutional Court judge Kadri Kryeziu, since they are friends. Judge Altay Suroy Recepoglu may be under influence of the judge F. S., who is judge at the Special Chamber, and the latter had influence on rendering court decisions, because he is related to the claimant..."*

8. On 30 August 2013, by Decision No. GJR. KI 131/13 the President appointed Deputy President Ivan Čukalović as Judge Rapporteur and by Decision No. KSH KI 13/13. On the same date the President appointed the Review Panel composed of Judges Snezhana Botusharova (Presiding), Enver Hasani and Arta Rama-Hajrizi.

9. On 23 September 2013, the Court notified the Applicant the referral had been registered with the Court.

10. Also on 23 September 2013, the Court notified the Supreme Court of the referral.

11. On 2 October 2013, the Applicant submitted a request for urgency in proceedings of his case before the Court. The Applicant

requested the Court to "*take the execution case E.no 1476/12 of the Basic Court in Prizren and review the constitutionality of decision rendered by this court and to stop any further actions in the executive procedure by judge A. H. until the constitutionality of the rendered decisions be reviewed by the Constitutional Court, as the court has rendered the decision to sell the immovable property of the debtor Luan Spahiu on 30 October 2013*." In addition, the Applicant has submitted a number of documents related to the execution case E. no. 1476/12.

12. On 19 November 2013, the statements were taken from Judges Kadri Kryeziu and Altay Suroy, consequently in accordance with Rule 7 of the Rules of Procedure the Court rejected the Applicant's request for recusal of the above mentioned judges.

13. On 19 November 2013, after having considered the Report of the Judge Rapporteur, the Review Panel made a recommendation to the Court on the inadmissibility of the Referral.

The Facts of the Case

14. On 12 June 2010, the Municipal Court in Prizren, issued a Judgment C. No. 780/09 and approved as grounded the claim suit of A. R. against the Applicant ordering him to pay the claimant A. R. the debt of 34,000 € with legal interests. At the same time the Municipal Court rejected as ungrounded the counter - claim suit of the Applicant, by which he demanded that the claimant/counter-respondent A. R. pay the amount of 16,000 Euros of debt.

15. In the reasoning the Municipal Court stated, inter alia, that "*it has been proven that the respondent Luan Spahiu has admitted to the debt of 34.000 €. He is under obligation to repay such debt, because he has admitted to this debt before witnesses heard in the procedure, and a process report was compiled on this agreement on 22.05.2008, according to which the respondent has assumed the obligation of paying back the debt to the claimant in installments.*"

16. The Municipal Court in the reasoning recalled that "*pursuant Article 295, paragraph 1 of the Law on Obligations and Torts..., and it is a general rule that the obligation ceases to exist when it is fulfilled, and with the other law, the renting party is bound to pay the rent on deadlines set by contract or stipulated by law. According to Article 324, paragraph 1 of the Law, the debtor is in default when he does not repay debt within deadline stipulated...* "

17. On 2 June 2011, the Applicant submitted an appeal against the judgment of the Municipal Court in Prizren dated 12 June 2010. In his appeal the Applicant claimed that the challenged judgment was adopted in violation of the contested procedure. The Applicant also claimed that that the Municipal Court in Prizren had made erroneous and incomplete factual determination and erroneous application of material law.

18. On 18 June 2012, the District Court in Prizren issued the Judgment Ac. No.300/2011 and rejected the appeal of the Applicant as ungrounded.

19. In its reasoning the District Court in Prizren stated, inter alia, that "*The District Court upholds the factual determination and the legal stance of the first instance court in their entirety, since from the evidence produced and reviewed, it is clear that the respondent/counter-claimant owes the claimant/counter-respondent 34.000 Euros, while the respondent/counter-claimant has failed to prove that he is owed 16.000 Euros by the claimant/counter-respondent, also as found by this Court.*"

20. Following that, on 16 July 2012, the Applicant submitted a request for revision to the Supreme Court of Kosovo against the District Court Judgment. In his request the Applicant alleges substantial violations of contested procedure and erroneous application of material law.

21. On 17 April 2013, the Supreme Court issued the judgment Rev. No 313/2012 and rejected as ungrounded the revision of the Applicant filed against the Judgment of the District Court in Prizren, AC. No. 300/2011 of 18 June 2012.

22. The Supreme Court in the reasoning of its judgment stated, among other things that "*From the case files, it may be derived that the first instance court has found that the litigating parties have both claims on debts towards each other. On 22 May 2008, a group of people assembled… the present people, including the respondent/counter-claimant Luan Spahiu, agreed during the meeting that the latter owes the claimant/counter-respondent A.R. the amount of 34,000 €, which he would pay back, and that such payback would be made in installments: 10,000 Euros in September 2009, 10,000 Euros in September 2010, 10,000 Euros in September 2011, and 4,000 Euros in September 2012. Nevertheless, Luan Spahiu agreed to pay the whole amount even*

earlier, if he sold his house, which was already put up for sale. In relation to this meeting, a process report was compiled, which was signed by all present (except A.R.), and such facts were found by the Court also based on witness testimonies.

23. According to the findings of the Supreme Court, the second instance Judgment does not contain any violations of contested procedure reviewed ex officio. There are no grounds either in the claim of substantial violations of contested procedure provisions as alleged in the revision, namely that the judgment does not reason upon decisive facts relevant to rendering a lawful decision. The Supreme Court stated in its reasoning as follows:"*... not only it has been mentioned in the process report of 22 May 2008 that the respondent/counter-claimant Luan Spahiu owes the claimant/counter-respondent A. R., ..., but even the respondent/counter-claimant Luan Spahiu stated himself that he will pay the debt even earlier, if he sells his house, and he declared that in his own will, in the presence of witnesses. Therefore, the contents of the process report have been assessed accurately, and rightfully taken as proof in the proceedings*."

24. According to the documents the Applicant submitted to the Court on 2 October 2013, it appears that on unspecified date, the Applicant submitted the request for recusal of the judge A.H. from the enforcement proceedings that was initiated before the Basic Court in Prizren. These proceedings were related to the enforcement of the Municipal Court Judgment dated 12 June 2010. In the same request the Applicant also asked recusal of the President of the Basic Court in Prizren.

25. It appears further that on 5 September 2013, the Basic Court in Prizren issued a decision and rejected the Applicant's request to recuse the judge A.H. from the proceedings and deciding the executive matter E. no 1476/12 pending before the Basic Court in Prizren.

26. On 16 September 2013, the Applicant submitted the appeal against the Decision of 5 September 2013.

27. Furthermore, on 23 September 2013, the President of the Court of Appeals issued a ruling and rejected the Applicant's request to recuse the President of Basic Court in Prizren and the judge A.H. from the Basic Court in Prizren. It was mentioned, *inter alia*, that "*the request for recuse has not explicitly and specifically provided the reasons for recuse as provided by Article 69.2 of the Civil*

Procedure Code. From the case file it is found that the debtor has abused his procedural rights…"

Applicant's Allegation

28. The Applicant alleges that his right to a fair trial has been violated. The Applicant claims that there has been violation of Article 31 of the Constitution in conjunction with Article 6 of the European Convention of Human Rights.

29. The Applicant alleges that "*whole process was fabricated by the former president of the District Court in Prizren, now President of the Basic Court in Prizren,… and he influenced all from the Municipal Court to the Supreme Court, and during the appeal procedure before the District Court in Prizren.*" The Applicant further alleges that "*It is surprising how in both first and second court instances, the judges and the claimant are Bosnian, it is impossible to not suspect, considering the percentage of Bosnian judges working…"*

Assessment of the admissibility of the Referral

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

31. The Court recalls that the Applicant's complains that his right to fair and impartial trial guaranteed by Article 31 of the Constitution in conjunction with Article 6 paragraph 1 of the European Convention on Human Rights ("the Convention") has been violated.

32. In this regard, the Court notes that the Applicant has used all available legal remedies prescribed by the Law on Contentious Procedure and that the Supreme Court in Pristina has taken into account and answered his appeals on the points of law.

33. The Court also notes that the both Basic Court in Prizren and the President of the Court of Appeals addressed the Applicant's complaints related to the alleged violation of his right in an independent and impartial tribunal during the enforcement procedure.

34. The Constitutional 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).

35. The Court notes that by the bare statement that "*It is surprising how in both first and second court instances, the judges and the claimant are Bosnian, ...*" the Applicant has neither built a case on a violation of any of his rights guaranteed by the Constitution nor has he submitted any *prima facie* evidence on such a violation (see Vanek v. Slovak Republic, ECHR Decision as to the Admissibility of Application no. 53363/99 of 31 May 2005).

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

37. Accordingly, pursuant to Article 113.7 of the Constitution and Rule 36 of the Rules of Procedure that the Referral is inadmissible.

FOR THESE REASONS

The Constitutional Court pursuant to Article 113 .7 of the Constitution, Article 48 of the Law and Rule 36 (1) (c) of the Rules of the Procedure, unanimously:

DECIDES

I. TO REJECT the Referral as Inadmissible;

II. TO NOTIFY this Decision to the Parties;

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

IV. TO DECLARE this Decision immediately effective.

Judge Rapporteur
Prof. Dr. Ivan Čukalović

President of the Constitutional Court
Prof. Dr. Enver Hasani

KI192/13, Hatixhe Avdyli, Resolution of 24 February 2014 - Constitutional Review of the Judgment of the Supreme Court, Rev. No. 11/2013, of 23 July 2013

Case KI 192/13, decision of 24 February 2014

Key words: Individual Referral, right to legal remedies, protection of property, judicial protection of rights, manifestly ill-founded.

The subject matter is the request for constitutional review of the Judgment of the Supreme Court, by which it amended the Judgments of the Municipal Court in Prishtina and the District Court in Prishtina, thereby rejecting the claim of the Applicant as ungrounded. The Applicant had filed a claim with the Municipal Court in Prishtina to annul the sales contract for the purchase of an Apartment, to confirm that the Applicant has the rights to use the Apartment, and oblige the respondent to allow the Applicant free possession over the Apartment and to bear the procedural expenses.

The Applicant alleged that the Judgment of the Supreme Court, by amending the Judgments of the lower court instances, violated her rights guaranteed by the Constitution, namely Article 3 [Equality Before the Law], Article 32 [Right to Legal Remedies], Article 46 [Protection of Property] and Article 54 [Judicial Protection of Rights].

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. KI192/13
Applicant
Hatixhe Avdyli
Constitutional Review
of the Judgment of the Supreme Court, Rev. No. 11/2013,
of 23 July 2013

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

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

The Applicant

1. The Referral is submitted by Mrs. Hatixhe Avdyli (hereinafter: the Applicant), represented by Mr. Skender Musa.

Challenged decision

2. The challenged Decision is the Judgment of the Supreme Court, Rev. No. 11/2013, dated 23 July 2013, which was served on the Applicant on 17 October 2013.

Subject matter

3. The subject matter is the request for constitutional review of the Judgment of the Supreme Court Rev. No. 11/2013, dated 23 July 2013. In its Judgment, the Supreme Court, approved the request for revision of the respondent V. A. and amended the Judgments of the Municipal Court in Prishtina and the District Court in Prishtina, thereby rejecting the claim of the Applicant as

ungrounded. The Applicant had filed a claim with the Municipal Court in Prishtina to annul the sales contract for the purchase of an Apartment, to confirm that the Applicant has the rights to use the Apartment, and oblige the respondent to allow the Applicant free possession over the Apartment and to bear the procedural expenses.

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 Court

5. On 11 November 2013, the Applicant filed the Referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 29 November 2013, based on the Decision of the President GJR. KI192/13, Judge Snezhana Botusharova was appointed as Judge Rapporteur.

7. On 3 December 2013, based on the Decision of the President KSH. KI192/13, the Review Panel was appointed composed of judges, Altay Suroy (presiding), Kadri Kryeziu and Arta Rama-Hajrizi.

8. On 4 December 2013, the Court informed the Applicant of the registration of the Referral. On the same date, the Court also notified the Supreme Court of the Referral.

9. On 5 December 2013, the Court decided to reject the Request for Interim Measures as ungrounded pending the final outcome of the Referral (See Decision on Interim Measures, dated 9 December 2013).

10. On 7 February 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.

The facts of the case

11. In the period 1988 to 1989, the Applicant, as an employee of the Socially Owned Enterprise "Amortizatorët" (hereinafter the SOE), was allocated an Apartment in Prishtina. The Decisions on the allocation of the Apartment were annulled by the Joint Labor Court in Prishtina and this annulment was upheld by the Joint Labor Court of Kosovo.

12. On 26 July 1990, the provisional organs of the SOE terminated the employment contract of the Applicant.

13. On 8 October 1992, the provisional organs of the SOE decided to allocate the Apartment to employee V. A. and, as a result, a contract on the use of the Apartment was concluded. Based on a sales contract, certified by the Municipal Court in Prishtina, dated 28 December 1995, V. A. acquired ownership rights over the apartment.

14. After the war in Kosovo, V. A. fled from the Apartment, which was later occupied by the Applicant.

15. On 9 December 2004, the Housing and Property Directorate issued an Order (HPCC/REC/41/2004) on the eviction of the Applicant from the Apartment.

16. Consequently, on an unspecified date, the Applicant filed a claim with the Municipal Court in Prishtina, requesting the annulment of the aforementioned sales contract (certified by the Municipal Court in Prishtina, dated 28 December 1995) and to confirm that the Applicant has the right to use the Apartment, and oblige the first respondent to allow her free possession over the Apartment.

17. On 10 November 2006, the Municipal Court in Prishtina in its Judgment (C. No. 1502/2005) decided to approve the claim of the Applicant.

18. On 31 October 2008, following an appeal filed by V. A., the District Court in Prishtina with its Judgment (Ac. No. 367/2007) quashed the Judgment of the Municipal Court in Prishtina and remanded the case for retrial.

19. On 12 May 2009, the Municipal Court in Prishtina with its Judgment (C. No. 2038/2008) approved the claim of the Applicant as grounded, annulled and voided the sales contract and further

confirmed that the Applicant is the holder of the right for the use of the Apartment.

20. The Municipal Court in Prishtina reasoned its Judgment as following:

> *"The fact that she was not a party to the contract VR no. 7903/95 does not exclude her legitimacy, because in terms of Article 109 of the* LOT [Law on Obligation and Tort], *the review of validity of the contract may be claimed by every person interested for the reasons mentioned in Article 103 of the LOT. Based on the claim suit of the claimant, and in terms of Article 109 of the LOT, the Court has largely reviewed the content of the contract of the case, and has found that there is contradiction and inconsistency in between its provisions and also in relation to the contracted price of sale and payments made according to certificate no. 2010/1. And this inconsistency, in terms of the subject of the contract, makes the same invalid and as such, the Court annulled it."*

21. On 18 June 2012, the District Court in Prishtina (Ac. No. 1087/2009) rejected the appeal of the respondent V. A. and upheld the Judgment of the Municipal Court in Prishtina (C. No. 2038/2008 of 12 May 2009).

22. The District Court in Prishtina held that:

> *[…]*
>
> *"This court considers that on the basis of the correct determination of the factual situation the first instance court has properly applied the substantive law when approved the claim of the claimant as grounded and decided as per enacting clause of the challenged judgment".*

23. On 23 July 2013, following the request for revision filed by respondent V. A., the Supreme Court in its Judgment Rev. No. 11/2013 decided to approve the revision of the respondent and amend the Judgments of the Municipal Court in Prishtina (C. No. 2038/2008 of 12 May 2009) and the District Court in Prishtina (Ac. No. 1087/2009 of 18 June 2012), thereby rejecting the claim of the Applicant filed with the Municipal Court as ungrounded.

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

"Proceeding from such a situation of the matter, the Supreme Court of Kosovo found that the lower instance courts have properly and fully determined the factual situation, and based on such a situation, have erroneously applied substantive law, when approved the claim suit of the claimant, thereby annulling the contract on sale of disputed apartment, signed between the first respondent as a buyer, and the second respondent – as a seller.

Erroneous application of substantive law consists in the fact that Article 103 of the Law on Obligations and Torts provides that a contract contrary to principles provided by the Constitution and social policy, compulsory regulations, social order or social morals shall be void unless the purpose of the rule violated refers to another sanction, or unless the law provides for something else. The contract on sale does not contain any of the reasons that would cause the absolute nullity, which would enable a third person to request the annulment of the contract on sale of disputed apartment. The claimant did not acquire the right of use of the apartment, because the decisions on allocation of the apartment to the claimant were annulled by the Basic Joint Labour Court at that time. Since the contract signed by the first respondent and the second respondent does not contain any elements of an absolute nullity, then the claimant has no active legitimacy."

Applicant's allegations

25. The Applicant alleges that the Judgment of the Supreme Court, by amending the Judgments of the lower court instances, violated her rights guaranteed by the Constitution, namely Article 3 [Equality Before the Law], Article 32 [Right to Legal Remedies], Article 46 [Protection of Property] and Article 54 [Judicial Protection of Rights] of the Constitution of the Republic of Kosovo [hereinafter: the Constitution).

26. *The Applicant concludes by requesting the Court:* "[...]that on the basis of evidence and testimony that we are presenting, to annul the Decision of the Supreme Court of Kosovo as ungrounded and absolutely null, and to CONFIRM the Decisions of the Municipal Court and District Court in Prishtina by which the statement of claim of Hatixhe Avdyli is APPROVED, by which her right to use the Apartment is recognized, and the sale-purchase-privatization contract of the disputed apartment concluded between [...] and

SOE "Amortizatorët" be ANNULED as an absolutely ungrounded contract".

Admissibility of the Referral

27. 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.

28. 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."*

29. 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."*

30. In the concrete case, the Court notes that the Applicant has made use of all legal remedies available under the law. The Court also notes that the Applicant was served with the Judgment of the Supreme Court Rec. No. 11/2013 on 17 October 2013 and filed his Referral with the Court on 11 November 2013.

31. Thus, the Court considers that the Applicant is an authorized party and has exhausted all legal remedies afforded to her by the applicable law and the Referral was submitted within the four months time limit.

32. However, the Court also takes into account Rule 36 of the Rules of Procedure, which provides that:

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

d) when the Applicant does not sufficiently substantiate his claim."

33. The Applicant alleges that the Judgment of the Supreme Court (Rev. No. 11/2013) violates her rights, guaranteed by Articles 3 [Equality before the Law], Article 32 [Right to Legal Remedies], Article 46 [Protection of Property] and Article 54 [Judicial Protection of Rights] of the Constitution.

34. However, the Applicant does not explain how and why the Judgment of the Supreme Court violated her rights guaranteed by the Constitution.

35. In this respect, the Court reiterates that under the Constitution, it is not its task to act as a fourth instance court with respect to decisions taken by the regular courts. The role of the regular courts is to interpret and apply the pertinent rules of both procedural and substantive law (see, *mutatis mutandis,* Garcia Ruiz vs. Spain, No. 30544/96, ECtHR, Judgement of 21 January 1999; see also case KI70/11 of the Applicants Faik Hima, Magbule Hima and Bestar Hima, Resolution on Inadmissibility of 16 December 2011).

36. The Court can only consider whether the evidence has been presented in a correct manner and the proceedings in general, viewed in their entirety, have been conducted in such a way that the Applicant had a fair trial (see inter alia Case Edwards vs. United Kindgdom, Application No. 13087/87, Report of the European Commission on Human Rights adopted on 10 July 1991).

37. Based on the case file, the Court notes that the reasoning give in the last Judgment of the Supreme Court is clear, and after having reviewed all the proceedings, the Court has also found that the proceedings before the Supreme Court have not been unfair or arbitrary (See, *mutatis mutandis,* Shub vs. Lithuania, No. 17064/06, ECtHR, Decision of 30 June 2009).

38. Moreover, the Supreme Court in its Judgment reasoned that […] *"Erroneous application of substantive law consists in the fact that Article 103 of the Law on Obligations and Torts provides that a contract contrary to principles provided by the Constitution on*

social policy, compulsory regulations, social order or social morals shall be void unless the purpose of the rule violated refers to another sanction, or unless the law provides for something else. The contract on sale does not contain any of the reasons that would cause the absolute nullity, which would enable a third person to request the annulment of the contract on sale of disputed apartment." [...]

39. For the foregoing reasons, the Court considers that the facts presented by the Applicant do not in any way justify the allegations of a violation of her constitutional rights and the Applicant has not sufficiently substantiated her allegation.

FOR THESE REASONS

The Constitutional Court, pursuant to Rule 36 (2), b) and d), of the Rules of Procedure, on 24 February 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

KI72/13, Isa Halimi, Resolution of 3 December 2013 - Constitutional Review of the Decision Rev. no. 241/2010, of the Supreme Court of Kosovo, of 10 January 2013

Case KI72/13, decision of 3 December 2013

Key words: Individual Referral, manifestly-ill founded.

The Applicant alleged that the Municipal Court in Ferizaj, rendered a Decision without any legal ground and by this Decision was violated his human right-the labor right, guaranteed by the Constitution.

The Applicant further stated that Decision of the Supreme Court is contradictory and unfair, because amongst others, the judge that adjudicated the claim [in the Municipal Court in Ferizaj] participated in the panel as well.

The Court finds that the facts presented by the Applicant do not in any way justify the allegation of a violation of a constitutional right, therefore it cannot be concluded that the Referral was founded.

The Constitutional Court pursuant to Article 113.7 of the Constitution, Article 20 of the Law and Rule 36 (2) b) of the Rules of the Procedure, on 3 December 2013, unanimously declared the Referral inadmissible.

RESOLUTION ON INADMISSIBILITY
in
Case no. KI72/13
Applicant
Isa Halimi
Request for constitutional review of the Decision of the Supreme Court of Kosovo, Rev. no. 241/2010, of 10 January 2013

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

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

Applicant

1. The Applicant is Mr. Isa Halimi (hereinafter: the Applicant) from Prishtina.

Challenged decision

2. The challenged decision is the Decision of the Supreme Court of Kosovo, Rev. no. 241/2010, of 10 January 2013, served to the Applicant on 13 February 2013.

Subject matter

3. The subject matter before the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) on 15 May 2013, is the constitutional review of the Decision of the Supreme Court of Kosovo Rev. no. 241/2010, by which the Applicant's revision was rejected as ungrounded and the Decision of the District Court Ac. no. 112/2008 of 4 August 2010 was upheld.

Legal basis

4. Article 113.7 of the Constitution (hereinafter: the Constitution), Article 22 of the Law on 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 15 May 2013, the Applicant submitted the Referral to the Court.

6. On 27 May 2013, by Decision GJR. KI72/13 the President of the Court appointed Judge Altay Suroy as Judge Rapporteur, and Review Panel composed of Judges: Robert Carolan (Presiding), Ivan Čukalović and Enver Hasani.

7. On 13 June 2013, the Constitutional Court notified the Applicant and the Supreme Court of the registration of the Referral.

8. On 9 September 2013, the Constitutional Court requested from the Supreme Court clarification regarding the participation of Judge N. I. in two decission -making instances on the same legal matter, the fact that was concluded by the copies of regular court decisions attached to the Referral, by the Applicant.

9. On 12 September 2013, the Constitutional Court received from the Supreme Court the reply regarding the required clarification.

10. On 17 October 2013, the Court notified the Applicant of the reply of the Supreme Court.

11. On 5 November 2013, the Court received the written comments from the Applicant regarding the reply of the Supreme Court.

12. On 3 December 2013, after having considered the Report of the Judge Rapporteur, the Review Panel made a recommendation to the Court on the inadmissibility of the Referral.

Summary of the facts

13. On 11 September 2001, Municipality of Ferizaj – Directorate for Culture, Youth and Sport, (hereinafter: DCYS), announced a job vacancy for filling 7 (seven) vacant positions in the city library,

among which also the job position of the "person in charge of the library" ranked in the item 1 (one) of the vacancy.

14. For this job position, according to the DCYS minutes of 29 September 2001, have applied the following: M. P., E. Zh., E. S., H. Sh. and the Applicant Isa Halimi.

15. After the interview, the recruitment committee drafted the final short list and proposed that the Municipality concludes employment contract with the candidate E. Zh., who was evaluated as the best candidate with 115 points, while the Applicant was evaluated with 65 points and was ranked as the third on the list. This proposal was approved and E. Zh. concluded employment relationship with the Municipality of Ferizaj for the respective position of the person in charge of the city library.

16. This decision of the Municipality was challenged in the Municipal Court in Ferizaj by the Applicant's claim, requesting the annulment of the selection of the candidate according to this vacancy, by presenting also the arguments of non-fulfillment of the requirements in the vacancy by the selected candidate.

17. On 28 March 2002, the Municipal Court in Ferizaj rendered the Judgment C. no. 318/2001, providing in its enacting clause that*: "The claimant's statement of claim is APPROVED and decision of the Board of Directors of the Municipality in Ferizaj no. 1485 of 1 October 2001 on selection of a candidate – person in charge of the city library "Anton Çetta" in Ferizaj is annulled and the respondent is obliged, within 15 days, to make a reselection among the participating candidates in the vacancy for the job position – person in charge of the city library in Ferizaj, under the threat of forced execution."*

18. On 9 July 2004, Municipal Court in Ferizaj approved in the executive procedure the proposal for execution of the Judgment C. no. 318/2001 and by executive Decision 851/04 assigned the execution of this judgment.

19. On 17 May 2005, according to the proposal of the municipal advocate of the Municipality, as well as by taking into account the Decision E 851/04 of 09 July 2004 of the Municipal Court in Ferizaj on allowing the execution of the Judgment C. no. 318/2001 of this court, the Municipality of Ferizaj – Board of Directors rendered Decision 02.No.1111, thereby ANNULLING its previous Decision no. 1485 of 2 October 2001 on selection of the candidate

E. ZH. in the position of person in charge of the city library, by annulling at the same time the employment contract of 17 May 2005, and also decided to make new selection for this position from the participants in the announced vacancy.

20. On 24 May 2005, Municipality of Ferizaj – Board of Directors rendered Decision 02 No. 1172, by which the candidate E. Zh. was selected as the person in charge of the city library, as of 24 May 2005, thus it selected the same candidate in the repeated procedure.

21. On 21 November 2007, the Municipal Court in Ferizaj rendered Decision C. no. 453/05, thereby rejecting the claim of the claimant-Applicant, filed against the respondent, the Municipality of Ferizaj-Directorate for Culture Youth and Sport, as premature. In the reasoning of the Decision, the Municipal Court stated that: *"the claimant has not exhausted all available legal remedies in administrative procedure, since before filing the claim, the claimant was entitled to address by appeal the Independent Oversight Board of Kosovo, as the highest competent authority to decide on appeals in the recruitment procedure of civil servants and that only the decision of the Board is final decision in the administrative procedure".*

22. Although the Applicant did not attach this decision to the Referral submitted to the Constitutional Court, from the Decision of the Supreme Court, which decided on the revision, the Court concludes that the District Court in Prishtina, rendered the Decision Ac. no. 112/2008 of 4 August 2010 by which *'rejected as ungrounded the claimant's appeal and upheld the Decision of the Municipal Court in Ferizaj C. no. 453/2005 of 21 November 2008, by which the claimant's claim was rejected as premature."*

23. Against this decision, the Applicant filed a revision with the Supreme Court of Kosovo.

24. On 10 January 2013, the Supreme Court of Kosovo rendered Decision Rev.no.241/2010, thereby rejecting as ungrounded the claimant's revision filed against Decision of the District Court in Prishtina Ac.no.112/2008, on 4 August 2010. The Supreme Court "*by rejecting the claimant's appeal in entirety has accepted the conclusions and legal stance of the first instance court."*

Applicant's allegations

25. The Applicant alleged that "following the revision, the Supreme Court composed of: E. B., Presiding, Sh. S. and N. I., members, otherwise former Judge of the Municipal Court in Ferizaj, rendered a Decision without any legal ground and by this Decision was violated his human right-the labor right, guaranteed by the Constitution.

26. The Applicant further stated that he consulted the IOBK responsible official-and he was told that the IOBK does not decide on cases which happened before the IOBK was established and precisely for this, he directly addressed to the Municipal Court. The Applicant further stated that Decision of the Supreme Court is contradictory and unfair, because amongst others, the judge that adjudicated the claim in the Municipal Court in Ferizaj participated in the panel as well.

Assessment of the admissibility of the Referral

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

28. 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".*

29. In this respect, the Court concludes that the Referral, registered under the no. KI 72/13 was submitted to the Court by an individual, within the time limit of 4 months, provided by Article 49 of the Law on the Constitutional Court and that the Applicant has exhausted all available legal remedies and consequently has fulfilled formal requirements in order that his Referral is appropriate to be considered in the Constitutional Court.

Assessment of the merits of the Referral

30. As the Applicant has met procedural admissibility requirements, the Court should go into the merits of the Applicant's appeal.

31. The Court notes that the Applicant challenges the Decision of the Supreme Court, Rev. no. 241/2010, of 10 January 2013, by which was rejected as ungrounded the request for revision, filed against the Decision of the District Court in Prishtina Ac.no.112/2008 of 4. August 2010.

32. Regarding the Applicant's allegation that by Decision of the Supreme Court his Right to Work (Article 49 of the Constitution) was violated, because that court has rejected the revision, by upholding the decisions of the lower instance courts, which concluded that the Applicant failed to exhaust available legal remedies, therefore the claim was premature, the Constitutional Court emphasizes that this issue is the matter of implementation of legality and in particular in the present case of the Regulation 2001/36 on Civil Service of Kosovo, which was in force at that time and it is up to the regular courts to assess the factual situation of the use of legal remedy of appeal to IOBK.

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

34. Therefore, it does not adjudicate as court of fourth instance, it is not a fact-finding court and its role is only to ensure compliance with the rights guaranteed by the Constitution and other legal instruments and, therefore, it cannot act in any case as a "fourth instance court" (see, *mutatis mutandis*, i.e., Akdivar v. Turkey, 16 September 1996, R. J. D, 1996-IV, para. 65), therefore, in these circumstances it cannot find violation of Article 49 of the Constitution.

35. The Applicant in his Referral, as it was stated in paragraph 21 of this report, emphasized the composition of the Trial Panel of the Supreme Court, but without specifically referring whether the

composition of this panel may possibly constitute violation of a human right, guaranteed by the Constitution.

36. Although, in fact, from the copies of the Decisions of the Municipal Court C.no.453/05 of 21 November 2007 and of the Decision of the Supreme Court on Revision Rev. no. 241/2010, of 10 January 2013, which were attached to the Referral of the Applicant, it can be concluded that the name of Judge N. I. is in both decisions as a member in the trial panels that have decided on the legal matter, referred by the Applicant.

37. However, the Constitutional Court has received an explanatory document no. 357/13 of 12 September 2013 from the Supreme Court, part of which is the statement of the Judge N. I., who under moral and criminal responsibility states that she was not a member of the panel in the Supreme Court when it was decided on the revision and that also the Supreme Court sent the Decision on Correction of Decision Rev .nr. 241/2010, of 10 January 2013.

38. This Decision was rendered on 9 September 2013 and in its enacting clause is stated:

> a. *"The Decision of the Supreme Court of Kosovo Rev.no.241/2010 of 10.01.2013 is CORRECTED in the introductory part so that instead of the name of the Judge Nazmije Ibrahimi as the second member of the panel, there should be the name of Judge Gyltene Sylejmani*".

39. The Constitutional Court takes into account the competencies of regular courts, pursuant to the Law on the Contested Procedure (Law No. 03/L-006 Official Gazette of the Republic of Kosovo: Year III / No. 38 / 20 September 2008) which are stipulated by Article 165 (Correction of Judgment), where is explicitly stated that" 1 – Errors in names and numbers, as well as other written and calculating errors in an aspect of ways of Judgment and discrepancies of the copy with the original of the Judgment, are corrected by the court at any time. "

40. In item two of the same Article it is provided that by this decision was made a correction, as it was done in the present case by the Supreme Court, by respecting the on the law based procedure, regarding the correction of Revision, rendered upon the request of the Applicant, therefore the Court does not find facts of any form of arbitrariness in these legal actions of the court and neither

violation of the Right to Fair and Impartial Trial (Article 31) of the Constitution.

41. The Applicant has not specified explicit violations of his rights guaranteed by the Constitution either in his additional response regarding these legal acts of the Supreme Court, except that he expressed his surprise *"that it is not possible that the Supreme Court makes such a mistake."*

42. In these circumstances, the Court finds that the facts presented by the Applicant do not in any way justify the allegation of a violation of a constitutional right, therefore it cannot be concluded that the Referral was founded.

FOR THESE REASONS

The Constitutional Court pursuant to Article 113.7 of the Constitution, Article 20 of the Law and Rule 36 (2) b) of the Rules of the Procedure, on 3 December 2013, 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**
Altay Suroy	Prof. Dr. Enver Hasani

KI140/13, Ramadan Cakiqi, Resolution of 2 December 2013 - Ramadan Cakiqi-Constitutional Review of Judgment SCEL-09-0001, of the Special Chamber of the Supreme Court, of 10 June 2011

Case KI140/13, decision of 2 December 2013

Key words: individual referral, property right, out of time.

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

The subject matter is the constitutional review of the challenged Judgment, SCEL-09-0001, which allegedly denies the Applicant's entitlement to a share of proceeds acquired from the privatization of the Socially Owned Enterprise Ramiz Sadiku in Prishtina. The Applicant does not refer to any constitutional provision in particular.

The Applicant alleges that his human rights have been violated because his "rights from the employment relationship, which I enjoyed for 4 years with the SOE Ramiz Sadiku, were not recognized."

The Court notes that the decision that is challenged by the Applicant is dated 10 June 2011, and the Referral was submitted on 4 September 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 to the Court more than two (2) years after the date of last decision.

It results that the Applicant's Referral is out of time.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI140/13
Applicant
Ramadan Cakiqi
Constitutional Review of the Judgment, SCEL-09-0001, of the Special Chamber of the Supreme Court of Kosovo, dated 10 June 2011.

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

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

Applicant

1. The Applicant is Mr. Ramadan Cakiqi (hereinafter, "Applicant"), residing in Podujeva.

Challenged Decision

2. The Applicant challenges the judgment, SCEL-09-0001, of the Special Chamber of the Supreme Court of Kosovo, dated 10 June 2011. The date of service of the judgment is unknown.

Subject Matter

3. The subject matter is the constitutional review of the challenged judgment, SCEL-09-0001, which allegedly denies the Applicant's entitlement to a share of proceeds acquired from the privatization of the Socially Owned Enterprise "Ramiz Sadiku" Prishtina (hereinafter SOE "Ramiz Sadiku").

4. In this respect, the Applicant does not invoke any constitutional provision in particular.

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 of 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 4 September 2013, the Applicant submitted a Referral with the Constitutional Court of the Republic of Kosovo (hereinafter the "Court").

7. On 24 September 2013, the President, by Decision No. GJR. KI140/13, appointed Judge Arta Rama-Hajrizi as Judge Rapporteur. On the same date, the President, by Decision No. KSH. KI140/13, appointed the Review Panel composed of Judges Altay Suroy (Presiding), Snezhana Botusharova, and Kadri Kryeziu.

8. On 9 October 2013, the Court notified the Applicant about the registration of the Referral. On the same date, the Special Chamber of the Supreme Court of Kosovo (hereinafter, "Special Chamber"), was notified of the Referral.

9. On 2 December 2013, after having considered the Report of the Judge Rapporteur, the Review Panel made a recommendation to the Court on the inadmissibility of the referral.

Summary of facts

10. The Applicant was employed as a worker of the SOE "Ramiz Sadiku" between 1986 and 1990.

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

12. On March 2009, the PAK published the final list of eligible employees entitled to 20% of the proceeds of the privatization of

SOE "Ramiz Sadiku". The deadline for filing a complaint with the Special Chamber was on 27 March 2009.

13. On 13 March 2009, the Applicant filed a complaint with the Special Chamber against the PAK, where he requested to be included in the list of eligible employees entitled to a share of privatization proceeds.

14. On 10 June 2011, the Trial Panel of the Special Chamber (Judgment SCEL-09-0001) rejected the Applicants complaint, holding that the Applicant did not fulfill the requirements of Section 10.4 of UNMIK Regulation 2003/13 as amended, as he reached the retirement age prior to the privatization of the SOE "Ramiz Sadiku".

15. On 4 September 2013, the Applicant then filed the Referral with the Court for the constitutional review of the abovementioned decision.

Applicant's Allegations

16. The Applicant claims that he worked at the SOE "Ramiz Sadiku" *"since 1986 until 28.02.1990, when we were expelled by Serbian forces. After the war, we returned to work with Ramiz Sadiku, and they did not allow us there, and they told us they will call us, and never did."*

17. The Applicant alleges that his human rights have been violated because his *"rights from the employment relationship, which I enjoyed for 4 years with the SOE Ramiz Sadiku, were not recognized."*

18. The Applicant does not invoke any constitutional provisions in particular.

Assessment of admissibility

19. 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.

20. In this respect, the Court refers to Article 113.7 of the Constitution, which establishes:

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

21. 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."*

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

> *"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. Under these circumstances, the Court notes that the decision that is challenged by the Applicant is dated 10 June 2011, whereas the Referral was submitted on 4 September 2013. The Applicant's Referral is not in compliance with Article 49 of the Law and Rule 36 (1) b) of the Rules of Procedures as it was submitted more than two (2) years after the date of the challenged decision.

24. 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).

25. The Court reiterates that Article 49 of the Law and Rule 36 (1) b) of the Rules of Procedure requires that the Applicants, after exhaustion of all legal remedies, submit their Referrals to the Court within the mandatory four (4) month legal deadline from the day the last court decision was received.

26. It results that the Referral is out of time.

27. It follows, that the Referral must be rejected as inadmissible due to noncompliance with the prescribed criteria set forth in 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, and Rule 56.2 of the Rules of Procedure, on 2 December 2013, 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; and

IV. TO DECLARE this Decision effective immediately.

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

KI42/12, Rizah Ismajli, Resolution of 9 September 2013 - Constitutional Review of the Request to issue an Opinion

Case KI 42/12, decision of 9 September 2013

Key words: Individual Referral, un-authorized party, non exhaustion

The Applicant did not challenge any decision of a public authority; he merely requested from the Constitutional Court to issue an opinion in regards to six (6) questions that were put forth in the referral. These questions pertained to the alleged right of the employees of STE "Gërmia" to use the premises of the company.

The Applicant alleged that the representatives of STE "Gërmia" are entitled to use such premises until the same is privatized. In this regard, they alleged that their right guaranteed by Article 46 [Protection of Property] of the Constitution of the Republic of Kosovo was violated.

The Constitutional Court declared the Referral inadmissible because the party did not submit an adequate authorization to represent the members of the Trade Union "Gërmia". However, the Constitutional Court held that even assuming that the Applicant is an authorized party; he has not exhausted all available legal remedies since he lodged an application directly with the Constitutional Court without having initiated any proceedings before the regular courts. Lastly, the Constitutional Court held that, by virtue of Article 113.1, the Constitutional Court is not competent to give an opinion on the questions that were posed by the Applicant. Consequently, the referral was declared inadmissible.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI42/12
Applicant
Rizah Ismajli
Request to issue an Opinion

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
Svezhana Botusharowa, Judge
Kadri Kryeziu, Judge
Arta Rama-Hajrizi, Judge

Applicant

1. The Applicant is Mr. Riza Ismajli from the Village of Zhiti, Municipality of Podujeva, employee of STE "Germia" in Pristina. He is allegedly acting under a Power of Attorney issued by the Presidency of the Trade Union of the STE "Germia" to represent its 473 employees in proceedings before the Special Chamber of the Supreme Court of Kosovo in order to obtain "compensation of personal incomes."

Challenged decision

2. No court judgment or administrative decision is challenged by the Applicant.

Subject Matter

3. The Applicant submits that the employees of STE "Germia" request the Court to issue an opinion on the question whether they are entitled to request from the current users the payment of rent for the

use of their business premises of 11.500 m2 in the New Shopping Mall "Germia" in Pristina.

Legal basis

4. The Referral is apparently not based on Articles 113.7 and 21.4 of the Constitution, Article 20 of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the "Law") or Rule 56(3) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the "Rules Procedure").

Proceedings before the Constitutional Court

5. On 18 April 2012, the Applicant filed a referral with the Court. However, the Power of Attorney of 20 August 2009 which he submitted to the Court together with the Referral apparently concerns the authorization to represent the employees of STE "Germia" in proceedings before the Special Chamber of the Supreme Court regarding the compensation of personal incomes.

6. On 23 May 2012, by Decision KHS KI. 42/12, the President appointed Judge Altay Suroy as Judge Rapporteur and the Review Panel consisting of Judges Ivan Čukalović (Presiding), Gjyljeta Mushkolaj and Iliriana Islami. When their mandate as members of the Constitutional Court expired on June 2012, Judges Gjyljeta Mushkolaj and Iliriana Islami were replaced by Judges Enver Hasani and Robert Carolan by Decision Nr.K.SH.KI. 42/212 of the President.

Summary of the facts

7. By letter of 26 January 2009 addressed to the Ministry of Public Services, the Independent Trade Union of employees STE 'Germia" informed the Minister that the employees possessed valid documentation that they had over 62 shops throughout Kosovo, for which they did not receive any rent and that the Ministry of Public Services took their most valuable property. They appealed to all institutions of the Republic of Kosovo, the Government and all Ministries to take the necessary measures to stop once and forever the corrupt people and prosecute them. If rent would be paid, the letter continued, they would manage to secure a living for themselves and their families.

8. On 4 November 2009, the Trade Union was registered at the Ministry of Labour and Social Welfare.

9. A further letter, dated 24 March 2010, was sent to the Board of the Privatization Agency of Kosovo (PAK), requesting it to incite the institutions, public bodies and private persons occupying the premises of "Germia" to pay rent since they moved in there. The letter further stated that from the rent, which could be collected from these institutions, the salaries of around 400 employees of STE "Germia" who are without financial means could be paid.

10. On 22 March 2011, the President and Vice President of the Trade Union sent a further letter to the Ministry of Public Administration with the intension to initiate an administrative produre in the Ministry. They informed the Ministry that the employees of STE "Germia" requested from it to use its authority for the payment of rent for the Shopping Mall Germia, where five ministries were established since 2000 which had not paid rent for 12 years now. The letter continued that PAK managed the socially and publicly owned enterprises for the employess who had constructed the premises in 1970 as proven by valid documents.

11. No further facts have been submitted.

Applicant's allegations and claims

12. The Applicant alleges that the representatives of STE "Germia" are convinced that the premise of the new Shopping Mall is their property and that they may legally use it until its privatization, pursuant to Article 46 [Protection of Property] of the Constitution, providing that "No one shall be arbitrarily deprived of property."

13. The employees of STE "Germia" organized in trade unions, through their authorized representative, request the Court to issue an opinion on the following questions:

    1) Do the employees of STE "Germia" have the right to use the premises;
    2) If they do, do they have the right to request the payment of rent from the current users;
    3) Would the Court recognize their legal capacity as a party, pursuant to
    Article 73 of the Law on Contested Procedure;

4) Does the representative of the Trade Union Council, according to the authorization, have procedural capacity;
5) If he does not, who could represent them to exercise their rights;
6) Do they have the right to ask from the institutions to empty the premises from the current users who use them without any legal title?

Assessment of the admissibility of the Referral

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

15. The Court needs to determine first whether the Applicant is an authorized party within the meaning of Article 113.7 of the Constitution, stating that *"Individuals are authorized to refer violations by public authorities of their individual rights and freedoms guaranteed by the Constitution, but only after exhaustion of all legal remedies provided by law."* In this respect, the Referral was submitted with the Court by Mr. Riza Ismajli, employee of STE "Germia" and President of its Trade Union, acting under a power of attorney by the Presidency of the Trade Union "*to represent the employees of STE "Germia" in Prishtina in the Special Chamber of the Supreme Court of Kosovo, regarding the compensation of personal incomes*."

16. As to the power of attorney cited above, the Court observes that it apparently does not cover the proceedings before this Court, but only those before the Special Chamber of the Supreme Court of Kosovo. It follows that the Applicant cannot be considered as an authorized party under Article 113.7 of the Constitution.

17. However, even assuming that the Presidency of the Trade Union meant to authorize Mr. Riza Ismajli to represent the employees of STE "Germia" in the proceedings before the Constitutional Court, the Referral must be declared inadmissible for the following reason:

18. As mentioned above, an Applicant is also under the obligation, by virtue of Article 113.7 of the Constitution and Article 47.2 of the Law, to exhaust all legal remedies available under Kosovo law.

19. The Court emphasizes that the rationale for the exhaustion rule, as interpreted by the European Court of Human Rights (hereinafter: ECtHR) is to afford the public authorities concerned, including the courts, the opportunity to prevent or put right the alleged violation of fundamental rights guaranteed by the Constitution and/or international instruments directly applicable in Kosovo. The rule is based on the assumption that the Kosovo legal order will provide for an effective remedy to deal with an alleged violation of such fundamental rights. This is an important aspect of the subsidiary character of the proceedings before the Constitutional Court (see, *mutatis mutandis*, Selmouni v. France, ECtHR, no 25803/94, Judgment of 28 July 1999).

20. However, the exhaustion rule does not only require an applicant, before submitting a referral to the Court, to exhaust all legal remedies available under Kosovo law, including the highest instance court, but also to have raised the alleged violations of fundamental rights in the proceedings before these instances.

21. As to the present case, the Court notes that it appears from the documents submitted by the Applicant that he has not filed the claims, which he is now making before this Court, with the competent courts in Kosovo. The Applicant has, therefore, not shown that he has exhausted all legal remedies available to him under Kosovo law as he was required to do pursuant to Article 113.7 of the Constitution and Article 47.2 of the Law.

22. Moreover, the Court is not competent, by virtue of Article 113.1 of the Constitution, to give an opinion on the above questions submitted by the Applicant.

23. The Court, therefore, considers that the Referral must be rejected as inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution and Article 47 (2) of the Law, and Rule 36 (1) c) and Rule 56 (2) of the Rules of Procedure, on 9 September 2013,

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

KI144/13, Ramë Hoxha, Resolution of 3 December 2013- Constitutional Review of the Judgment, Rev. no. 300/2011, of the Supreme Court of Kosovo, of 3 May 2013

Case KI144/13, decision of 3 December 2013

Key words: Individual Referral, right to work, 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 Applicant claims a violation of Article 31 [Right to Fair and Impartial Trial], Article 49 [Right to Work and Exercise Profession], and Article 102 [General Principles of the Judicial System] of the Constitution as well as Article 6 [Right to a fair trial] of the European Convention of Human Rights (hereinafter: the Convention).

Finally, the Applicant requires the Court to render invalid the Judgment Rev. no. 300/2011, of the Supreme Court of Kosovo, dated 3 May 2013, and final Judgment Ac. no. 346/2010, of the District Court in Peja, dated 19 July 2011.

The Applicant stated in his Referral that the challenged Judgment [Rev. no. 63/2014], the Supreme Court violated his rights guaranteed by the Constitution, as follows: Article 3 of the Constitution of the Republic of Kosovo which stipulates that 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.

Considering the Applicant's allegations regarding the constitutional review of the Judgment Rev. no. 300/2011, of the Supreme Court of Kosovo, of 3 May 2013, the Constitutional Court found that the facts presented by the Applicant do not justify in any way the allegation of violation of the constitutional rights and that the Applicant has not sufficiently substantiated his claims. Therefore, the Court decided 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. KI144/13
Applicant
Ramë Hoxha
Constitutional review of Judgment, Rev. no. 300/2011, of the Supreme Court of Kosovo, dated 3 May 2013

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

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

Applicant

1. The Referral was submitted by Mr. Ramë Hoxha (hereinafter: the "Applicant") residing in Peja.

Challenged decisions

2. The Applicant challenges Judgment Rev.no.300/2011, of the Supreme Court of Kosovo, dated 3 May 2013, which was served on him on 28 May 2013; and Judgment Ac. no. 346/2010, of the District Court of Peja, dated 19 July 2011.

Subject matter

3. The subject matter is the constitutional review of the challenged decisions of the regular courts which upheld the allegedly *"wrongful and unfair decision of the Employer of the Applicant to dismiss him from work"*.

4. In this respect, the Applicant claims that Articles 31 [Right to Fair and Impartial Trial], 49 [Right to Work and Exercise Profession], 102 [General Principles of the Judicial System] of the Constitution

as well as Article 6 [Right to a fair trial] of the European Convention on Human Rights (hereinafter: the "Convention) were 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 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

6. On 10 September 2013, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter the "Court").

7. On 24 September 2013, the President of the Constitutional Court, by Decision No. GJR. KI144/13, appointed Judge Snezhana Botusharova as Judge Rapporteur. On the same date, the President of the Constitutional Court, by Decision No. KSH. KI144/13, appointed the Review Panel composed of Judges Robert Carolan (Presiding), Almiro Rodrigues and Enver Hasani.

8. On 21 October 2013, the Court notified the Applicant about the registration of the Referral. On the same date, the Supreme Court of Kosovo was notified of the Referral.

9. On 2 December 2013, the President of the Court, based on Article 11 of the Law and Rule 9 (1) of the Rules of procedure, by Decision No. KSH. KI144/13, appointed Judge Altay Suroy as member of the Review Panel, instead of Judge Robert Carolan.

10. On 3 December 2013, after having considered the Report of the Judge Rapporteur, the Review Panel made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

11. On 1999, the Applicant was hired as an employee of the petrol company "KOSOVA PETROLL" (hereinafter the "Employer") for an indefinite time.

12. On 14 October 1999, the Employer by Decision no.05-114 prohibited the Applicant to work in the petrol station no.1 in Peja, which was allegedly usurped by third persons and was out of factual authority of the Employer. The Decision, inter alia, stated:

> *"All employees of the State Enterprise for Distribution of Oil Products "Kosova Petrol" are hereby strictly prohibited to work in petrol stations owned by the enterprise which are temporarily used by illegal occupiers".*

13. On 27 March 2003, the Employer by Decision no. 05-312, renders the following:

> *"All working contracts of the employees of Enterprise for Distribution of Oil Products "Kosova Petrol", signed before 01.01.2003, and not extended during 2003, are hereby terminated unilaterally from 01.03.2003.*
>
> *From 01.03.2003, new working contracts will be signed for all employees needed for the enterprise, while the employees who will not have new contracts shall enjoy social assistance".*

14. The Applicant, then, lodges a lawsuit against the Employer, for compensation of unpaid income.

15. On 9 October 2003, the Employer by decision no. 05-671 orders the Applicant to an unpaid leave, for 3 months, starting from 8 October 2003 until 8 January 2004, allegedly without his request and against his will.

16. On 23 December 2003, the Municipal Court in Peja, by Judgment C.nr.15/03 obliged the Employer that in the name of unpaid personal income to pay to the Applicant the amount of 3.520.00 euro, for the period 1 March 2001 until 31 June 2003.

17. On 6 March 2006, the Municipal Court in Peja, by Judgment C. no. 1152/05 annulled the decision of the Employer to order the Applicant to an unpaid leave as unlawful, and obliged the Employer to pay procedural expenses under the threat of compulsory enforcement.

18. On 26 October 2007, the Municipal Court in Peja, by Judgment C. no. 422/06 obliged the Employer to pay to the Applicant in the name of compensation of personal income the amount of

15.340.80 euro, for the period 1 October 2003 until 30 September 2007, including annual interest.

19. In the above mentioned Judgment C. no. 422/06, the Municipal Court in Peja, further argued:

> *"... upon assessment of relevant facts, based on the ascertained factual situation by the Court in its main hearing, it derives that the claim suit of the plaintiff is legally grounded, and therefore, the Court approved it as grounded.*
>
> *The court reached such a conclusion based on the fact that the respondent (Employer) ordered the plaintiff (Applicant) to an unpaid leave, as per decision no. 05-671, of 09.10.2003, for 3 months, starting from 08.10.2003 to 08.01.2004. Such a decision is in violation of legal provisions currently applicable in Kosovo. The Law on Working Relations of Kosovo, which is currently applicable according to the UNMIK Regulation 1999/1 and 1999/20, the matter of sending employees to unpaid leave is not provided upon, but the matter of unpaid leaves of employees is provided upon by the Essential Labour Law in Kosovo, which according to Regulation no. 2001/27, of 08.10.2001, is still in force and applicable.*
>
> *This matter is provided upon by Article 21 of the Essential Labour Law (UNMIK Reg.no. 2001/27). It stipulates that "An employer may, at the request of the employee, approve unpaid leave". Therefore, according to this provision, unpaid leave may be allowed by an employer upon request of an employee.*
>
> *In the concrete case, the plaintiff never filed any request to be allowed unpaid leave. Having this in consideration, it may be derived that the disputed decision of the respondent ordering unpaid leave of the plaintiff is in contradiction to the legal provision, and therefore, the Court annulled it as unlawful".*

20. On 16 October 2008, the District Court in Peja, by Decision Ac. no. 125/08 quashed Judgment C. no. 422/ 06, of the Municipal Court in Peja, and remanded the case for a retrial.

21. On 19 June 2010, the Municipal Court in Peja, by Judgment C. no. 771/08, obliged the Employer to pay to the Applicant in the name of compensation of personal income the amount of 15.340.80 euro,

for the period 1 October 2003 until 30 September 2007, including annual interest.

22. On 19 July 2011, the District Court in Peja, by Judgment Ac. no. 346/2010 changed Judgment C. no. 771/08, of the Municipal Court in Peja, and rejected the claim suit of the Applicant as unfounded.

23. In the above mentioned Judgment Ac. no. 346/2010, the District Court in Peja, further argued:

> *"... The respondent (Employer) never used the petrol station Peja 1, despite its legal rights to do so, and despite the fact that it compensated personal salaries to the plaintiff (Applicant) until the period in dispute, similar to other employees working in facilities under the management of the respondent. In relation to such facilities, namely for their release from the persons using them temporarily, a separate case is being proceeded by the Municipal Court in Peja.*
>
> *... for this reason, technological redundancy occurred, and many working positions were closed. Pursuant to Article 12 of the Essential Labour Law, Regulation 2001/27, and pursuant to the decision no. 05-312, of 27.03.2003, the Enterprise has not extended working contracts with many employees, the plaintiff included, due to the reason that there were no working positions for the employees, since the majority of these facilities are being used by other persons. For an obligation to exist to compensate personal incomes, conditions must be met to have an unlawful action of the respondent, the damage caused in the form of lost profits, and causal link between the harmful action and damage caused. Due to the fact that the plaintiff was not involved in work for the period in dispute, and the working contract was not extended for objective reasons, this Court finds that there is no unlawful action of the respondent, there is no objective obligation of the respondent, and neither guilt, since the plaintiff has not worked for such time, and has not contributed to income generation, the claim suit of the plaintiff cannot be accepted, and therefore, it is ungrounded.*
>
> *On the other hand, since the respondent is not using the petrol stations, including the one where the plaintiff used to work, and since those facilities are used by other persons, this Court finds that the respondent is not part of the legal and obligations relationship under review in this legal matter, it is not a subject in the material and legal relationship from which*

the plaintiff derives his rights, independently of the fact that the plaintiff had a formal decision assigning him to working duties and position as Chief Worker at PS Peja 1, starting from 17.12.1999…"

24. On 3 may 2013, the Supreme Court of Kosovo, by Judgment Rev. no. 300/2011 rejected the revision of the Applicant lodged against Judgment Ac. no. 346/2010, of the District Court in Peja, as unfounded.

25. In the above mentioned Judgment Rev. no. 300/2011, the Supreme Court of Kosovo, further argued:

"… Setting from such a situation, the Supreme Court of Kosovo found that the second instance court, based on a fair and complete factual situation ascertained, has fairly applied contested procedure provisions and material law, when finding that the claim suit of the plaintiff (Applicant) is ungrounded. This due to the fact that the respondent (Employer) was not using the petrol stations during the period in dispute, including the petrol station 1 in Peja, where the plaintiff was working. For this reason, technological redundancy of employees appeared, and many working conditions were terminated. In compliance with Article 12 of the Essential Labour Law in Kosovo, Regulation No. 2001/27, and pursuant to decision no. 05-312, of 27.03.2003, the respondent did not extend working contracts with many employees, including the plaintiff. In these circumstances, this Court finds that the respondent had no obligation to compensate personal salaries, since the conditions for an unlawful decision were not met, and there is no causal link between the decision of the respondent and the damage caused in the form of lost profits, and therefore, there was no objective liability of the respondent, as found rightfully by the second instance court, and is accepted as such by this court.

The allegations in the revision, that he never received any decision or notice on 27.03.2003, which according to the plaintiff, did not exist, and it was only done by the respondent to manipulate, are found by this Court to be ungrounded, since these allegations, including others, refer to the factual situation, and therefore, the Court did not review such allegations, pursuant to Article 214 of the CPL, since revisions cannot be filed on these causes".

Applicant's allegations

26. The Applicant alleges that *"regular courts have violated the constitutional principle of prohibition of arbitrariness in decision making since their statements of facts fail to present facts as found in case files and courts have failed in applying legal provisions and the logical relation between them".*

27. The Applicant claims that *"the Constitutional Court had found the Referral of Zyma Berisha, in the case KI120/10 admissible, for the same causes, and therefore, the Applicant believes that this referral should also be found admissible".*

28. The Applicant claims that *"the respondent (employer) never officially served him with a decision for termination of the labor relationship".*

29. Furthermore, the Applicant claims that *"the rationale of regular courts, that the respondent had no legal obligation to compensate personal salaries, since the facility where he was assigned to work was occupied, and consequently there is no blame, according to the Applicant is untenable, when taking into account the fact that the respondent (Employer) rendered decision no. 05-114, of 14.10.1999, thereby removing the Applicant from his working place, and this is proof that directly renders the enterprise liable and culpable. This evidence was not elaborated or assessed at all by the courts".*

30. The Applicant claims a violation of Article 31 [Right to Fair and Impartial Trial], Article 49 [Right to Work and Exercise Profession], and Article 102 [General Principles of the Judicial System] of the Constitution as well as Article 6 [Right to a fair trial] of the Convention.

31. Finally, the Applicant requires the Court to render invalid the judgment of the Supreme Court of Kosovo, Rev. no. 300/2011, dated 3 May 2013, and final judgment of the District Court in Peja, Ac. no. 346/2010, dated 19 July 2011.

Assessment of the admissibility

32. 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.

33. 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".*

34. Furthermore, the Court 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".*

35. In the concrete case, 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 regular courts. The Applicant's referral, by and large, raises substantive law questions, and in this regard, the Court considers questions of fact and of law to be within the ambit of the regular courts. The Court cannot substitute its own findings with those of regular courts because it is neither a court of appeal nor a court of fourth instance.

36. With regard to the Applicant's claim that his case should be deemed admissible because it raises the same arguments that were raised in case KI120/10, Applicant Zyma Berisha, the Court notes that this case is different and dissimilar to the case KI120/10, in several aspects, but one key aspect is that in case KI120/10, the Court found that the Supreme Court had acted in an "evidently arbitrary manner" because it had ruled to the detriment of the Applicant (Zyma Berisha), in comparison to favorable rulings for the Applicant's colleagues for the same set of circumstances and facts, there was thus, "a profound inconsistency" in the decision-making of the Supreme Court in that particular case. The Court considers that the case at issue, is different and dissimilar to the case KI120/10, because it does not substantiate such or similar arguments.

37. In the abovementioned case KI120/10, Applicant Zyma Berisha, the Court reasoned: "*…the Supreme Court viewed that, contrary to the Applicant's submissions, the subject matter of her case concerned the extension of the fixed term contract and did not at all consider the Applicant's arguments and evidence related to her claim to be entitled to permanent employment status and reinstatement into her working place."*

38. Furthermore, in case KI120/10, Applicant Zyma Berisha, the Court reasoned: *"…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".*

39. As to the reasoning of the regular courts, in the case at issue, the Court considers that the regular courts did not fall short of their obligation to reason their decisions; indeed the Court considers that the regular courts have provided sufficient, logical and clear reasoning which explains the relationship between the Applicant as the employee, his Employer as well as the relationship of the latter with the third parties who have usurped its facilities.

40. 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 KI 86/11, Applicant Milaim Berisha, Resolution on Inadmissibility of 5 April 2012).

41. 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).

42. 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 49 [Right to Work and Exercise Profession] of the Constitution (See case Mezotur-Tiszazugi Tarsulat us. Hungary, No. 5503/02, ECtHR, Judgment of 26 July 2005).

43. In these circumstances, the Applicant has not substantiated his allegation for violation of Articles 31 [Right to Fair and Impartial Trial] and 49 [Right to Work and Exercise Profession] 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.

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

FOR THESE REASONS

The Constitutional Court pursuant to Article 113 (7) of the Constitution, Article 47 of the Law, and Rule 56.2 of the Rules of procedure, on 3 December 2013, unanimously:

DECIDES

I. TO REJECT the Referrals as inadmissible;

II. TO NOTIFY the Parties of this Decision;

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

IV. TO DECLARE this Decision effective immediately.

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

KI161/13, KI162/13, KI164/13, KI165/13, KI166/13, KI167/13, KI168/13, KI169/13, KI170/13, KI171/13, KI172/13, KI173/13, KI174/13, KI175/13, KI176/13, KI177/13, KI178/13 and KI179/13, Ramiz Isufi and 17 other individuals, Resolution of 7 February 2014 - Constitutional Review of the 18 Judgments of the Supreme Court, of 14 June 2013

Joint cases, decision of 7 February 2014

Key words: Individual Referrals, manifestly ill-founded, protection of property, compensation.

The subject matter is the request for constitutionality review of eighteen Judgments of Supreme Court of 14 June 2013, in which cases the Supreme Court decided to partly approve the revision filed by the Municipality of Gllogoc and to amend the Judgments of the District Court in Prishtina and Judgments of the Municipal Court in Gllogoc, whereby the amounts for compensation of demolished business premises were reduced and the claims for compensation of non-material damage filed by the Applicants were rejected as ungrounded.

In their Referrals the Applicants argue that the Supreme Court did not determine an adequate and proportional compensation for the demolition of the premises and therefore the right to protection of property was violated. Furthermore, they also allege violation of Articles 23 [Human Dignity], 24 [Equality before the Law], 31 [Right to Fair and Impartial Trial] and 54 [Judicial Protection of Rights] of the Constitution.

The Constitutional Court considered that the Supreme Court extensively reasoned why it amended the Judgment of the lower court instances, whereby it reduced the amount of compensation for the caused damage and rejected the claim for non-material compensation. Consequently, the Constitutional Court declared the Referral inadmissible for being manifestly ill-founded, because the facts presented by the Applicants do not in any way justify the allegations of a violation of their constitutional rights and the Applicants have not sufficiently substantiated their claims.

RESOLUTION ON INADMISSIBILITY
in
Cases No.
KI161/13, KI162/13, KI164/13, KI165/13, KI166/13, KI167/13, KI168/13, KI169/13, KI170/13, KI171/13, KI172/13, KI173/13, KI174/13, KI175/13, KI176/13, KI177/13, KI178/13 and KI179/13
Applicants
Ramiz Isufi and 17 other individuals
Constitutional Review
of the 18 Judgments of the Supreme Court of 14 June 2013

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

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

The Applicants

1. The following Referrals are submitted by the following Applicants:

1.Ramiz Isufi (KI161/13)
2. Zenullah Pirraku (KI162/13)
3. Fehmi Gecaj (KI164/13)
4. Qazim Zogaj (KI165/13)
5. Lulzim Qorolli (KI166/13)
6. Sami Qorri (KI167/13)
7. Rusha Uljeviq (KI168/13)
8. Fevzije Seferaj (KI169/13)
9. Qamil Dragaj (KI170/13)
10. Qama Ramaj (KI171/13)
11. Murtez Xhehaj (KI172/13)
12. Ferat Gjoka(KI173/13)
13. Ilir Haziri (KI174/13)
14. Mehdi Gjoka (KI175/13)
15. Azemine Hasi (KI176/13)
16. Imer Zeneli (KI177/13)
17. Mevlude Zymberi (KI178/13)
18.Asllan Seferaj (KI179/13

(Hereinafter: the Applicants), with residence in Gllogoc.

2. Ramiz Isufi is represented by Mr. Zenullah Pirraku (KI162/13), also an Applicant before the Court.

3. The 16 other Applicants are represented by Mr. Feriz Gervalla, a practicing lawyer from Prishtina.

Challenged decisions

4. The Applicants challenge the following Judgments of the Supreme Court of 14 June 2013:

   (1) Ramiz Isufi (KI161/13), Rev.99/2013, served on the Applicant on 27 September 2013.

   (2) Zenullah Pirraku (KI162/13), Rev.109/2013, served on the Applicant on 27 September 2013.

   (3) Fehmi Gecaj (KI164/13), Rev.96/2013, served on the Applicant on served on the Applicant on 30 September 2013.

   (4) Qazim Zogaj (KI165/13), Rev.100/2013, served on the Applicant on 30 September 2013.

   (5) Lulzim Qorolli (KI166/13), Rev.110/2013, served on the Applicant on 30 September 2013.

   (6) Sami Qorri (KI167/13), Rev.98/2013, served on the Applicant on 30 September 2013.

   (7) Rusha Uljeviq (KI168/13), Rev.106/2013, served on the Applicant on 30 September 2013.

   (8) Fevzije Seferaj (KI169/13), Rev.103/2013, served on the Applicant on 30 September 2013.

   (9) Qamil Dragaj (KI170/13), Rev.111/2013, served on the Applicant on 30 September 2013.

   (10) Qama Ramaj (KI171/13), Rev.97/2013, served on the Applicant on 30 September 2013.

   (11) Murtez Xhehaj (KI172/13), Rev.104/2013, served on the Applicant on 30 September 2013.

(12) Ferat Gjoka (KI173/13), Rev.113/2013, served on the Applicant on 30 September 2013.

(13) Ilir Haziri (KI174/13), Rev. 108/2013, served on the Applicant on 30 September 2013.

(14) Mehdi Gjoka (KI175/13), Rev. 105/2013, served on the Applicant on 30 September 2013.

(15) Azemine Hasi (KI176/13), Rev. 101/2013, served on the Applicant on 30 September 2013.

(16) Imer Zeneli (KI177/13), Rev. 107/2013, served on the Applicant on 30 September 2013.

(17) Mevlude Zymberi (KI178/13), Rev. 102/2013, served on the Applicant on 30 September 2013.

(18) Asllan Seferaj (KI179/13), Rev. 112/2013, served on the Applicant on 30 September 2013.

Subject matter

5. The subject matter is the request for constitutionality review of eighteen Judgments of Supreme Court of 14 June 2013, in which cases the Supreme Court decided to partly approve the revision filed by the Municipality of Gllogoc and to amend the Judgments of the District Court in Prishtina and Judgments of the Municipal Court in Gllogoc, whereby the amounts for compensation of demolished business premises were reduced and the claims for compensation of non-material damage filed by the Applicants were rejected as ungrounded.

Legal basis

6. The Referrals are 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 Rules 37 and 56 (2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

7. On 17 October 2013, the Applicants Ramiz Isufi (KI161/13) and Zenullah Pirraku (KI162/13) submitted their Referrals to the Court.

8. On 22 October 2013, the Applicants Fehmi Gecaj (KI164/13), Qazim Zogaj ((KI165/13), Lulzim Qorolli (KI166/13), Sami Qorri (KI167/13), Rusha Uljeviq (KI168/13), Fevzije Seferaj (KI169/13), Qamil Dragaj (KI170/13), Qama Ramaj (KI171/13), Murtez Xhehaj (KI172/13), Ferat Gjoka (KI173/13), Ilir Haziri (KI174/13), Mehdi Gjoka (KI175/13), Azemine Hasi (KI176/13), Imer Zeneli (KI177/13), Mevlude Zymberi (KI178/13) and Asllan Seferaj (KI179/13) submitted their Referrals to the Court.

9. On 8 November 2013, the President by Decision GJR. KI161/13 appointed Judge Arta Rama-Hajrizi as Judge Rapporteur. On the same date, by Decision KSH. KI161/13 of the President the Review Panel was appointed, composed of Judges: Altay Suroy (presiding), Snezhana Botusharova and Kadri Kryeziu.

10. On 11 November 2013, in accordance with Rule 37.1 of the Rules of Procedure, the President ordered the joinder of Referral KI161/13 with Referrals KI162/13, KI164/13, KI165/13, KI166/13, KI167/13, KI168/13, KI169/13, KI170/13, KI171/13, KI172/13, KI173/13, KI174/13, KI175/13, KI176/13, KI177/13, KI178/13 and KI179/13. By this order, it was decided that the Judge Rapporteur and the composition of the Review Panel be the same as it was decided by the the President on appointment of the Judge Rapporteur and the Review Panel on 8 November 2013.

11. On 13 November 2013, the Court notified the Applicants and the Supreme Court of the registration of the Referrals and the joinder of Referrals.

12. On 7 February 2014, the Review Panel considered the report of Judge Rapporteur and made a recommendation to the full Court on the inadmissibility of the Referral.

The facts of the case

13. Based on the case files, between 1992 and 1996, the Municipality of Gllogoc allocated nearly 60 parcels to different individuals for construction of business premises with permanent and temporary character.

14. In September 1999, the Municipality of Gllogoc in the context of the spatial planning decided to clear the parcels and ordered the demolition of the business premises.

15. The Administrative procedures regarding these decisions lasted until 2005.

16. On 21 March 2005, the Supreme Court decided to annul the Administrative Decisions and remand the cases in administrative proceedings, in order to render other decisions.

17. Regardless of pending administrative appeal and prior to the decision of Supreme Court of 21 March 2005, in early March 2005, the Municipality of Gllogoc had already demolished all existing business premises and cleared the parcels.

18. Immediately after the demolition of the business premises, many claims for compensation were filed with the Municipal Court in Gllogoc against the Municipality of Gllogoc.

19. On 8 December 2009 and 25 June 2010, upon request of 18 claimants, EULEX Judges decided to take over the cases.

20. In their claims, the claimants requested compensation for demolition of the business space, compensation for partial destruction of business space, compensation for lost profit, compensation for non-material damage, determination of another parcel for business premise and the interest rate for monetary compensation.

21. Between 27 September 2011 and 21 October 2011, the Municipal Court in Gllogoc partly approved the claims. It only decided to approve the compensation of the demolition of the premises with the specified interest rate starting from the date when the claim was filed, whereas it further decided to approve a compensation for non-material damage and reject the claims for compensation for lost profit and determination of another parcel for business premise.

22. Against the Judgments of the Municipal Court in Gllogoc, the Municipality of Gllogoc filed appeals with the District Court in Prishtina.

23. Between 23 October 2012 and 23 November 2012, the District Court in Prishtina issued Judgments rejecting the appeals and upholding the Judgments of the Municipal Court in Gllogoc.

24. Against the Judgments of the District Court in Prishtina, the Municipality of Gllogoc filed revisions with the Supreme Court, based on essential violation of the provisions of contested procedure and erroneous application of substantive law.

25. On 14 June 2013, the Supreme Court rendered 18 Judgments and decided to partly approve the revision filed by the Municipality of Gllogoc and to amend the Judgments of the District Court in Prishtina and Judgments of the Municipal Court in Gllogoc, whereby the amount for compensations of demolished business premises were reduced and the claims for compensation of non-material damage were rejected as ungrounded.

26. In eighteen Judgments, the Supreme Court held the following:

> *"Regarding the caused damage by the demolition of the building, the second instance court made a correct determination that the caused damage is only in the form of ordinary damage-of the reduction of the claimant's property. However, in this regard, the law was not correctly applied. The damage in this case is the value of the building, when it was constructed in 1997 (equivalent value with the material and the labor force for its construction), is not the value at the time of demolition in 2005 minus depreciation of the building for 8 years of use, but it is only the value of the material, which the claimant could receive is the construction/building would not be demolished, but it would be de-constructed (de-construction is the selective dismantle of the parts of the buildings for re-use). The construction/building was of temporary character, it could not be sold, neither in the market value at the time of demolition, nor the value of construction (the time of construction or the time of destruction minus depreciation). Therefore, the damage is only the value of usable material, which may have been received in case of proper de-construction."*

27. In this respect, the Supreme Court decided to amend the Judgments of the lower court instances and reduce the amount of compensation as determined by the aforementioned courts.

28. Regarding the compensation for the lost inventory, the Supreme Court concluded that the Judgments were fair and the request for revision should be rejected.

29. With regards to the non - material damage, the Supreme Court found that [...]" *the revision is grounded and no non-material awardable damage was suffered. There are no data that the claimant has suffered physical or psychological pain that should be compensated. The claimant and the Municipality have objected the claimant's right to have this building in the municipality land for many years until the time of its demolition. It is reasonable that the claimant was disappointed and angry when the building was demolished, but not all psychological pain should be compensated with money, in accordance with Article 200 of LOR [Law on Obligational Relationships]. The psychological pain cannot be compensated in cash, if it is not proved that they were so intensive and long, so that they affected the mental health of the claimant. There is no evidence regarding this, therefore, in this part also, the decision should be modified and the claim for moral compensation should be rejected (Article 224 (1) of the Law on Contested Procedure).*

Applicants' Allegation

30. In their separate Referrals, the Applicants, Ramiz Isufi (KI161/13) and Zenullah Pirraku (KI162/13) allege the following: *[...]"Article 46.3 of the Constitution of the Republic of Kosovo has been violated, since the protection of property and compensation were violated. Article 24.1 of the Constitution was violated, since equality before law was infringed. Article 23 of the Constitution of the Republic of Kosovo was violated, since human dignity was violated. Our right to property has been denied, although allocated on legal grounds, it was built upon valid decisions [...]".*

31. The same Applicants further request the Constitutional Court*: [...]"We request the approval of our Referral by the Constitutional Court of Kosovo, and Judgment [...] of 14 June 2013 annulled. We seek from the Constitutional Court of the Republic of Kosovo the compensation of material, psychological and moral damage."*

32. In their Referrals, the 16 other Applicants argue that: *[...]"Thus, by not approving adequate and proportional compensation for claimants due to unjust demolition of business premises, the right to protection of property pursuant to Article 46 paragraph 1 and 2*

of the Constitution of the Republic of Kosovo and provisions of European Convention on Human Rights, based on unjust judgment pursuant to Article 31 of Kosovo Constitution are violated. The judgment is confusing, which fact speaks clearly that we have to do with an unfair trial. The judgment is contradictory and contains contradictory reasons on crucial facts. Whereas by its enacting clause the judgments of lower courts were amended and is awarded a minimum amount of compensation of damages for the demolished premises, the request for compensation of non-material damage is rejected, with paragraph 2 of enacting clause is decided: that the remained part of request is rejected as ungrounded and each party bears its own expenses. […]".

33. These Applicants allege violation of Article 31 [Right to Fair and Impartial Trial], Article 46, paras. 1 and 2 [Protection of Property] and Article 54 [Judicial Protection of Rights] of the Constitution and Article 1 of Protocol No. 1 of the European Convention on Human Rights.

Assessment of admissibility of the Referral

34. First of all, in order to be able to adjudicate the Applicants' Referral, the Court has to examine whether the Applicants have met all the requirements of admissibility, which are foreseen by the Constitution and further specified by the Law and Rules of Procedure.

35. The Court refers to Article 113, paragraph 7 of the Constitution 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."*

36. In addition, Article 49 of the Law establishes that *"The referral should be submitted within a period of four (4) months. The deadline shall be counted from the day upon which the claimant has been served with a court decision."*

37. In the present cases, the Court considers that the Applicants are an authorized party, all legal remedies available to them under the applicable law have been exhausted and that the Referrals have been submitted within the four month time limit.

38. However, the Court also takes into account Rule 36 (2) of the Rules of Procedure, which provides:

> *"The Court shall reject a Referral as being manifestly ill-founded when it is satisfied that:*
> *[...], or*
> *b) when the presented facts do not in any way justify the allegation of a violation of the constitutional rights, or*
> *[...], or*
> *d) when the Applicant does not sufficiently substantiate his claim".*

39. In their Referrals the Applicants argue that the Supreme Court did not determine an adequate and proportional compensation for the demolition of the premises and therefore the right to protection of property was violated. Furthermore, they also allege violation of Articles 23 [Human Dignity], 24 [Equality Before the Law], 31 [Right to Fair and Impartial Trial] and 54 [Judicial Protection of Rights] of the Constitution.

40. However, the Applicants do not explain how and why the Judgments of the Supreme Court violated their rights guaranteed by the Constitution.

41. In this connection, the Constitutional Court reiterates that it is not its task under the Constitution to act as a court of fourth instance, in respect of the decisions taken by the regular courts. It is the role of the latter to interpret and apply the pertinent rules of both procedural and substantive law (See, *mutatis mutandis*, García Ruiz v. Spain, No. 30544/96, ECtHR, Judgment of 21 January 1999, para. 28, see also case No. KI70/11, Applicants Faik Hima, Magbule Hima and Bestar Hima, Resolution on Inadmissibility of 16 December 2011).

42. The Constitutional Court can only consider whether the evidence has been presented in such a manner and the proceedings in general, viewed in the entirety, have been conducted in such a way that the Applicants had a fair trial (See, *inter alia*, Edwards v. United Kingdom, No. 13071/87, Report of European Commission of Human Rights of 10 July 1991).

43. Based on the case files, the Court notes that the reasoning provided in the last Judgments rendered by the Supreme Court is clear and reasoned and, after reviewing the entire procedures, the Court also

found that the proceedings before the Supreme Court, have not been unfair and arbitrary (See, *mutatis mutandis,* Shub v. Lithuania, Decision of the European Court of Human Rights on admissibility of referral, no. 17064/06, of 30 June 2009).

44. In this respect, the Supreme Court extensively reasoned why it amended the Judgment of the lower court instances, whereby it reduced the amount of compensation for the caused damage and rejected the claim for non-material compensation.

45. With regards to the material damage, the Supreme Court held that the lower court instances erroneously applied the substantive law when they determined the amount of compensation, whereby it reasoned as following: [...]"*The damage in this case is the value of the building, when it was constructed in 1997 (equivalent value with the material and the labor force for its construction), is not the value at the time of demolition in 2005 minus depreciation of the building for 8 years of use, but it is only the value of the material, which the claimant could receive is the construction/building would not be demolished, but it would be de-constructed (de-construction is the selective dismantle of the parts of the buildings for re-use). The construction/building was of temporary character, it could not be sold, neither in the market value at the time of demolition, nor the value of construction (the time of construction or the time of destruction minus depreciation). Therefore, the damage is only the value of usable material, which may have been received in case of proper de-construction."* Whereas for the non-material damage, the Supreme Court held that there was no evidence that the Applicants suffered moral damage.

46. For all the aforementioned reason, the Court considers that the facts presented by the Applicants did not in any way justify the allegations of a violation of the constitutional rights and the Applicants did not sufficiently substantiate their claims.

FOR THESE REASONS

The Constitutional Court, pursuant to Rule 36 (2), b) and d), on 7 February 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

KI147/13, Ilir Bunjaku, and Resolution of 5 December 2013 - Constitutional Review of the Administrative Instruction No. 20/2012 of the Ministry of Education, Science and Technology, on Comparability and Equivalence of Diplomas and Study Programs before the Bologna System and of the Bologna System

Case KI147/13, decision of 5 December 2013

Key words: Individual Referral, unauthorized party.

The subject matter is constitutional review of Administrative Instruction No. 20/2012 of MEST, which according to the Applicant, places a group of engineers graduated in the Faculty of Electrical and Computer Engineering (hereinafter: FECE), who finished their lectures in a five-year program before graduation, in an unequal position with those who attended four-year studies, and the academic title awarded upon graduation.

The Applicant alleges that the Administrative Instruction has placed him and the group of students finishing the five-year study program in an unequal position with other students, because they are not recognized 300 ECTS, like those graduating in the system before the Bologna system.

The Applicant has not alleged any violation of any constitutionally guaranteed right, but has requested review of legality of this Administrative Instruction.

The Court notes that individuals are not authorized parties, in the meaning of Article 113 of the Constitution, to refer matters of compliance of Government regulations with the Constitution, since such referrals may be filed only by entities as provided by Article 113.2 of the Constitution.

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 20 of the Law and Rule 36 (3) c) of the Rules of the Procedure, on 5 December 2013, unanimously declared the Referral inadmissible.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI147/13
Applicant
Ilir Bunjaku
Constitutional Review of the Administrative Instruction No. 20/2012 of the Ministry of Education, Science and Technology, on Comparability and Equivalence of Diplomas and Study Programs before the Bologna System and of the Bologna System

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. Ilir Bunjaku (hereinafter: the Applicant), from the village of Samadrexha, Municipality of Vushtrri.

Challenged decision

2. The challenged decision is the Administrative Instruction No. 20/2012 of the Ministry of Education, Science and Technology (hereinafter: AI MEST), on Comparability and Equivalence of Diplomas and Study Programs before the Bologna System and of the Bologna System, signed by the Minister on 22 October 2012.

Subject matter

3. The subject matter is constitutional review of Administrative Instruction No. 20/2012 of MEST, which according to the Applicant, places a group of engineers graduated in the Faculty of

Electrical and Computer Engineering (FECE), who finished their lectures in a five-year program before graduation, in an unequal position with those who attended four-year studies, and the academic title awarded upon graduation.

Legal basis

4. Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: Constitution), Article 47 of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: Law), and Rule 56 (2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: Rules of Procedure).

Proceedings before the Court

5. On 13 September 2013, the Applicant filed his referral with the Court.

6. On 24 September 2013, by Decision GJR. KI147/13, the President of the Court appointed Judge Arta Rama-Hajrizi as Judge Rapporteur, and a Review Panel composed of Judges Altay Suroy (Presiding), Snezhana Botusharova and Kadri Kryeziu.

7. On 7 October 2013, the Constitutional Court notified the Applicant and the MEST on registration of the referral.

8. On 5 December 2013, the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

Summary of the facts

9. On 22 October 2010, MEST issued Administrative Instruction No. 20/12 – on Comparability and Equivalence of Diplomas and Study Programs before the Bologna System. The Administrative Instruction was signed by the Minister of Education, Science and Technology.

10. Article 4.1 of this AI provides that "*Diplomas of four-year university studies of the system before Bologna are equivalent to 240 ECTS. Paragraph 2 of the same Article provides that: "To earn a Master degree, these graduates shall also collect at least 60 ECTS in one of these programs*".

11. Article 5 of the same AI provides: "Diplomas of 5 (five) years university studies that have been completed with the public defense of the graduate thesis in technical system areas before Bologna are equivalent with 300 ECTS".

12. According to the Applicant, himself and a group of FECE students attended all lectures in a five-year study system, and passed almost all exams, but without graduation, and in the meantime, the study program changed in the Faculty, where the fifth year exams were transferred to the fourth year of study.

Applicant's allegations

13. The Applicant alleges that the Administrative Instruction has placed him and the group of students finishing the five-year study program in an unequal position with other students, because they are not recognized 300 ECTS, like those graduating in the system before the Bologna system.

14. The Applicant has not alleged any violation of any constitutionally guaranteed right, but has requested review of legality of this Administrative Instruction.

Assessment of admissibility of the Referral

15. In order to be able to review the Referral of the Applicant, the Court must first assess whether the Applicant has met all admissibility criteria as provided by the Constitution, and further specified by Law and Rules of Procedure

16. In this regard, the Court refers to Article 113.1 of the Constitution, which provides:

> *"1. The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties".*

and Article 113.7, 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. In referring to the Applicant's Referral and violations alleged, the Court finds that the Referral was filed by an individual, that the Applicant has not proven to have exhausted any legal remedy before filing the Referral with the Constitutional Court, and that the challenged legal act was made public on 20 October 2012, which means 10 and a half months before the Applicant's Referral was submitted to the Court.

18. In relation to the admissibility criteria of the authorized party, the Court finds the following:

19. The Applicant challenges AI of MEST No. 20/12, signed by the Minister of MEST on 22 October 2012.

20. Article 92 [General Principles] of the Constitution provides that:

> *"1. The Government consists of the Prime Minister, deputy prime minister(s) and ministers"*.

21. In due consideration of the above-mentioned constitutional norm, and the fact that the challenged AI was signed by a Minister of the Government, and belongs to the executive branch, respectively the MEST, it is clear that the AI is a bylaw of the Government of Kosovo.

22. In relation to this, the Court notes that Article 113 [Jurisdiction and Authorized Parties] of the Constitution providing the parties that are authorized to refer constitutional matters, in its item two has stipulated:

> *"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"*.

23. Based on the above, the Court notes that individuals are not authorized parties, in the meaning of Article 113 of the Constitution, to refer matters of compliance of Government regulations with the Constitution, since such referrals may be filed only by entities as provided by Article 113.2 of the Constitution.

24. In similar circumstances, the Court has addressed the issue of authorized parties when deciding in Case KI44/10 of Applicant Gafurr Podvorica, when on "constitutional review of the Decision of the Ministry of Labor and Social Welfare (MLSW) no. 89 dated 23 April 2010, on the dissolution of the Social Policy Institute within MLSW, it issued Resolution on Inadmissibility (see the Resolution in Case KI44/10 of 18 March 2011 and also the European Court of Human Rights when it reviewed Application no. 45129/98 (see Convention Municipal Section of Antilly v. France (December) no. 45129/98, ECHR 1999-VIII)."

25. Furthermore, the Court notes that the Applicant has not specified any human right as guaranteed by the Constitution which may have been violated by the legal act he challenges, while from the contents of the Referral, the Court was not able to ascertain what rights could have been subject of the matter filed for review before it.

26. In these circumstances, the Applicant has not proven that he is an authorized party to file a referral with the Court, in the form and content in which he has built the case, and therefore

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 20 of the Law and Rule 36 (3) c) of the Rules of the Procedure, on 5 December 2013, 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. This Decision is effective immediately.

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

KI59/13, Ibrahim Rizvanolli, Resolution of 18 November 2013 - Constitutional Review of Judgment Rev. no. 105/2010 of the Supreme Court of Kosovo, of 29 November 2012.

Case KI59/13, decision of 18 November 2013

Keywords: individual referral, manifestly ill-founded, non-exhaustion.

The applicant filed a Referral pursuant to Article 113.7 of the Constitution of Kosovo challenging Judgment Rev. no. 105/2010 of the Supreme Court, dated 15 February 2013, as being taken in violation of Article 31 [Right to a Fair and Impartial Trial] and Article 46 [Protection of Property] 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 pursuant to Rule 36 (1) c) and 36 (2) d) of the Rules of Procedure. Furthermore, the Court also held that in respect to the alleged violation of the principle that a case must be decided within a reasonable time, it is declared as inadmissible for non-exhaustion because the Applicant has not raised this complaint before the regular courts in accordance with Article 113.7 of the Constitution and Article 47 of the Law.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI59/13
Applicant
Ibrahim Rizvanolli
Constitutional Review of Judgment Rev. no. 105/2010 of the Supreme Court of Kosovo, dated 29 November 2012

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

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

Applicant

1. The Applicant is Mr. Ibrahim Rizvanolli, resident in Pristina.

Challenged decision

2. The Applicant challenges the Judgment Rev. no. 105/2010 of the Supreme Court, dated 15 February 2013, which was served on the Applicant on 23 March 2013.

Subject matter

3. The subject matter is the constitutional review of the challenged decision which allegedly violated Article 31 [Right to a Fair and Impartial Trial] and Article 46 [Protection of Property] of the Constitution.

Legal basis

4. The Referral is based on Articles 113.7 of the Constitution of the Republic of Kosovo (hereinafter, the Constitution), Article 22 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter, the Law) and Rule 29 of the Rules of Procedure of the Constitutional Court (hereinafter, the Rules).

Proceedings before the Court

5. On 18 April 2013, the Applicant filed the Referral with the Court.

6. On 29 April 2013, the President appointed Judge Almiro Rodrigues as Judge Rapporteur and the Review Panel consisting of Judges Altay Suroy (Presiding), Kadri Kreyziu and Arta Rama-Hajrizi.

7. On 18 November 2013, the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

8. In March 1989, the Applicant purchased a shop and would have to pay to the seller the purchase price in instalments. On 1 January 1999, the Applicant still owed the seller a certain amount of money. The seller initiated civil proceedings before the Municipal Court in Peja, after the Applicant had ignored several requests from the seller to pay the remaining debt.

9. On 28 October 2007, the Municipal Court rejected the claim as out of time.

10. The seller appealed to the District Court in Peja against the Municipal Court's decision.

11. On 5 February 2010, the District Court modified the judgment of the Municipal Court and ordered the Applicant to pay the claimant the remaining sum plus interest as well as the procedural costs.

12. Thereupon, the Applicant filed a request for revision with the Supreme Court, *"due to substantial violations of the provisions of contested procedure of erroneous implementation of substantive*

law". He requested the Supreme Court to quash the judgment of the District Court in order for the judgment of the Municipal Court to remain valid.

13. On 15 February 2012, the Supreme Court ruled that the District Court had been right in finding that the Municipal Court had assessed the factual situation correctly, but had erroneously applied the substantive law by not taking into account the amendment of Article 371 of the Law on Contracts and Torts (hereinafter, the LCT) of 25 June 1993, by which the period within which claims should be submitted had been extended from 5 to 10 years.

14. The Supreme Court concluded that the time limit of ten years had not passed and the District Court had rightly accepted the appeal by the seller as grounded. Therefore, the Supreme Court confirmed the decision of the District Court on modifying the judgment of the the Municipal Court.

Applicant's allegations

15. The Applicant alleges before the Constitutional Court that both the appeal and revision court have erroneously applied Article 371 of the LCT.

16. The Applicant concludes that the challenged decisions infringe Articles 31 [Right to Fair and Impartial Trial] and 46 [Protection of Property] of the Constitution and requests the Court to annul the challenged decisions.

Assessment of the admissibility of the Referral

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

18. In this respect, the Court refers to Article 113.7 of the Constitution which establishes:

> *"7. Individuals are authorized to refer violations by public authorities of their individual rights and freedoms guaranteed by the Constitution, but only after exhaustion of all legal remedies provided by law".*

19. The Court also refers to Article 47 and 48 of the Law.

Article 47.2 of the Law on Court provides that:

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

Article 48 of the Law on Court 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".*

20. In addition, Rule 36 (1) a), b) and c), and (2) a) and d) of the Rules provides that

> *"(1). The Court may only deal with Referrals if:*
> *a) all effective remedies that are available under the law against the Judgment or decision challenged have been exhausted, or*
>
> *b) the Referral is filed within four months from the date on which the decision on the last effective remedy was served on the Applicant, or*
>
> *c) the Referral is not manifestly ill-founded.*
>
> *(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*
> *[...]*
>
> *(d) when the Applicant does not sufficiently substantiate his claim".*

21. The Court considers that the Applicant complied with the prescribed deadline of four months counted from the day upon he has been served with the judgment of the Supreme Court; justified the referral with the relevant facts and a clear reference to the supposedly alleged violations; expressly challenges the Judgment of the Supreme Court as being the concrete act of public authority subject to the review; clearly points out the relief sought; and

attaches the different decisions and other supporting information and documents.

22. In fact, the Applicant filed a request for revision with the Supreme Court *"due to substantial violations of the provisions of contested procedure of erroneous implementation of substantive law".*

23. The Supreme Court found finally that the time limit of ten years had not passed and confirmed the decision of the District Court.

24. As said above, the Applicant claims that "that both the appeal and revision court have erroneously applied Article 371 of the Law on Contested procedure" and alleges that the Judgment of the Supreme Court violated his constitutional right guaranteed by Article 31 [Right to Fair and Impartial Trial].

25. The Constitutional Court notes that the grounds of appeal to the Supreme Court consist of allegations related with "*substantial violations of the provisions of contested procedure" and "erroneous implementation of substantive law".*

26. The Constitutional Court considers that those allegations pertain to the domain of legality; and further notes that no clear allegation was made on the basis of constitutionality before the Supreme Court.

27. 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.

28. In fact, the purpose of the exhaustion rule is, in the case, allowing to the Supreme Court the opportunity of settling an alleged violation of the Constitution. The exhaustion rule is operatively intertwined with the subsidiary character of the constitutional justice procedural frame work. (See, *mutatis mutandis,* Selmouni v. France [GC], § 74; Kudła v. Poland [GC], § 152; Andrášik and Others v. Slovakia (dec.).

29. Thus the principle of subsidiarity requires that the Applicant exhaust all procedural possibilities in the regular proceedings, in order to prevent the violation of the constitution or, if any, to remedy such violation of a fundamental right. Otherwise, the Applicant is liable to have its case declared inadmissible by the Constitutional Court, when

failing to avail itself of the regular proceedings or failing to report a violation of the Constitution in the regular proceedings. That failure shall be understood as a waiver of the right to further object the violation and complain. (See Resolution, in Case No. KI07/09, Demë Kurbogaj and Besnik Kurbogaj, Review of Supreme Court Judgment Pkl. nr. 61/07 of 24 November 2008, paragraph 18).

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

31. In the instant case, the Applicant should have clearly complained before the Supreme Court against the alleged violation of its right to fair trial, as the Supreme Court also "shall adjudicate based on the Constitution and the law" (Article 102 (3) of the Constitution).

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

33. The Constitutional Court already considered that *"The non exhaustion of remedies might encompass different situations: the referral is premature, because a decision on the same matter is still pending; the referral was filed with some appeals missing; or a complaint was filed in the last instance court proceedings and no opportunity of settling the alleged violation was given to that last instance court"* (See Resolution on Inadmissibility of 4 December 2012, in Case No. KI120/11, Applicant Ministry of Health, Constitutional Review of the Decision of the Supreme Court A. No. 551, dated 20 June 2011).

34. In fact, that analysis is in conformity with the European Court of Human Rights (hereinafter, the European Court) jurisprudence which establishes that applicants are only obliged to exhaust

domestic remedies that are available in theory and in practice at the relevant time, that is to say, that are accessible, capable of providing redress in respect of their complaints and offering reasonable prospects of success (Sejdoviæ v. Italy [GC], no. 56581/00, ECHR 2006-II § 46). It must be examined whether, in all the circumstances of the case, the applicant did everything that could reasonably be expected of him or her to exhaust domestic remedies (D. H. and Others v. the Czech Republic [GC], §§ 116-22).

35. The Constitutional Court also applied this same reasoning when it issued the Resolutions on Inadmissibility on the grounds of non exhaustion of remedies, on 04 December 2012, in the Case No. KI120/11, Ministry of Health, Constitutional Review of the Decision of the Supreme Court A. No. 551 of 27 January 2010, in the Case No. KI41/09, AAB-RIINVEST University L.L.C., Prishtina vs. Government of the Republic of Kosovo; and on 23 March 2010, in its Decision in the Case No. KI73/09, Mimoza Kusari Lila vs. the Central Election Commission.

36. As a matter of principle and of fact, the Applicant cannot as a rule complain directly before the Constitutional Court about a human rights and fundamental freedoms violation. The Applicant should have decisively complained first before the Supreme Court of a constitutional violation. The absence to complain before the Supreme Court against the alleged violation of his right to fair trial shows that all the remedies provided by the regular legal system have not been exhausted.

37. However, the Constitutional Court considers that the facts of the case do not allow a compelling conclusion that the grounds of appeal "*substantial violations of the provisions of contested procedure" and "erroneous implementation of substantive law",* alleged before the Supreme Court, meet the test of the European Court.

38. In any way, even if the Applicant would have raised clearly the constitutional allegations before the Supreme Court, the Constitutional Court further considers that the Applicant has not substantiated and supported with evidence a violation of his rights by the Supreme Court.

39. In fact, the Applicant's allegation of the violation of his constitutional rights do not present *prima facie* sufficient ground for filing the case in the Court; the Applicant's dissatisfaction with

the decision of the Supreme Court cannot be a constitutional ground to complain before the Constitutional Court.

40. The Court recalls that the Applicant alleges that the challenged decision violates his right to a fair trial and protection of property, as guaranteed by Articles 31 and 46 of the Constitution.

41. However, the Court considers that the Applicant has not accurately clarified why and how his constitutional rights were infringed by the challenged decision when it concluded that the time limit of ten years had not passed. It appears that the Applicant merely does not agree with the outcome of the challenged decisions.

42. In fact, no allegation on the ground of constitutionality was made by the Applicant, either implicitly or in substance, which would substantiate the alleged violation of his rights to fair and impartial trial and protection of his property.

43. Moreover, the Court again notes that the Applicant complains on the grounds "of erroneously application of Article 371 of the Law on Contracts and Torts" and further concludes that the challenged decisions infringe his constitutional rights.

44. The Court considers that the Applicant's complaint falls under the scope of legality, which, as a rule, is the jurisdiction of the regular courts. The mere reference to a violation of his rights to fair trial and protection of his property does not constitute in itself a constitutional ground for his complaint.

45. Furthermore, the Applicant does not substantiate a *prima facie* allegation on constitutional grounds and does not provide evidence showing that his rights and freedoms guaranteed by Article 31 and 46 of Constitution have been violated by the decisions of District and Supreme Courts.

46. Moreover, the Constitutional Court recalls that it is not the task of the Constitutional Court to deal with errors of law (legality) allegedly committed by the District and Supreme Courts, unless they may have infringed rights and freedoms protected by the Constitution (constitutionality).

47. Thus, the Court cannot act as a court of fourth instance, when considering the decisions rendered by these courts. It is the task of the regular courts to interpret and apply the pertinent procedural

and substantive law *(*See*, mutatis mutandis,* Garcia Ruiz v. Spain, no. 30544/96, § 28, European Court on Human Rights [ECHR] 1999-1).

48. Furthermore, the Constitutional Court cannot consider that the pertinent proceedings before the District Court and Supreme Courts 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).

49. On the contrary, the Court considers that the proceedings, viewed in their entirety, have been conducted in such a way that the Applicant has had a fair trial (See, *mutatis mutandis,* Report of the EComHR in case Edwards v. UK, Appl. No. 13071/87, 10 July 1991).

50. In addition, the Court considers that both the decisions of the District and Supreme Courts are well reasoned and justified in accordance with their jurisdiction.

51. In sum, the Court concludes that the Applicant's Referral, pursuant to the combined provisions of Article 113 (7) of the Constitution, Article 48 of the Law and Rule 36 (1) a), b) and c), and (2) a) and d) of the Rules, is manifestly ill-founded.

52. Therefore, the Referral is inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Articles 47 and 48 of the Law and Rule 36 (1) c) and Rule 56 (2) of the Rules, on 18 November 2013, 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 immediately effective.

Judge Rapporteur	**President of the Constitutional Court**
Almiro Rodrigues	Prof. Dr. Enver Hasani

KI150/13, Halit Lahu, Resolution of 20 November 2013 - 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 15 March 2011

Case KI150/13, decision 20 November 2013

Key words: Individual Referral, out of time.

The Applicant claims that the challenged Decision violates his constitutional rights guaranteed under Article 3 [Equality Before the Law], Article 31 [Right to Fair and Impartial Trial], Article 46 [Protection of Property], and Article 54 [Judicial Protection of Rights] of the Constitution of Kosovo.

The Applicant requests the Constitutional Court to declare that "the 20 % share from the privatization belong also to him because as a former employee of SOE Ramiz Sadiku he is entitled to it".

The Court notes that the Applicant submitted Referral to the Court on 19 September 2013, whereas the final decision of the Trial Panel of the Special Chamber was served on the Applicant on 17 April 2011.

Thus, the Court considers that the Referral is out of time, because it was filed 2 years and 31 days after the expiration of legal time limit provided by Article 49 of the Law and Rule 36 (1) b) of the Rules of Procedure.

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 20 of the Law and Rule 36 (1) b) of the Rules of Procedure, on 20 November 2013, unanimously declares the Referral inadmissible.

RESOLUTION ON INADMISSIBILITY
in
Case no. KI150/13
Applicant
Halit Lahu
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, Dated of 15 March 2011

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

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

Applicant

1. The Applicant is Mr. Halit Lahu 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 15 March 2011, which was served on the Applicant on 17 April 2011.

Subject matter

3. The subject matter is the constitutional review of the challenged decision, which allegedly violated, among others, the right to a fair trial of 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 20 and 22.7 of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo of 15 January 2009 (hereinafter, the Law) and Rule 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 19 September 2013, the Applicant filed the Referral with the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).

6. On 24 September 2013, the President, by Decision no. GJR.KI. 150/13 appointed Judge Almiro Rodrigues as Judge Rapporteur. On the same day, the President by Decision no. KSH.150/13 appointed the Review Panel composed of judges: Altay Suroy (Presiding), Kadri Kryeziu and Arta Rama-Hajrizi.

7. On 10 October 2013, the Court notified the Applicant and the Special Chamber of the Supreme Court of the registration of Referral.

8. On 20 November 2013, the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

Summary of the facts

9. On 27 June 2006, "SOE Ramiz Sadiku" completed the privatization process.

10. On 31 March 2009, the Applicant started judicial proceedings before the Special Chamber of the Supreme Court, comlaining in order to ensure his alleged right to 20% share from the privatization of "SOE Ramiz Sadiku".

11. Finally, on 15 March 2011, the Trial Panel of the Special Chamber rejected (Decision SCEL-09-0001) the Applicant's complaint as inadmissible.

12. The Trial Panel of the Special Chamber reasoned as follows:

> *"during the hearing and after the administration of the evidence it determined that the Applicant did not present evidence justifying why he missed the legal deadline for filing a complaint against the Agency"*. Moreover, in the advice on legal remedy, the Trial Panel of the Special Chamber stated that *„the party unsatisfied with the decision of the Trial Panel has the right to appeal within the legal deadline"*.

Applicant's allegations

13. The Applicant claims that the challenged Decision violates his constitutional rights guaranteed under Article 3 [Equality before the Law], Article 31 [Right to Fair and Impartial Trial], Article 46 [Protection of Property], and Article 54 [Judicial Protection of Rights] of the Constitution of Kosovo.

14. The Applicant requests the Constitutional Court to declare that *"the 20 % share from the privatization belong also to him because as a former employee of SOE Ramiz Sadiku he is entitled to it"*.

Assessment of admissibility of the Referral

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

16. In that regard, the Court refers to Article 113.7 of the Constitution which establishes:

> *„7. Individuals are authorized to refer violations by public authorities of their individual rights and freedoms guaranteed by the Constitution, but only after exhaustion of all legal remedies provided by law."*

17. 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"*.

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

"(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."

19. The Court notes that the Applicant submitted Referral to the Court on 19 September 2013, whereas the final decision of the Trial Panel of the Special Chamber was served on the Applicant on 17 April 2011.

20. Thus, the Court considers that the Referral is out of time, because it was filed 2 years and 31 days after the expiration of legal time limit provided by Article 49 of the Law and Rule 36 (1) b) of the Rules of Procedure.

21. Therefore, the Court concludes that the Referral must be rejected as inadmissible.

FOR THESE REASONS

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

DECIDES

I. TO REJECT the Referral as Inadmissible;

II. TO NOTIFY the Parties of this Decision;

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

IV. TO DECLARE this Decision effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Almiro Rodrigues	Prof. Dr. Enver Hasani

KI197/13, NTP "Beni Dona", Resolution of 21 January 2014 - Constitutional Review of the Judgment of the Supreme Court, Rev. Mlc. no. 141/2012, of 18 September 2013.

Case KI197/13, decision of 21 Jnuary 2014

Keywords: individual referral, manifestly ill-founded.

The applicant, N.T.P. Beni Dona, filed a Referral pursuant to Article 113.7 of the Constitution of Kosovo challenging the Judgment of the Supreme Court, which allegedly violates Articles 3.2 [Equality Before the Law], 7.1 [Values], 16.3 [Supremacy of the Constitution], 21.4 [General Principles] and 22.2 [Direct Applicability of International Agreements and Instruments] of the Constitution of the Republic of Kosovo. The Applicant considers that the Supreme Court wrongfully applied the material law because according to the Applicant there is a legal succession between the former municipality of Podujeva and the one constituted after the armed conflict in Kosovo.

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 36 (2) d) of the Rules of Procedure.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI197/13
Applicant
N.T.P. "Beni Dona"
Constitutional Review of the Judgment of the Supreme Court, Rev. Mlc. no. 141/2012, dated 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
Kadri Kryeziu, Judge, and
Arta Rama-Hajrizi, Judge

The Applicant

1. The Applicant is the Company "Beni Dona", represented by Mr. Muhamet Shala, a practicing lawyer from Prishtina.

Challenged decision

2. The Applicant challenges the Judgment of the Supreme Court, Rev. Mlc. no. 141/2012 of 18 September 2013, which was served on the Applicant on 5 November 2013.

Subject matter

3. The Applicant requests the constitutional review of the Judgment of the Supreme Court, which allegedly violates Articles 3.2 [Equality Before the Law], 7.1 [Values], 16.3 [Supremacy of the Constitution], 21.4 [General Principles] and 22.2 [Direct Applicability of International Agreements and Instruments] of the Constitution of the Republic of Kosovo (hereinafter: the "Constitution").

Legal basis

4. The Referral is based on Articles 113.7 and 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 Court

5. On 12 November 2013, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the "Court").

6. On 3 December 2013, the President, by Decision No. GJR. KI197/13, appointed Judge Robert Carolan as Judge Rapporteur. On the same date the President, by Decision No. KSH. KI197/13, appointed the Review Panel composed of Judges Snezhana Botusharova (Presiding), Kadri Kryeziu and Arta Rama-Hajrizi.

7. On 9 December 2013, the Court communicated the Referral to the Supreme Court, the Office of the Chief State Public Prosecutor in Pristina and the Municipality of Podujeva.

8. On 21 January 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 16 September 1996, the "Beni Dona" Company owned by the Applicant, entered into a contract with the Municipality of Podujeva for the lease of the premises of the former Hotel "Llab" in Podujeva for a period of 10 years, on the condition that the "Beni Dona" Company would rehabilitate it at its own costs. After the expiration of the lease contract, the Municipality of Podujeva would decide on the extension or termination of the lease contract to the effect that, if the Municipality decided to terminate the lease contract, it would have to return the amount spent on the rehabilitation of the Hotel to the "Beni Dona" Company.

10. From 2002 to 2005, upon the request of the Municipality of Podujeva, the "Beni Dona" Company paid, in addition to the rehabilitation costs, also property taxes on the leased property.

11. Since the Municipality of Podujeva did not fulfill their contractual obligations, on 6 June 2007, the Applicant filed a claim against the Municipality with the Municipal Court of Podujeva, requesting the court to rule that either the Municipality returns their investment, or to continue the use by the Company of the leased premises for ten years.

12. On 9 November 2007, the Municipal Court of Podujeva (Judgment C. no. 155/2007) admitted the claim of the Applicant, ordering the Municipality of Podujeva to either return the invested funds to the Company or to continue the lease contract for another ten years.

13. On 9 November 2007, the Municipality appealed to the District Court of Pristina against this Judgment.

14. On 28 May 2008, the District Court of Pristina (Judgment Ac. no. 28/2008) rejected the appeal of the Municipality as ungrounded, maintaining that the enacting clause of the judgment of the Municipal Court was comprehensible and suitable for execution and that, in its reasoning, the court had provided complete and comprehensible reasons on all facts of decisive importance and, therefore, the reasoning provided was fully compatible with the content of the evidence examined.

15. Within the legal deadline, the Municipality of Podujeva filed a request for Revision against the judgments of the Municipal and District Court with the Supreme Court. At the same time, the Public Prosecutor filed a request for protection of legality with the same court, proposing to quash the judgments of the lower instance courts on the basis of substantial violations of the contested procedure provisions and erroneous application of material law, and to re-open the case at the first instance court.

16. On 3 September 2010, the Supreme Court granted the request for protection of legality submitted by the Public Prosecutor as well as the Revision filed by the Municipality of Podujeva, ruling that the Municipality of Podujeva was not now legally responsible for a lease contract between the Applicant and the former Municipal Assembly of Podujeva signed in 1996. The Supreme Court found that the lower instance courts had erroneously applied the material law.

17. On 12 October 2010, the Applicant submitted the Referral to the Court complaining about the Judgment of the Supreme Court. The

Constitutional Court, on 12 April 2012, declared null and void the Judgment of the Supreme Court of Kosovo, Rev. no. 406/2008 of 3 September 2010, because the Judgment of the Supreme Court had violated the Applicant's procedural rights under Article 31 [Right to Fair and Impartial Trial] of the Constitution and Article 6.1 (Right to fair trial) of the European Convention on Human Rights. Thus, the Constitutional Court remanded the case to the Supreme Court for reconsideration in conformity with the judgment of this Court.

18. On 18 September 2013, the Supreme Court (Judgment Mlc. No. 141/2012) complied with the Judgment of the Constitutional Court and reopened the proceedings regarding the request for protection of legality submitted by the Public Prosecutor, as well as the Revision filed by the Municipality of Podujeva. The Supreme Court ruled that the Municipality of Podujeva was not now legally responsible for a lease contract between the Applicant and the former Municipal Assembly of Podujeva signed in 1996. However, the Supreme Court of Kosovo, following the recommendations of the Constitutional Court of Kosovo, as specified in Constitutional Court Judgment No. KI103/2010 of 12 April 2012, also notified the litigating parties, the State Prosecutor of Kosovo, claimant Shaban Mustafa – owner of "Beni-Dona", the authorized representative attorney Muhamet Shala, and respondent's representative public attorney Faik Rama.

Applicant's allegations

19. The Applicant alleges that the reasoning of the Supreme Court is erroneous, in that it concluded that the Company had entered into a contract with the former Municipality of Podujeva in 1996, which, after the war, was not succeeded by the present Municipality of Podujeva and, therefore, that the present Municipality was not bound to assume the obligations of the 1996 contract. The Applicant argues that, the Municipality of Podujeva was, indeed, not the political successor to the former Municipality, but had enjoyed the legal succession to that Municipality in terms of rights and obligations, as it had been established on the same premises and managed the same immoveable properties as before and, since it had admitted that it was the owner of the leased premises, it had to also accept the obligations connected to this facility.

Admissibility of the Referral

20. The Court first observes that, in order for the Referral to be admissible, the Applicant must show that it has fulfilled all admissibility requirements laid down in the Constitution, the Law and the Rules of Procedure.

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

22. In respect to the present case, the Applicant alleges that the Supreme Court, with its Judgment of 18 September 2013, wrongfully applied the material law because according to the Applicant there is a legal succession between the former municipality of Podujeva and the one constituted after the armed conflict in Kosovo.

23. In this respect, the Court emphasizes that it is not the task of the Constitutional Court to deal with errors of fact or law (legality) allegedly committed by the regular court, unless and in so far as they may have infringed rights and freedoms protected by the Constitution (constitutionality). Thus, the Constitutional Court is not to act as a court of fourth instance, when considering the decisions taken by the regular courts. It is the role of the regular courts to interpret and apply the pertinent rules of both procedural and substantive law (See case KI14/13, Applicant Municipality of Podujeva, Resolution on Inadmissibility of 12 March 2013).

24. The Court notes that the Applicant's referral concerns a question of legality and not a constitutional question, because the allegation of the Applicant is in regard to whether it was correct for the Supreme Court to conclude that there is no legal succession between the former municipality of Podujeva and the one constituted after the armed conflict in Kosovo.

25. In respect to the Judgment of the Supreme Court, the Applicant did not substantiate a claim on constitutional grounds and did not provide evidence that its rights and freedoms have been violated by that public authority. 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).

26. Therefore, the Court considers that the Applicant did not show why and how the conclusion of the Supreme Court that there is no legal succession between the former municipality of Podujeva and the one constituted after the armed conflict in Kosovo has infringed his rights and freedoms protected by the Constitution.

27. In these circumstances, the Court concludes that the Referral, pursuant to Rule 36 (1) c) of the Rules of Procedure, is inadmissible, because it is manifestly ill-founded.

FOR THESE REASONS

The Constitutional Court, pursuant to Rule 36 (1) c) and Rule 56.2 of the Rules of Procedure, on 21 January 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**
Robert Carolan	Prof. Dr. Enver Hasani

KI188/13, Fetije Bajrami-Shala, Resolution of 24 January 2014 - Constitutional Review of the Judgment Rev. no. 181/2013, of 9 July 2013, and Judgment Rev. no. 48/2003, of the Supreme Court, of 11 September 2003

Case KI188/13, decision of 24 January 2014

Key words: individual referral, civil contest, right to fair and impartial trial, interpretation of human rights provisions, manifestly ill-founded referral.

In the present case, the Applicant alleged that by challenged decisions were violated her constitutionally guaranteed rights, as per Articles 31 and 53 of the Constitution, due to the fact that the Supreme Court had rejected her claim related to compensation of money for the work done with the Commission for War Crimes and Missing Persons.

The Court has entirely reviewed all documents attached to the referral, and has found that the Applicant has not provided sufficient evidence on the basis of constitutional argumentation to support the allegation that Judgments, Rev. no. 181/2013, of 9 July 2013, and Rev. no. 48/2003, of 11 September 2003, of the Supreme Court have violated the rights of the Applicant, as guaranteed by Articles 31 and 53 of the Constitution.

In the present case, the Applicant did not present any evidence showing that the alleged violations, mentioned in the Referral contain elements of violation of rights as guaranteed by the Constitution. In this respect, the Court referred to the ECHR findings in the case Vanek v. Slovak Republic, ECHR Decision on admissibility of Application, no. 53363/99, of 31 May 2005·

The Court considered that the relevant procedures, conducted before the Supreme Court, were not in any way unfair or arbitrary and in this regard, it referred to *mutatis mutandis,* Shub vs. Lithuania, ECHR decision on admissibility of Application, no. 17064/06, of 30 June 2009).

In sum, the Court found that the Applicant' Referral did not meet the requirements of Rule 36 (1) c) of the Rules of Procedure.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI188/13
Applicant
Fetije Bajrami-Shala
Constitutional review of the Judgment Rev. no. 181/2013, of 9 July 2013, and Judgment Rev. no. 48/2003, of 11 September 2003,
of the Supreme Court

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

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

Applicant

1. The Applicant is Mrs. Fetije Bajrami-Shala (hereinafter: Applicant), residing in Oshlan, Municipality of Vushtrri.

Challenged decision

2. The Applicant challenges the Judgment Rev. no. 181/2013, of 9 July 2013 and Judgment Rev. no. 48/2003, of 11 September 2003, of the Supreme Court. The Applicant has not specified the date of receipt of the last decision.

Subject matter

3. The subject matter of the Referral is the constitutional review of the Judgment Rev. no. 181/2013, of 9 July 2013, and the Judgment Rev. no. 48/2003, of 11 September 2003, of the Supreme, by which the Applicant alleges violation of Article 31 [Right to Fair and Impartial Trial] and Article 53 [Interpretation of Human Rights

Provisions] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution).

Legal basis

4. Article 113.7 of the Constitution, Article 47 of the Law on the Constitutional Court of the Republic of Kosovo, no. 03/L-121, of 16 December 2008, entered into force on 15 January 2009 (hereinafter: the Law) and Rule 56 (2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Court

5. On 4 November 2013, the Applicant filed her Referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 2 December 2013, the President of the Court, by Decision no. GJR. KI188/13 appointed Judge Kadri Kryeziu as Judge Rapporteur. On the same date, the President of the Court appointed the members of the Review Panel, composed of Judges: Robert Carolan (Presiding), Almiro Rodriguez and Ivan Čukalović.

7. On 13 September 2013, the Constitutional Court notified the Applicant and the Supreme Court of the registration of the Referral.

8. On 20 January 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. From 1999 to 2000, the Applicant claims to have worked for the Municipality of Vushtrri, namely the Commission for investigating war crimes and missing persons. This commission, according to the Applicant, was established by the Provisional Government of Kosovo, by decision of 5 July 1999. Based on such a decision, the President of the Municipal Council of Vushtrri had authorized the Applicant to work with the relevant commission.

10. Since the Municipality of Vushtrri had not replied to the requests of the Applicant for monetary compensation, the Applicant with other persons filed a claim with the Municipal Court in Vushtrri.

11. On 5 July 2002, the Municipal Court in Vushtrri, by Judgment C. no. 13/2001 approved the Applicant's statement of claim of the Applicant and of other claimants. By this decision, the Municipality of Vushtrri (the respondent) was obliged to pay each claimant, including the Applicant, 1.794 Euros for the debt.

12. The Municipality of Vushtrri, filed a complaint with the District Court in Mitrovica against the Judgment of the Municipal Court in Vushtrri.

13. On 11 December 2002, the District Court in Mitrovica, by Judgment Ac. no. 93/2002, rejected as ungrounded the complaint filed by the Municipality of Vushtrri, and upheld the first instance court judgment as fair.

14. On 5 February 2003, the Municipality of Vushtrri filed a revision with the Supreme Court, against the Judgment Ac. no. 93/2002, of the District Court in Mitrovica, due to procedural violations, erroneous determination of factual situation, and erroneous application of the substantive law.

15. Since the District Court in Mitrovica upheld as fair the judgment of the Municipal Court in Vushtrri, the Applicant addressed the latter with a proposal for execution of the Judgment C. no. 13/2001 of 5 July 2002.

16. On 5 March 2003, the Municipal Court in Vushtrri, by Decision E. no. 59/2003, allowed the execution proposal, by which was approved the statement of claim of the Applicant for compensation of debt at the amount of 1.794 Euros by the Municipality of Vushtrri.

17. On 11 September 2003, the Supreme Court, by Judgment Rev. no. 48/2003, approved as grounded the revision filed by the Municipality of Vushtrri, thereby deciding to modify the Judgment C. no. 13/2001, of 5 July 2002, of the Municipal Court in Vushtrri, and the Judgment Ac. no. 93/2002, of 11 December 2002, of the District Court in Mitrovica. This Court reasoned as the following:

> *"The Supreme Court of Kosovo cannot admit such stance of lower instance courts, since according to evaluation of this*

Court, the appealed judgments are rendered by violating the substantive law. Pursuant to Resolution of United Nations 1244 of UNMIK Regulation 1999/1 and 1999/24, after the war was created a new reality in Kosovo. Whereas, by provision of Article 1 of this Regulation it is provided that the entire legislative and executive power is exercised by UNMIK and UN Special Representative as well as by accessory instruments issued in compliance with them. By UNMIK Regulation have been established all legislative, executive and administrative institutions both at central level and self-governing of Kosovo municipalities. According to UNMIK Regulation no. 1999/45, Article 48.12, the administrator approves every appointment or dismissal of senior officers and supervises all other appointments with the purpose to provide necessary representation of communities in those appointments. Such appointments and dismissals cannot enter into force without the co-signature of Municipal Administrator. Pursuant to Article 2.4 of the same Regulation, every municipality should have its own legal statute, the right to possess and administer the property, possibility to file a claim and to be respondent in the court, the right to sign contracts and the right to hire people.

By this Regulation are established self-governing authorities of Municipalities and Municipal Civil Service. For the fact that the claimants do not possess contracts for establishment of obligations, according to this Court, in the instant case was erroneously applied the substantive law, thus judgments of both courts were modified, so that the statement of claim of claimants were rejected as ungrounded.

According to evaluation of the Court of revision, lack of passive real legitimacy of respondent municipality comes out that the situation which exists in case file and the court, with ex-officio due regard, the moment it certifies the lack of active or passive legitimacy of litigation parties, will reject by judgment the statement of claim of claimants as ungrounded."

18. Upon this, the Municipality of Vushtrri filed a claim with the Municipal Court in Vushtrri, thereby requesting to reclaim the financial means paid to the Applicant from its account, as per Decision E. no. 59/2003 of 5 March 2003, of the Municipal Court in Vushtrri.

19. On 26 October 2005, the Municipal Court in Vushtrri, by Judgment C. no. 20/2004 approved the statement of claim of the Municipal Court in Vushtrri, now the claimant, thereby ordering the Applicant to repay the Municipality of Vushtrri, due to unjust acquisition, the amount of 2.485,75 Euros, to the official account, on annual interest rate of 3%, starting from 10 February 2004, until the final payment. The Court, upon review of matter, had found that:

> *"From the conducted proceedings, the court concluded that we have to do with the case of unjust acquisition – payment according to the ground that failed later on, since for the claimant at the moment of payment existed the ground, paid the amount of money to the respondent based on final judgment of Municipal Court in Vushtrri mentioned above, but this ground later on failed since by judgment of Supreme Court mentioned above was modified the judgment of Municipal Court in Vushtrri and that of District Court in Mitrovica as well as statement of claim of the now respondent is rejected as ungrounded".*

20. On 18 March 2013, the Court of Appeal in Prishtina, by Judgment Ac. no. 373/2012, rejected the appeal filed by the Applicant, and upheld as fair the Judgment of the Municipal Court in Vushtrri, C. no. 20/2004, of 26 October 2005. This court had found as fair and lawful the first instance court decision, due to the fact that it was not rendered by any substantial violation of the contested procedure provisions, as per Article 354.2 of the LCP, which this court reviews ex officio, as per Article 365.2 of the LCP.

21. On 9 July 2013, the Supreme Court, by Judgment Rev. no. 181/2013, rejected the revision filed by the Applicant, as a claiming party in this case, filed against the judgment. The Court reasoned:

> *"Setting from this situation of the matter, the Supreme Court of Kosovo assesses that the lower instance courts, based on factual situation determined correctly and completely the substantive law, when they found that the statement of claim of claimant to return the money at the adjudicated amount is grounded. The first instance court has correctly applied the provision of Article 210 of LOR, since by Judgment of Supreme Court of Kosovo, Rev.no.48/2003 of 11.09.2003, in that contest was rejected the statement of claim of now the respondent for the payment of debt adjudicated by Judgment of Municipal Court in Vushtrri, C. no. 13/2001 of 05.07.2002. This amount,*

the first instance court determined based on the ruling on allowing the execution of the Municipal Court in Vushtrri E.no.59/2003 of 05.03.2003, whereby the amount of €691,75 or the total amount of €2,485,75 was paid to the respondent in the name of main debt the amount of €1,794,00 and of interest rate.

The allegations in the revision in relation to the height of the norm of interest rate of 3% at the adjudicated amount, this court assessed as ungrounded since the adjudicated interest rate is annual interest rate, which is received in the Bank in the term deposited amounts for more than one year without certain destination. The allegations of revision in relation to the works and work duties, which the respondent performed and her right to compensation, this Court did not evaluate, since by Judgment of this Court Rev.no.48/2003 of 11.09.2003, it was decided in relation to this matter."

Applicant's allegations

22. The Applicant alleges that by challenged decisions were violated her constitutionally guaranteed rights, as per Articles 31 and 53 of the Constitution, due to the fact that the Supreme Court had rejected her claim related to compensation of money for the work done with the Commission for War Crimes and Missing Persons.

23. The Applicant alleges that: *"The stance of Supreme Court of Kosovo in Judgment Rev.no.48/2003 that the courts have implemented erroneously the substantive law is not accurate. The court states that by Regulation 1999/1, 1999/24, 1999/45 have been established all legislative, executive, and administrative institutions both at central and municipal level, but, by UNMIK Regulation no.2000/01 of 14. January 2000 on joint interim administrative structure of Kosovo, it is stated the opposite of what is stated in the reasoning of this judgment. Legis specialis derogat legis generalis. By this regulation is regulated the basis of administrative structure in Kosovo, respectively all power institutions established by Provisional Government in Kosovo according to this Regulation are considered that they have existed and have acted legally in Kosovo up to adoption of this Regulation."*

The admissibility of the Referral

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

25. In regard 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".*

26. The Court also refers to Article 49 of the Law, which provides:

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

27. The Court also refers to the Article 48 of the Law, which provides that "*the claimant should accurately clarify what rights and freedoms he/she claims to have been violated…*"

28. In the case at issue, the Court finds that the Applicant is an authorized party, and has exhausted all legal remedies available by law, in compliance with requirements of the Article 113.7 of the Constitution, and that the Referral was filed within the legal timeline of four months, as provided by Article 49 of the Law.

29. In relation to the applicant's allegation on violation of rights guaranteed by the Constitution, the Court refers to the Rule 36 (1) c) and 36 (2) b) of the Rules of Procedure, which provides that:

> *"(1) The Court may only deal with Referrals if:*
>
> *[…]*
>
> *c) The Referral is not manifestly ill-founded.*
>
> *"(2) The Court shall reject a Referral as being manifestly ill-founded when it is satisfied that:*
>
> *[…]*

b) when the presented facts do not in any way justify the allegation of a violation of the constitutional rights".

30. The Court has entirely reviewed all documents attached to the referral, and has found that the Applicant has not provided sufficient evidence on the basis of constitutional argumentation to support the allegation that Judgments, Rev. no. 181/2013, of 9 July 2013, and Rev. no. 48/2003, of 11 September 2003, of the Supreme Court have violated the rights of the Applicant, as guaranteed by Articles 31 and 53 of the Constitution.

31. The Court notes that the challenged decisions have been sufficiently reasoned, and from them, it finds that the Supreme Court, in both cases, has reviewed all circumstances of the case to base its verdict, which is also its full jurisdiction to review the legality of court decisions rendered by lower instance courts.

32. In the regular proceedings, it is clearly noticed that the Applicant was offered all possibilities of presenting arguments, facts and evidence before the courts, in relation to violation of alleged constitutional rights. It is not the duty of the Court to review decisions of regular courts only because the Applicant is not satisfied with the outcomes of the regular courts decisions.

33. The Court must remind the Applicant that the Constitutional Court is not a fourth instance court, to review legality and accuracy of decisions rendered by regular courts, unless there is convincing evidence that such decisions were rendered in a manifestly unfair and unclear manner. It is the role of regular courts to interpret and apply the pertinent rules of procedural and material law (See Garcia Ruiz v. Spain [GC], No. 30544/96, 28, European Court for Human Rights [ECHR] 1999-I.).

34. In the present case, the Applicant has not presented any evidence showing that the alleged violations, mentioned in the Referral contain elements of violation of rights as guaranteed by the Constitution (See, Vanek v. Slovak Republic, ECtHR Decision on admissibility of Application, no. 53363/99, of 31 May 2005).

35. Therefore, the Court cannot consider that the relevant procedures, conducted before the Supreme Court, were in any way unfair or arbitrary *(*See*, mutatis mutandis,* Shub vs. Lithuania, ECtHR Resolution on admissibility of Application, no. 17064/06, of 30 June 2009).

36. From the reasons presented above, the Court finds that the Applicant' Referral does not meet the requirements of Rule 36 (1) c) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Rule 36 (1) c), Rule 36 (2) b) and Rule 56 (2) of the Rules of Procedure, on 24 January 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

KI134/12, C.P.T.C. "CLIRIMI", Resolution of 13 May 2013 - Constitutional Review of the Judgment of the Supreme Court, Rev. E. 5/2010, of 8 November 2012

Case KI134/12, decision of 13 May 2013

Key words: Individual Referral, non-exhaustion.

The subject matter is the constitutional review of the Judgment of the Supreme Court, Rev. No. 105/2010, dated 29 November 2012. The Applicant had requested from the District Court in Prishtina to order the Municipality of Gllogoc to pay him some alleged outstanding bills. Initially, the District Court in Prishtina approved the claim of the Applicant. However, after the appeal filed by the Municipality of Gllogoc, the claim of the Applicant was rejected as ungrounded since the Court held that the construction contract upon which he was seeking the payment of such outstanding bills should have been sealed in a written form. Following the appeal filed by the Applicant, the Supreme Court confirmed the Judgment of the District Court in Prishtina.

The Applicant then filed a Referral with the Constitutional Court. In his Referral, the Applicant alleged that the challenged Judgment violated his right guaranteed by Article 24 [Equality before the Law] and Article 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo. The Applicant also alleged a violation of his right guaranteed by Article 6 [Right to a Fair Trial] of the European Convention on Human Rights and Article 10 of the Universal Declaration on Human Rights. In substance, the Applicant claimed that his right to a fair and impartial trial was violated because the parties in the procedure were not treated equally and that his arguments were not properly considered.

The Constitutional Court rejected the Referral as inadmissible because the Applicant had not exhausted all available legal remedies provided by law. In its reasoning, the Constitutional Court emphasized that the exhaustion rule does not only require from an Applicant to exhaust all legal remedies available under Kosovo law, it also requires that to raise the alleged violations of fundamental rights in the proceedings before the regular court instances. In this particular case, the Constitutional Court held that the Applicant had not submitted any evidence which would show that he invoked the same violations before the District Court and the Supreme Court.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI134/12
Applicant
C.P.T.C. "CLIRIMI"
Constitutional Review of Judgment Rev. E. nr. 5/2010 of the Supreme Court of Kosovo, dated 8 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.

Applicant

1. The Referral was filed by the Company C.P.T.C. "CLIRIMI" (hereinafter, the Applicant), represented by Mr. Sahit Bibaj, Attorney at Law in Pristina.

Challenged decision

2. The Applicant challenges the Judgment Rev. E. nr. 5/2010 of the Supreme Court, dated 8 November 2012.

Subject Matter

3. The Applicant requests the constitutional review of the challenged decision, which allegedly violated its right to a fair and impartial trial under Article 31 of the Constitution.

Legal basis

4. The Referral is based on Articles 113.7 and 21.4 of the Constitution, Article 20 of the Law No. 03/L-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 Procedure).

Proceedings before the Court

5. On 28 December 2012, the Applicant filed a referral with the Constitutional Court.

6. On 10 January 2013, the President appointed Judge Almiro Rodrigues as Judge Rapporteur and the Review Panel consisting of Judges Snezhana Botusharova (Presiding), Enver Hasani and Kadri Kryeziu.

Summary of the facts

7. On 4 October 2005, the Applicant presented a number of bills to the Municipality of Gllogoc for the performance of certain additional road works. However, the Municipality refused to pay these bills because no written contract existed between the parties. Thereupon, the Applicant appealed to the Municipality's Executive Chief.

8. On 20 December 2005, the Executive Chief of the Gllogoc Municipality Assembly approved the payment of only one of the presented bills, and ordered the Municipal Directorate of Finance to execute the ruling.

9. On 15 January 2006, the Applicant requested to the District Court in Prishtina the payment by the Municipality of Gllogoc of the outstanding bills.

10. On 16 February 2006, the District Court (Decision E. nr. 30/2006) approved the execution of the Applicant's claim. Meanwhile, the Municipality appealed that Decision before the same District Court.

11. On 25 July 2006, the District Court held a hearing and decided to assign two experts to the case for the preparation of an expertise. The experts' findings apparently supported the Applicant's claim.

12. On 17 July 2007, the District Court held a further hearing and on the same day annulled (Judgment No. II. C. nr. 49/2006) its previous decision (E. nr. 30/2006) and rejected the Applicant's claim as ungrounded, because it was mandatory for such

construction contracts to be in written form, instead of in the form of an oral agreement with the Executive Chief of Gllogoc Municipality Assembly as held by the Applicant.

13. On 2 November 2007, the Applicant appealed against Judgment No. II. C. nr. 49/2006 to the Supreme Court, alleging a serious violation of provisions of civil procedure, the incomplete and wrongful determination of the factual situation and the wrongful application of the material law. The Applicant further argued that the additional works had been approved by the Municipal Committee for Politics and Finances on 11 December 2003 and that, pursuant to Article 73 of the Law on Obligations, when a contract is not in writing but is executed in full or most of it, the contract is valid.

14. On 23 June 2010, the Supreme Court (Judgment A. e. nr. 135/2007) turned down the appeal as ungrounded and confirmed the contested judgment, reasoning that the District Court had rightfully established the factual situation and implemented the material law when it ruled that the Applicant's claim was ill-founded. The Court stated further that, pursuant to Article 633 of the Law on Obligations, construction contracts must be established in written form and that for any deviation from the construction project or work the implementer must obtain the written consent of the hirer and cannot ask for any increase in the amount contracted for the work he has executed without such consent.

15. On 8 July 2010, the Applicant filed a revision with the Supreme Court, requesting it to annul the contested judgments and to approve its claim, arguing the Supreme Court had not properly justified its refusal of these claims.

16. On 8 November 2012, the Supreme Court (Judgment Rev. E. nr. 5/2010) rejected the Applicant's revision as ungrounded and confirmed the judgment of the District Court of 17 July 2007, stating that the District Court had turned down the Applicant's claim, because the latter was not authorized to change the project without the written consent for the additional works by the hirer/investor and that, therefore, the responding party's obligation to pay to the Applicant the contested amount could not stand. The Court further stated that the appealed judgment did not contain any violations of the Law on Obligations.

Applicant's allegation

17. The Applicant alleges that, contrary to Articles 24 [Equality before the Law] and 31 [Right to Fair and Impartial Trial] of the Constitution, its rights to a fair and impartial trial have been violated, since the parties in this procedure were not equally treated and that the courts did not review the evidence and facts provided by the Applicant. The Applicant further argues that the District Court as well as the Supreme Court did not provide convincing reasons for rejecting its case and wrongfully applied the material law.

18. The Applicant also claims that there is a violation of Article 6 of the ECHR and Article 10 of the Universal Declaration.

Admissibility of the Referral

19. The Court notes that the Applicant, in its revision submitted to the Supreme Court, alleges that the first instance as well as the second instance courts have wrongly applied the material law and it describes in detail how the courts should have properly applied the pertinent articles of the Law on Obligations and the Law on Public Procurement.

20. In this respect, the Court refers to Article 113.7 of the Constitution, which establishes:

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

21. The same principle is laid down in Article 47.2 of the Law on the Constitutional Court.

22. The Court also refers to Article 21.4 of the Constitution, which provides:

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

Consequently, the Company C.P.T.C. "CLIRIMI" is entitled to submit a constitutional complaint to this Court, invoking a violation of constitutional rights and freedoms in the same way,

albeit "to the extent possible" as individuals. This means that the Applicant is also under the obligation to exhaust all legal remedies as individuals are required to do as stipulated by the above Article 113.7 of the Constitution and Article 47.2 of the Law on the Constitutional Court.

23. The Court further stresses that the exhaustion rule does not only require an applicant, before submitting a referral to the Court, to exhaust all legal remedies available under Kosovo law, including the highest instance court, but also to have raised the alleged violations of fundamental rights in the proceedings before these instances.

24. The rationale for the exhaustion rule, as interpreted by the European Court of Human Rights (see Article 53 of the Constitution), is to afford the authorities concerned, including the courts, the opportunity of preventing or putting right the violation of the Constitution alleged against them before those allegations are submitted to this Constitutional Court (see, *mutatis mutandis*, ECtHR, Selmouni v. France, no. 25803/94, judgment of 28 July 1999).

25. Consequently, the bodies concerned, including the relevant courts, are dispensed from answering for their acts before the Constitutional Court, before they have had an opportunity to put matters right through their own procedures. The rule is based on the assumption that the Kosovo legal order will provide an effective remedy in respect of the alleged breach(es) of constitutional rights. In this way, it is an important aspect of the principle that the protection machinery of the Constitutional Court established by the Constitution is subsidiary to the court systems safeguarding human rights.

26. Thus, the complaint which the Applicant has filed with this Court, must first have been submitted – at least in substance – to the appropriate body(ies), including the competent courts, and in compliance with the procedural requirements, including the time limits to be observed, laid down in Kosovo law (see, *mutatis mutandis,* Handyside v. the United Kingdom, ECtHR Judgment of 7 December 1976, Series A no. 24, p.22, para 48 and Cardot v. France, HCtHR Judgment of 19 March 1991, Series A no. 200, p. 18, para. 34 as well as Case No. KI41/09, AAB-RIINVEST University L.L.C., Pristina vs. Government of the Republic of Kosovo, Resolution of the Constitutional Court of 27 January 2010).

27. In accordance with the above ECtHR case law which the Court needs to apply consistently when interpreting human rights and freedoms guaranteed by the Constitution, as provided by Article 53 [Interpretation of Human Rights Provisions] of the Constitution, it is not necessary for an applicant to have mentioned the exact Articles of the Constitution or applicable international instruments in the proceedings before the authorities concerned, including the courts. As long as the violation of fundamental rights, which an applicant is raising before this Court, has been raised implicitly or in substance in the proceedings concerned, the exhaustion rule is satisfied (see, *mutatis mutandis,* ECtHR, Azianas v. Cyprus, no. 56679/00, Judgment of 28 April 2004).

28. In this connection, the Court also recalls that applicants are only required to exhaust remedies that are available and effective (see, *mutatis mutandis,* ECtHR, Cinar v. Turkey, no. 28602/95, Judgment of 13 November 2003).

29. However, as to the complaints raised before the Constitutional Court, it has to be concluded that the Applicant has not submitted any evidence whatsoever, showing that, in the proceedings before the District Court and the Supreme Court in last instance, he has invoked a violation of Articles 21.4 and 31 of the Constitution as well as of Article 6 ECHR and Article 10 of the Universal Declaration, not even implicitly or in substance.

30. The Court, therefore, considers that, contrary to the requirements of Article 113.7 of the Constitution and Article 47.2 of the Law, the Applicant has not exhausted all legal remedies provided by law.

31. It follows that the Referral is inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution and Article 47(2) of the Law, and Rule 36 (1)(c) and Rule 56 (2) of the Rules of Procedure, in its session held on 13 May 2013,

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

KI157/13, Emin Maxhuni, Resolution of 20 January 2014 - Constitutional Review of the Judgment No. GSK-KPA-A-27/12 of the KPA Appellate Panel of the Supreme Court of the Republic of Kosovo, of 30 October 2012

Case KI157/13, decision of 20 January 2014

Key words: individual referral, civil contest, right to fair and impartial trial, manifestly ill-founded referral.

In the present case, the Applicant claimed that the challenged decision was rendered in a serious violation of constitutional provisions, due to the fact that the KPA Appellate Panel of the SCSC has decided in an arbitrary and non-transparent manner in resolving this property dispute. The Applicant alleged that the challenged decision violated his right to a fair and impartial trial, as guaranteed by Article 31 of the Constitution and Article 6 of the ECHR

The Constitutional Court considered that the Applicant did not accurately clarify how and why the KPA Appellate Panel, violated his rights and fundamental freedoms, namely his right to a fair and impartial trial, as guaranteed by the Constitution and the ECHR, when concluding that he "has not proven his ownership rights (...) over the apartments in dispute". Therefore, the Court considers that the Applicant has failed in sufficiently substantiating and proving his allegation.

Furthermore, the Court reiterated that it could not act as a court of fourth instance, when considering the decision rendered by the KPA Appellate Panel, since it is the task of the regular courts to interpret and apply the pertinent rules of both procedural and substantive law. In this regard, the Court referred to mutatis mutandis, Garcia Ruiz v. Spain, no. 30544/96, § 28, European Court on Human Rights [ECHR] 1999-1).

In sum, the Court, pursuant to Article 48 of the Law and Rule 36 (1) c) and 36 (2) d) of the Rules of Procedure, is manifestly ill-founded and, consequently, inadmissible.

RESOLUTION ON INADMISSIBILITY
in
Case no. KI157/13
Applicant
Emin Maxhuni
Constitutional review of the
Judgment No. GSK-KPA-A-27/12 of the KPA Appellate Panel of the Supreme Court of the Republic of Kosovo,
dated of 30 October 2012

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

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

Applicant

1. The Referral was filed by Emin Maxhuni, residing in Prishtina (hereinafter, the Applicant).

Challenged decision

2. The Applicant challenges the Judgment no. GSK-KPA-A-27/12 of the KPA Appellate Panel of the Supreme Court of the Republic of Kosovo, dated of 30 October 2012, (hereinafter, the Challenged decision), which the Applicant claims to have received on 16 September 2013.

Subject matter

3. The subject matter of the Referral is the constitutional review of the challenged decision, which allegedly violated paragraphs 1 and 2 of Article 3 [Equality before Law], in conjunction with Article 24

[Equality before Law]; paragraphs 1 and 2 of Article 31, [Right to Fair and Impartial Trial]; paragraphs 1, 2 and 3 of Article 46 [Protection of Property]; Article 54 [Judicial Protection of Rights]; paragraphs 2, 3 and 5 of Article 102 [General Principles of the Judicial System] all of the Constitution, and Article 6 [Right to a fair trial] of the European Convention for the Protection of Human Rights and Fondamental Freedoms (hereinafter, the ECHR).

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, Law) and Rule 29 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter, Rules of Procedure).

Proceedings before the Court

5. On 28 October 2013, the Applicant filed his referral.

6. On 28 October 2013, 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 Arta Rama-Hajrizi.

7. On 12 November 2013, the Court informed on the registration of the referral the Applicant, the KPA Appellate Panel of the Supreme Court, Kosovo Property Agency (hereinafter, KPA), and parties involved in the proceedings.

8. On 14 November 2013, the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

9. In 1991, the Applicant established the private enterprise Marigona Comerce.

10. On 27 November 1996, the enterprise entered into a contract (Contract no.02-2853/1) with the BVI (Bureau of Self-Governing Interests), now the Public Housing Enterprise in Prishtina, for

joint investment in relation the construction of two apartments in Prishtina.

11. The Marigona Comerce was active until 1999, when all the assets of the enterprise were destroyed, except the two disputed apartments. As a result, the Applicant had suspended his business. Further, UNMIK Administration (by Regulation 2000/8) required the registration of businesses. However, the Applicant did not register his business.

12. The Applicant did not acquire ownership of the apartments, since the construction of the building with the two apartments in dispute was not concluded. Thus, the Applicant claims that responding parties took illegal possession of the two apartments.

13. On 5 February 2008, the Applicant requested to the KPA the restitution of ownership over two disputed apartments.

14. On 26 October 2011, the Kosovo Property Claims Commission (KPCC) recognized (KPCC/D/R/130/2011) to the Applicant the ownership and possession rights over the two apartments.

15. On 25 May 2012, that decision was served on the responding parties.

16. On 26 May 2012, responding parties filed an appeal with the KPA Appellate Panel of the Supreme Court, arguing that the KPCC decision was based on falsified documentation.

17. On 30 October 2012, the KPA Appellate Panel of the Supreme Court (GJK-KPA-A-27/12) approved as grounded the appeal of responding parties, thereby amending the KPCC decision no. KPCC/D/R/130/2011, of 26 October 2011. The Appellate Panel found that the Applicant *"has not proven his ownership rights or any other property rights over the apartments in dispute"* and then he *"is not entitled to the right resulting from the contract on joint investment for the construction of apartments."*

18. The KPA Appellate Panel further reasons that, "*The contract related to the financing of the construction of the two contested apartments was not established between the Public Housing Enterprise and the respondent to the appeal as a physical person, but between the Public Housing Enterprise and "Marigona-Comerce" company. This company and its property must be*

distinguished from the respondent to the appeal and his property as a physical party".

Applicant's allegations

19. The Applicant claims that the challenged decision was rendered in a serious violation of constitutional provisions, due to the fact that the KPA Appellate Panel of the SCSC has decided in an arbitrary and non-transparent manner in resolving this property dispute.

20. The Applicant alleges that the challenged decision violates mainly his right to a fair and impartial trial, as guaranteed by Article 31 of the Constitution and Article 6 of the ECHR

Admissibility of the Referral

21. The Court initially examines whether the Applicant has met the requirements as provided by the Constitution, and further specified by the Law and Rules of Procedure of the Court.

22. In that respect, the Court refers to Article 113 of the Constitution, which provides that:

> *"1. The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties.*
> *[...]*
> *7. Individuals are authorized to refer violations by public authorities of their individual rights and freedoms guaranteed by the Constitution, but only after exhaustion of all legal remedies provided by law".*

23. 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."*

24. In addition, Rule 36 (1) c) and 36 (2) d) of the Rules of Procedures foresees 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:

[…]

d) the Applicant does not sufficiently substantiate his claim".

25. The Applicant alleges that the KPA Appellate Panel of the Supreme Court has decided in an arbitrary and non-transparent manner in resolving the property dispute. However, the Applicant does not buid an argument and present evidence on that alleged violation.

26. The Constitutional Court considers that the Applicant has not accurately clarified how and why the KPA Appellate Panel, when concluding that he *"has not proven his ownership rights (…) over the apartments in dispute",* violated his rights and fundamental freedoms, namely his right to a a fair and impartial trial, as guaranteed by the Constitution and the ECHR.

27. Therefore, the Court considers that the Applicant has failed in sufficiently substantiating and proving his allegation.

28. In addition, the Court notes that the KPA Appellate Panel stressed that *"the contract related to the financing of the construction of the two contested apartments was (…) established between (…) the Public Housing Enterprise and "Marigona-Comerce" company. This company and its property must be distinguished from the respondent to the appeal* [the Applicant] *and his property as a physical party"..*

29. Therefore, the Court cannot conclude that the Applicant was arbitrarily deprived of his rights as a party to this property dispute and the challenged decision was rendered in serious violation of the Constitution.

30. In fact, the KPA Appellate Panel found that the Applicant, as a natural person, does not enjoy property rights over the apartments in dispute, as the assets of the enterprise *Marigona-Comerce* cannot be considered to be property of the Applicant. In sum, since the Applicant has not proven that the ownership and possession

over the disputed apartments pertained to him personally, no violation to his own personal rights can be considered.

31. Furthermore, the Court cannot act as a court of "fourth instance", when considering the decision rendered by the KPA Appellate Panel. It is the task 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).

32. On the contrary, the Court considers that the Applicant has not submitted any evidence that the alleged violation constitute undisputable elements of violation of constitutional rights (See *Vanek v. Republic of Slovakia*, Resolution of the ECtHR on Admissibility of Application, no. 53363/99, of 31 May 2005).

33. Moreover, the Constitutional Court cannot consider as grounded the claim that the proceedings before the KPA Appellate Panel were non-transparent or 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).

34. Therefore, the Court finds that the Applicant has neither substantiated nor proved his claim on a violation of his right to a fair and impartial trial.

35. Consequently, there is no logical and practical need to further examine the other alleged violations (of right to Equality before Law, Protection of Property, Judicial Protection of Rights and General Principles of the Judicial System), as they are subsumed and included in the allegation on the violation of the right to fair and impartial trial.

36. In sum, the Court concludes that the Referral, pursuant to Article 48 of the Law and Rule 36 (1) c) and 36 (2) d) of the Rules of Procedure, is manifestly ill-founded and, consequently, inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 48 of the Law, and Rule 36 (1) c), rule 36 (2) d) and rule 56 (2) of the Rules of Procedure, on 20 January 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

KI112/13, Bajram Sfishta, Resolution of 2 December 2013 - Constitutional Review of the Decision ASC-11-0035 of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo, of 23 November 2012

Case KI112/13, decision of 2 December 2013

Key words: Individual Referral, right to property, out of time.

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 Applicant addressed the Court, because the Decision ASC-11-0035 allegedly denied him the "entitlement to a share of proceeds acquired from the privatization of the Socially Owned Enterprise "Ramiz Sadiku" Prishtina".

In this respect, the Applicant does not invoke violation of any constitutional provision in particular.

From the submitted documents, the Court found that the Applicant has filed his referral on 25 July 2013, whereas the last decision of the Special Chamber was served on him on 15 January 2013. The Applicant has filed his referral with the Court forty days (40) later than the legal deadline prescribed by Article 49 of the Law and rule 36 (1) b) of the Rules of Procedure.

Based on this, the Court rejected the Referral as out of time.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI112/13
Applicant
Bajram Sfishta
Constitutional Review of Decision ASC-11-0035 of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo,
dated 23 November 2012

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

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

Applicant

1. The Applicant is Mr. Bajram Sfishta (hereinafter: "the Applicant"), residing in Podujeva.

Challenged Decision

2. The Applicant challenges the decision of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo, ASC-11-0035 of 23 November 2012, which was served on him on 15 January 2013.

Subject Matter

3. The subject matter is the constitutional review of the challenged Decision, which allegedly denied the Applicant's "*entitlement to a share of proceeds acquired from the privatization of the Socially Owned Enterprise "Ramiz Sadiku" Prishtina (hereinafter "SOE 'Ramiz Sadiku")*".

4. In this respect, the Applicant does not invoke violation of any constitutional provision in particular.

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 of 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 Republic of Kosovo (hereinafter: the "Rules of Procedure").

Procedure before the Court

6. On 25 July 2013, the Applicant submitted a Referral with the Constitutional Court of the Republic of Kosovo (hereinafter "Court").

7. On 5 August 2013, the President, by Decision No. GJR. KI112/13, appointed Judge Arta Rama-Hajrizi as Judge Rapporteur. On the same date, the President, by Decision No. KSH. KI112/13, appointed the Review Panel composed of Judges Altay Suroy (Presiding), Snezhana Botusharova and Kadri Kryeziu.

8. On 26 August 2013, the Court notified the Applicant about the registration of the referral. On the same date, the Privatization Agency of Kosovo (hereinafter: the "PAK"), was notified of the Referral.

9. On 24 September 2013, the Court asked the Applicant to submit additional documents. On the same date, the Special Chamber of the Supreme Court of Kosovo (hereinafter: the "Special Chamber"), was notified of the Referral.

10. On 2 December 2013, after having considered the Report of the Judge Rapporteur, the Review Panel made a recommendation to the Court on the inadmissibility of the referral.

Summary of facts

11. At some point in time, the Applicant was employed as a worker of the SOE "Ramiz Sadiku."

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

13. On 4, 5 and 7 March 2009, the PAK published a final list of eligible employees entitled to a share of the proceeds from the privatization of the SOE "Ramiz Sadiku", along with a legal deadline for filing a complaint against the list by 27 March 2009.

14. On 30 June 2009, the Applicant filed a complaint with the Trial Panel of the Special Chamber against the final list of employees.

15. On 24 February 2011, the Trial Panel of the Special Chamber by Decision SCEL-09-0001 ruled that the Applicant's complaint against the final list of employees was filed after the legal deadline. The Trial Panel dismissed the complaint as inadmissible.

16. The Appellant filed an appeal with the Appellate Panel of the Special Chamber against the Trial Panel Decision SCEL-09-0001 dated 24 February 2011.

17. On 23 November 2012, the Appellate Panel of the Special Chamber by Decision ASC-11-0035 upheld the Trial Panel Decision SCEL-09-0001 dated 24 February 2011.

18. The Appellate Panel of the Special Chamber by Decision ASC-11-0035, dated 23 November 2012, reasoned *inter alia* that: "*…the Trial Panel correctly assessed that the complaint against the final list, which he (Applicant) filed on 27 March 2009, was untimely. As the Appellant (Applicant) did not submit a motion for restitution to the Trial Panel it is of no relevance whether he missed the deadline by his fault or not.*

Applicant's Allegations

19. The Applicant claims that *"he has worked in the SOE 'Ramiz Sadiku' in Prishtina for many years until 28 February 1990 whereby Serbian forces coercively removed him from work and discriminated him."*

20. The Applicant alleges that at the time the names were published in the Kosovo daily newspapers, he was ill and did not see the names. Furthermore, he alleges that once he learned of the privatization through friends, he filed a claim with the PAK, but the claim was rejected as being out of time.

21. The Applicant alleges that his rights guaranteed by the Constitution were violated, to his detriment, by the PAK and the Special Chamber because he has contributed to the SOE "Ramiz Sadiku" for many years and therefore he is allegedly entitled to a share of proceeds from the privatization of said SOE.

22. The Applicant has not invoked any constitutional provisions in particular.

Assessment of 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 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 notes that the Applicant has filed complaints before the PAK and subsequently before the Trial Panel and Appellate Panel of the Special Chamber. The Applicant has exhausted all legal remedies as is prescribed by Article 113(7) of the Constitution.

26. The Court also refers to Article 49 of the Law, which provides:

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

27. The Court 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. From the submitted documents, the Court ascertains that the Applicant has filed his referral on 25 July 2013, whereas the last decision of the Special Chamber was served on him on 15 January 2013. The Applicant has filed his referral with the Court forty days (40) later than the legal deadline prescribed by Article 49 of the Law and rule 36 (1) b) of the Rules of procedure.

29. It follows that the referral is out of time.

30. Therefore, the referral must be rejected as inadmissible in compliance with 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, and Rule 56.2 of the Rules of Procedure, on 2 December 2013, unanimously:

DECIDES

I. TO REJECT the Referral as inadmissible;

II. TO NOTIFY the Parties of this Decision;

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

IV. TO DECLARE this Decision effective immediately.

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

KI195/13, Asllan Krasniqi, Resolution of 21 January 2014 - Constitutional Review of the Judgment, Rev. no. 126/2012, of the Supreme Court of Kosovo, of 2 August 2013

Case KI195/13, decision of 21 Jnuary 2014

Key words: Individual referral, manifestly ill-founded

The Applicant alleges that his constitutional rights to property and to fair and impartial trial have been violated by Judgment CC. no. 11/2008, of the Municipal Court in Gjakova, of 21 April 2011) and the Judgment Ac. no. 470/2011, of the District Court in Peja, of 19 March 2012. He further alleges that the Supreme Court in Kosovo did not rectify the violation of his human rights guaranteed by the Constitution.

The Court notes that the Applicant has neither described the facts of the case nor has he substantiated his complaints. Instead, he has only argued that his submissions were not taken into account and therefore claiming that his human rights, most notably, to property and fair trail have been violated.

In sum, the Applicant has neither built a case on a violation of any of his rights guaranteed by the Constitution nor has he submitted any prima facie evidence of such a violation.

The Constitutional Court pursuant to Article 113 .7 of the Constitution, Article 48 of the Lawand Rule 36 (1) (c) of the Rules of the Procedure, in its session held on 21 January 2014, unanimously declares the Referral as manifestly ill-founded.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI195/13
Applicant
Asllan Krasniqi
Constitutional Review of the Judgment, Rev. no. 126/2012, of the Supreme Court of Kosovo, dated 2 August 2013

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

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

The Applicant

1. The Referral was submitted by Mr. Asllan Krasniqi (hereinafter: "the Applicant") residing in Gjakova.

Challenged decision

2. The Applicant challenges the Judgment of the Supreme Court of Kosovo, Rev. no. 126/2012 dated 2 August 2013, which was served on him on 10 October 2013.

Subject matter

3. The Subject matter is the constitutional review of the Judgment of the Supreme Court Rev. no. 126/12 dated 2 August 2013. By that judgment the Applicant's Revision, submitted against the judgment of the District Court in Peja, Ac.No.470/2011 of 19 March 2012, related to the recognition of his co-ownership rights on the real estate, was rejected as ungrounded.

Legal basis

4. The Referral is based on Art. 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. On 12 November 2013, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: "the Court").

6. On 2 December 2013, the President of the Court with Decision No. GJR. KI195/13 appointed Judge Snezhana Botusharova as Judge Rapporteur. On the same day, the President of the Court by Decision No. KSH. KI195/13 appointed the Review Panel composed of Judges Robert Carolan (Presiding), Almiro Rodrigues and Ivan Čukalović .

7. On 11 December 2013, the Court notified the Applicant and requested him to submit the judgment of the District Court in Peja Ac. No. 470/2011 dated 19 March 2012 and the judgment of the Municipal Court in Gjakova C. No. 11/2008 dated 21 April 2011.

8. Also on 11 December 2013, the Court notified the Supreme Court of Kosovo on the registration of the Referral.

9. On 20 December 2013, the Applicant submitted to the Court copies of the requested judgments.

10. On 21 January 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

11. The Applicant did not describe the facts of the case. Instead he asked the Court to consider all the submissions he gave in the proceedings before the regular courts. In that respect he attached copies of the relevant judgments.

12. From these judgments the following may be asserted:

13. On an unspecified date, the Applicant together with his four brothers initiated a civil proceedings against I.K. for recognition of their co-ownership rights on the real estate in the surface area of 215.5 m2 registered in the cadastral plot no 189/2 CZ Rogove. The Applicant and his brothers also requested the handing over of the possession of the disputed real estate.

14. On 21 April 2011, the Municipal Court in Gjakova issued the judgment whereby the Applicant's petition was rejected as ungrounded.

15. The Municipal Court rejected the Applicant's petition because it found that the agreement on the physical division of the property was signed between the Applicant's deceased father and the I. K. deceased father (who were brothers), and verified by the Municipal Court in Prizren on 30 December 1963, thereby providing valid legal ground to acquire the right of property, pursuant to Article 20 of the Law on Basic Property Relations.

16. The Applicant and his brothers submitted an appeal to the District court in Peja.

17. On 19 March 2012, the District Court in Peja by judgment Ac.no.470/2011 rejected the aforementioned appeal. In the reasoning the District Court stated, inter alia, "*the legal stance of the first instance court was admitted by the second instance court as correct and based on law, because the challenged judgment does not contain substantial violations of the contested procedure provisions under Article 182.2 of LCP, which the second instance court observes ex-officio pursuant to Article 194 of LCP. The factual situation, which was determined by the first instance court, is not put into question in the appealed allegations. By the appeal are repeated and filed issues that are assessed by the first instance court during the review of legal contested relation and for which the first instance court, provided sufficient legal and factual reasons and based on law.*"

18. Subsequently, the Applicant and his brothers submitted a revision to the Supreme Court. They alleged that the District Court violated provisions of the Law on Civil Procedure (LCP) in particular Article 188 of the LCP, and that the District Court in Peja erroneously applied material law.

19. On 2 August 2013, the Supreme Court in Kosovo issued the judgement (Rev. 126/2012) and rejected the aforementioned revision.

20. The Supreme Court in the reasoning reiterated that "*The fact that the respondent's immovable property is larger was taken into account by the first instance court, however considering that that the division was performed on the grounds of the quality and the position of the plots, and the predecessors' of the litigating parties agreed to it, and they entered into possession without any remarks by the other party, and the successors – here the litigating parties continued the use and possession since 1963 and on, whereas the claimants did not challenge it until 2008 when they submitted the claim, …*"

21. The Supreme Court further stated the following "*In the claimants' Revision it is only generally stated that the Judgments of lower instance courts contain essential violations of the legal provision pursuant to Article 182, paragraph 2, item (n) of the LCP, without specifically explaining those violations, …, this Court finds that the Revision claims pertaining to the essential violations of the above mentioned legal provisions are not grounded. In the Revision it is mentioned that the challenged Judgment was rendered pursuant on the ground of the violation of the legal provision pursuant to Article 188 of the LCP. The Supreme Court reviewed this allegation but the same provision pertains to the response to the appeal and is not related to the review pursuant to Revision."*

Applicant's Allegation

22. The Applicant alleges that his constitutional rights to property and fair and impartial trial have been violated by the judgment of the Municipal Court in Gjakova (C. no. 11/2008 dated 21 April 2011) and the judgement of the District Court in Peja (Ac. no. 470/2011 dated 19 March 2012). He further alleges that the Supreme Court in Kosovo did not rectify the violation of his human rights guaranteed by the Constitution.

23. The Applicant states the following: "*My rights specified by Articles 21, 22, 31, 46 of the Constitution of the Republic of Kosovo have been violated and Articles 5 and 6 of the ECHR*."

Assessment of the admissibility of the Referral

24. First of all, 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 which are foreseen by the Constitution and further specified in the Law and the Rules of Procedure.

25. The Court notes that the Applicant has neither described the facts of the case nor has he substantiated his complaints. Instead he has only argued that his submissions were not taken into account and therefore claiming that his human rights, most notably, to property and fair trail have been violated.

26. In this regard, the Court takes into account Rule 36 of the Rules of Procedure, which provides:

> *"(1) The Court may review referrals only if: (c) The referral is not manifestly ill-founded."*

27. 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).

28. In this connection, the Constitutional 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 legal remedies prescribed by the Law on Contentious Procedure, by submitting the revision against the Judgment of the District Court in Peja and that the Supreme Court took this into account and indeed answered his appeals on the points of law.

30. The Court, therefore, considers that there is nothing in the Referral which indicates that the case lacked impartiality or that proceedings were otherwise unfair (see, *mutatis mutandis*, Shub v. Lithuania, ECHR Decision on Admissibility of Application No. 17064/06 of 30 June 2009).

31. In conclusion, the Applicant has neither built a case on a violation of any of his rights guaranteed by the Constitution nor has he submitted any *prima facie* evidence of such a violation (see Vanek v. Slovak Republic, ECHR Decision as to the Admissibility of Application no. 53363/99 of 31 May 2005).

32. Accordingly, the Court finds that the Referral is manifestly ill-founded 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 48 of the Law and Rule 36 (1) (c) of the Rules of the Procedure, in its session held on 21 January 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**
Snezhana Botusharova	Prof. Dr. Enver Hasani

KI139/13, Zorica Đokić, Resolution of 20 January 2014 - Constitutional Review of the State Prosecutor Notification, KMLP. I. No. 8/13, of 3 May 2013.

Case KI139/13, decision of 20 January 2014

Keywords: individual referral, manifestly ill founded,

The applicant, Zorica Dokic, filed a Referral pursuant to Article 113.7 of the Constitution of Kosovo challenging the State Prosecutor Notification, KMLP. I. No. 8/13, of 3 May 2013, as being taken in violation of Article 3 [Equality before Law]; Article 19 [Applicability of International Law]; Article 24 [Equality before Law]; Article 31 [Right to Fair and Impartial Trial]; Article 32 [Right to Legal Remedies]; Article 46 [Protection of Property]; Article 53 [Interpretation of Human Rights Provisions]; Article 54 [Judicial Protection of Rights]; Article 56 [Fundamental Rights and Freedoms during a State of Emergency]; Article 156 [Refugees and Internally Displaced Persons] of the Constitution of the Republic of Kosovo and pertinent Articles of the European Convention on Human Rights, namely Article 6, paragraph 1 [Right to Fair Trial]; Article 13 [Right to Effective Legal Remedies]; Article 8 [Right to Respect for Private and Family Life]; Article 14 [Prohibition of Discrimination]; Article 1 of Protocol 1 to the ECHR [Protection of Property] and Protocol 12 [General Prohibition of Discrimination].

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 pursuant to Rule 36 (1) c) and 36 (2) d) of the Rules of Procedure.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI139/13
Applicant
Zorica Đokić
Constitutional Review of the State Prosecutor Notification, KMLP. I. No. 8/13, dated 3 May 2013

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

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

Applicant

1. The Referral was submitted by Mrs. Zorica Đokić (hereinafter: the "Applicant"), from Zaječar, Serbia.

Challenged decision

2. The Applicant challenges the Notification of the State Prosecutor, KMLP. I. No. 8/13 of 3 May 2013, and the Judgment of the District Court in Gjilan, Kž. No. 251/2012 of 19 November 2012.

Subject matter

3. The subject matter is the constitutional review of the challenged decision, which the Applicant claims to have violated her constitutional rights guaranteed by: Article 3 [Equality before Law]; Article 19 [Applicability of International Law]; Article 24 [Equality before Law]; Article 31 [Right to Fair and Impartial Trial]; Article 32 [Right to Legal Remedies]; Article 46 [Protection of Property]; Article 53 [Interpretation of Human Rights

Provisions]; Article 54 [Judicial Protection of Rights]; Article 56 [Fundamental Rights and Freedoms during a State of Emergency]; Article 156 [Refugees and Internally Displaced Persons] of the Constitution of the Republic of Kosovo (hereinafter: the "Constitution") and pertinent Articles of the European Convention on Human Rights (hereinafter: ECHR), namely Article 6, paragraph 1 [Right to Fair Trial]; Article 13 [Right to Effective Legal Remedies]; Article 8 [Right to Respect for Private and Family Life]; Article 14 [Prohibition of Discrimination]; Article 1 of Protocol 1 to the ECHR [Protection of Property] and Protocol 12 [General Prohibition of Discrimination].

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 (hereinafter: the "Law") and Rule 56.2 of the Rules of Procedure of the Court (hereinafter: the "Rules of Procedure").

Proceedings before the Court

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

6. On 24 September 2013, the President of the Court, by Decision No. GJR. KI139/13, appointed Judge Kadri Kryeziu as Judge Rapporteur. On the same date, the President of the Court, by Decision No. GJR. KSH139/13, appointed the Review Panel composed of of Judges Robert Carolan (Presiding), Almiro Rodrigues and Ivan Čukalović.

7. On 10 October 2013, the Court requested additional documents and clarification from the Applicant.

8. On the same date, the Supreme Court was informed about the Referral.

9. On 18 October 2013, the Applicant replied to the Court.

10. On 20 January 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 2005, the Applicant filed a claim with the Housing and Property Claims Commission of the Housing and Property Directorate (hereinafter: "HPD") to evict F. I. from an apartment in Banja e Kllokotit, which according to the Applicant, was owned by her.

12. On 24 February 2005, the HPD rendered decision No. HPCC/D/170/2005/C requesting that that the property to be freed of *"any other person occupying the property... within a deadline of 30 (thirty) days from the receipt of this order"*, otherwise such persons would be evicted forcefully. F. I. filed a claim against this decision.

13. On 18 February 2006, the HPD, by decision HPCC/REC/58/2006, rejected the claim of F. I. for review of decision as ungrounded.

14. On 15 September 2006, the HPD handed over the keys of the property to the Applicant.

15. On 6 October 2006, the Municipal Public Prosecution in Gjilan (hereinafter: MPP) filed an indictment Kt. No. 1475/2006 with the Municipal Court in Viti (hereinafter: Municipal Court) against F. I. for violation of inviolability of apartment, and for removal or damage of official stamp or mark, as provided by Article 166, respectively 322 of the Criminal Code of Kosovo.

16. On 27 April 2008, the Applicant filed a report with the Police Station in Viti, thereby demanding that F. I. *"be removed from my apartment and to be held liable criminally and materially"*.

17. On 29 July 2009, the MPP in Gjilan had filed another indictment, Kt. No. 1235/2009 with the Municipal Court against F. I., for violation of inviolability of apartment; unlawful occupation of immovable property; and removal or damage of official stamp or mark, as provided by Article 166, respectively 259 and 322 of the Criminal Code of Kosovo. The representative of the Applicant to the session, J. Z., had supported the allegations of the MPP and criminal prosecution for enjoyment of her property rights.

18. On 4 July 2012, the Municipal Court rendered a judgment K. No. 320/2006, finding F. I. guilty of criminal offences of violation of inviolability of apartment, and damage of official stamp or mark. On the criminal offence of unlawful occupation of immovable

property, the Municipal Court found F.I. not guilty, because *"there was an absolute statutory limitation..., because the offence "was perpetrated in June 1999, and the time limit for criminal prosecution is over."*

19. Against this judgment, F. I. had filed a complaint with the District Court in Gjilan (hereinafter: District Court), thereby demanding that the Judgment of the Municipal Court be annulled (K.No.320/2006) and that the case to be returned for retrial, or be amended for him to be acquitted.

20. On 19 November 2012, the District Court, by Judgment Kž.No.251/12, amended the judgment of the Municipal Court (K.No.320/2006) and acquitted F. I. from all charges, due to the absolute statutory limitation of criminal offences. According to the District Court, *"from the case files it may be derived that more than 6 years have passed from the commission of the criminal offence until now, while for the criminal offence for which the defendant was found guilty, relative statutory limitation applies upon three years from the commission of the criminal offence, according to Article 91, paragraphs 1 and 6 of the same Law [Criminal law of Kosovo]. In this case, more than 6 years have passed from the criminal offence, which means that for the criminal prosecution the absolute statutory limitation was reached".*

21. On 17 July 2013, the Applicant filed a request for protection of legality with the Office of the Chief State Prosecutor, due to violation of Criminal law of Kosovo, and the Criminal Procedure Law of Kosovo.

22. On 3 May 2013, the State Prosecutor, by Notification KMLP. I. No. 8/13, notified the Applicant that there are no grounds for initiating a request for protection of legality. According to it, *"the District Court in Gjilan with Judgment Ap.251/2012 dated 19.11.2012, has correctly found that in this particular case the statutory limitation for criminal prosecution has been reached because for the criminal offenses, the accused is found guilty for by the Judgment of the first instance court P. No. 320/2006 dated 04.07.2006, the punishment of up to 3 years of imprisonment is provided, whereas in this particular case more than 6 years have passed since the time the criminal offense was perpetrated... while the "Claim of the submitter of request pursuant to the violation of the criminal procedure, because the appeal of the accused against*

the Judgment of the first instance was not serviced to her thus she could not answer the appeal, has no effect".

Applicant's allegations

23. The Applicant claims that in the regular court proceedings, her constitutional rights, guaranteed by Articles 3, 24, 31, 32, 46, 54, 56, 156, 19 and 53 of the Constitution and Articles 6, 13, 8, 14 of the ECHR, and Article 1 of Protocol 1 to the ECHR, and rights guaranteed by Protocol 12, were violated.

24. The Applicant request the Court to *"find this Referral admissible, and find the judgments of Kosovo courts mentioned above unconstitutional".*

Admissibility of the Referral

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

26. 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."*

27. Furthermore, Rule 36 (1) and (2) of the Rules of Procedure 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) when the Applicant does not sufficiently substantiate his claim."*

28. In the present case, the Court notes that in relation to the same immovable property, a civil proceeding is ongoing before pertinent regular courts, where one of the parties included is the legal entity "Banja e Kllokotit", as a claimant to the property. However, based on the reply from the Applicant submitted to the Court on 18 October 2013, the Applicant complains about the criminal proceedings. In relation to the criminal proceedings, the Applicant complains against the conclusion of the State Prosecutor that *"[...] more than 6 years have passed since the time the criminal offense was perpetrated [...]"* and allege that the decision of the State Prosecutor violate her rights, without explaining why and how the challenged decision violates her rights.

29. The Court emphasizes that it is not the task of the Constitutional Court to deal with errors of fact or law (legality) allegedly committed by the regular court, unless and in so far as they may have infringed rights and freedoms protected by the Constitution (constitutionality). Thus, the Constitutional Court is not to act as a court of fourth instance, when considering the decisions taken by the regular courts. It is the role of the regular courts to interpret and apply the pertinent rules of both procedural and substantive law (See case KI14/13, Applicant Municipality of Podujeva, Resolution on Inadmissibility of 12 March 2013).

30. In respect to the criminal proceedings, the Applicant did not substantiate a claim on constitutional grounds and did not provide evidence that her rights and freedoms have been violated by the regular courts. Therefore, the Court cannot conclude that the relevant proceedings before the regular courts were in any way unfair or tainted by arbitrariness (See case KI14/13, Applicant Municipality of Podujeva, Resolution on Inadmissibility of 12 March 2013).

31. Therefore, the Court considers that the Applicant did not show why and how the conclusion of the State Prosecutors notification or the District Court proceedings infringed her rights and freedoms protected by the Constitution.

32. It follows that the Referral is inadmissible because it is manifestly ill-founded, pursuant to Rule 36 (1) c) and 36 (2) d) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 48 of the Law and Rule 36 (1) c), 36 (2) d) and 56.2 of the Rules of Procedure, on 20 January 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 immediately effective.

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

KI90/13, Lumni Limaj, Resolution of 20 Jnuary 2014 - Constitutional Review of the Decision MD/PLK. No. 457/12, of the Conditional Release Panel of the Ministry of Justice, of 28 December 2012

Case KI90/13, decision of 20 January 2014

Key words: Individual Referral, *prima facie*, manifestly ill-founded.

The Applicant has not specified the alleged violation of any individual constitutional provision.

The Applicant has not specified the Court decision he challenges, and the constitutionally guaranteed rights and freedoms he alleges to have been violated, as provided by Article 113.7 of the Constitution and Article 48 of the Law. Taking into account the fact that the burden of proving constitutional violations falls with the Applicant, the Court shall only review the documents attached to the Referral. In the present case, the Applicant has not presented any evidence to lead the Court to the finding of a possible violation of any constitutional provision.

The Applicant also has not filed any prima facie evidence that would point to the violation of constitutional rights.

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 20 of the Law, and Rule 36 (2) a) and d) of the Rules of Procedure, on 20 January 2014, unanimously declares the Referral inadmissible.

RESOLUTION ON INADMISSIBILITY
in
Case no. KI90/13
Applicant
Lumni Limaj
Constitutional review of the Decision MD/PLK. No. 457/12, of the Conditional Release Panel of the Ministry of Justice, of 28 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. Lumni Limaj from Prizren (hereinafter: Applicant), currently serving sentence in the Dubrava Prison.

Challenged decision

2. The challenged decision is Decision MD/PLK. No. 457/12, of the Conditional Release Panel of the Ministry of Justice, of 28 June 2012, served on the Applicant on 29 January 2013.

Subject matter

3. The subject matter is the constitutional review of Decision MD/PLK. No. 457/12, of the Conditional Release Panel of the Ministry of Justice, of 28 December 2012, which is related to a criminal procedure, in which the Applicant was found guilty for the criminal offence of theft in the nature of robbery, and sentenced him to imprisonment of ten years.

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, paragraph 2 of the Rules of Procedure (hereinafter: the Rules of Procedure).

Proceedings before the Court

5. On 5 May 2013, the Applicant filed a Referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 24 May 2013, the Court requested from the Applicant to fill in the official Court Form for registration of Referral.

7. On 24 June 2013, the Applicant filed with the Court the official Court form for registration of Referral.

8. On 28 June 2013, by Decision of President No. GJR. KI90/13, Judge Kadri Kryeziu was appointed Judge Rapporteur. On the same date, by Decision of the President No. KSH. KI90/13, was appointed a Review Panel, composed of judges: Robert Carolan (Presiding), Almiro Rodrigues and Ivan Čukalović.

9. On 3 July 2013, the Constitutional Court requested from the Applicant to once again fill in the official Court form for registration and to sign the same, since the form of 24 June 2013, was not signed, and to clarify which decision he challenges.

10. On 20 January 2014, the Review Panel after having considered the report of the Judge Rapporteur, recommended to the Court the inadmissibility of the Referral.

Summary of facts

11. On 21 March 2007, the Supreme Court of Kosovo, deciding upon the complaint of the defense counsel of the Applicant, and defense counsels of other convicts against the Judgment of the Supreme Court Ap. no. 186/2006 of 14 September 2006 rendered the Judgment API. no. 9/2006, thereby rejecting the complaint as ungrounded, upheld the adjudicating part of the Supreme Court Judgment Ap. no. 186/2006 of 14 September 2006, and rejected

the complaint of the Applicant as inadmissible for the other parts of the Judgment.

12. The Supreme Court further reasons:

> "*In reviewing the challenged Judgment in relation to the essential violations of the criminal procedure provisions, pursuant to the provision of Article 415 of the PCPCK, the Supreme Court finds that this Judgment does not contain any essential violations of criminal procedure's provisions nor it violates the criminal code, violations which the court is obliged to review ex officio and that would condition the Judgment's annulment*".

13. On 20 December 2010, the Supreme Court of Kosovo, deciding upon request of the Applicant for extraordinary mitigation of sentence, rendered the Decision Pzd. No. 128/2010, rejecting as ungrounded the request of the Applicant. The Supreme Court reasoned:

> "*The abovementioned mitigation circumstances, noted on the request for extraordinary mitigation of punishment are not of such nature as, in conformity with Article 448, to be taken as a basis for extraordinary mitigation of punishment, and in particular when taking into account the circumstances and the manner the criminal offences were committed…".*

14. On 28 December 2012, the Ministry of Justice, namely its Conditional Release Panel, acting upon the request for conditional release, rendered the Decision MD/PLK. Nr 457/12, thereby rejecting the request for conditional release, with the following reasoning:

> "*Re-socialization has not been achieved, taking into consideration the summative opinion of the Correctional Centre on re-socialization scale. Therefore, the Panel considers that the purpose of punishment has not been reached in conformity with Article 34 of PCCK, therefore his request is rejected with a possibility of revision in one year*".

Applicant's allegations

15. The Applicant has not specified the alleged violation of any individual constitutional provision.

Admissibility of the Referral

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

17. 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".*

18. In this regard, the Court refers to the 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. In his Referral, the Applicant has not specified the Court decision he challenges, and the constitutionally guaranteed rights and freedoms he alleges to have been violated, as provided by Article 113.7 of the Constitution and Article 48 of the Law. Taking into account the fact that the burden of proving constitutional violations falls with the Applicant, the Court shall only review the documents attached to the Referral. In the present case, the Applicant has not presented any evidence to lead the Court to the finding of a possible violation of any constitutional provision.

20. Furthermore, the Constitutional Court cannot substitute the role of the regular courts. It is the role of regular courts to interpret and apply pertinent rules of procedural and material law (see, *mutatis mutandis*, García Ruiz v. Spain [GC], no. 30544/96, paragraph 28, European Court of Human Rights [ECtHR] 1999-I).

21. The Applicant also has not filed any *prima facie* evidence that would point to the violation of constitutional rights (see, *mutatis mutandis,* Vanek v. Republic of Slovakia, ECtHR Resolution on Admissibility of Application, no. 53363/99 of 31 May 2005).

22. Consequently, the Referral is manifestly ill-founded, in compliance with Rule 36 (2) a) and d) of the Rules of Procedure, which provide: *"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 (d) when the Applicant does not sufficiently substantiate his claim"*.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 20 of the Law, and Rule 36 (2) a) and d) of the Rules of Procedure, on 20 January 2014, unanimously

DECIDES

I. TO DECLARE the Referral inadmissible;

II. TO NOTIFY this Decision to the Parties;

III. TO PUBLISH this Decision 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

KI209/13, Mustafë Musa, Resolution of 21 January 2014 - Request for "[...] interpretation of part of the Judgment" in Case KO108/13, of 9 September 2013.

Case KI209/13, decision of 21 January 2014

Key words: individual referral, non-authorized party.

The applicant, Mustafë Musa, filed a Referral pursuant to Article 113.7 of the Constitution of Kosovo requesting interpretation related to a part of the Judgment of the Constitutional Court of the Republic of Kosovo in Case KO 108/13 of 9 September 2013 and with the Law on Amnesty, because it is not clear whether the Law on Amnesty applies to or in the entire territory of Kosovo or only for North Mitrovica.

On the issue of the admissibility of the Referral, the Court held, that the Referral was inadmissible because the Applicant's request for interpretation and clarification is not based on a constitutional or legal basis. Even more, the Applicant does not show how and why he might be a victim of the Judgment of the Court in Case KO108/13 of 9 September 2013 or that any of his constitutional rights might be affected with this Judgment because as alleged by the Applicant the Judgment is unclear.

Hence, the Court held that the Referral is inadmissible because the Applicant is not an authorized party pursuant to Article 113.1 of the Constitution.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI209/13
Applicant
Mustafë Musa
Request for "[...] interpretation of part of the Judgment" in Case 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 Mr. Mustafë Musa, a practicing lawyer from Gjilan.

Subject matter

2. The subject matter of the Referral is the request for interpretation related to a part of the Judgment of the Constitutional Court of the Republic of Kosovo (hereinafter: the "Court") in Case KO108/13 of 9 September 2013 and to the Law on Amnesty.

Legal basis

3. 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

4. On 19 November 2013, the Applicants submitted the Referral to the Court.

5. On 3 December 2013, the President of the Constitutional Court by Decision, No. GJR. KI209/13, appointed Judge Kadri Kryeziu as Judge Rapporteur. On the same date, the President of the Court by Decision, No. KSH. KI209/13, appointed the Review Panel composed of Judges Robert Carolan (Presiding), Almiro Rodrigues, and Ivan Čukalović.

6. On 9 December 2013, the Court notified the Applicant of the registration of the Referral.

7. On 20 January 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 *"[...] seeking interpretation – explanation of Judgment KO No. 108/2013 of 9 September 2013, on the Law on Amnesty"*. He asks for clarification whether*" the Law on Amnesty is applicable on the entire territory of Kosovo or only partially – only in North Mitrovica."*

9. The Applicant states that *"In practice there are great dilemmas in relation to the application of the Law on Amnesty, no. 04/L-209, on which there is also a Judgment of your court KO. No. 108/2013 of 9 September 2013, specifically on the interpretation of the provisions of Articles 3.1.1.13, respectively 3.1.2.8 and 3.1.3.4. of this law, on the criminal offense of Calling to Resistance (article 411) of the Criminal Code of the Republic of Kosovo ("Official Gazette of the Republic of Kosovo", no. 19/13, July 2012), (Article 319) of the Criminal Code of Kosovo ("UNMIK Regulation no. 2003/25", of 6 July 2003 "Official Gazette of Kosovo", no. 2003/25 and UNMIK Regulation no. 2004/19 on the amendment of the Provisional Criminal Code of Kosovo, and (Article 186) of the Criminal Code of the SAPK ("Official Gazette", no. 20/77 in relation to UNMIK Regulation no. 1999/24 and 2000/59 on the applicable law in Kosovo)."*

10. The Applicant further claims that *"In practice there is a dilemma among the Judges and prosecutors, regarding the mentioned provisions 'Call to Resistance' respectively 'Incitement to Resistance' and the actions listed in these paragraphs as to whether only the persons that have explicitly incited to resistance or all the citizens of the Republic of Kosovo benefit from the Law on Amnesty, since all of those that have not acted pursuant to the applicable provisions, in one way or another have resisted the governing authorities, so is the Law on Amnesty applied equally in the entire territory of the Republic of Kosovo or only partially in the area of North Mitrovica."*

Admissibility of the Referral

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

12. In this respect, the Court shall examine whether the Applicant is an authorized party in submitting the respective Referral.

13. In the case at hand, the Applicant is seeking an interpretation related to a part of the Court's Judgment in Case KO 108/13 of 9 September 2013 and to the Law on Amnesty, namely whether the Law on Amnesty is applicable on the entire territory of Kosovo or only partially, because it is not clear whether the Law on Amnesty applies on the entire territory of Kosovo or only for North Mitrovica.

14. Further, the Applicant seeks clarification related to the applicability of the Law on Amnesty and interpretation of certain provisions of the law in question as stated in paragraph 9 above.

15. Moreover, the Applicant considers that there is a dilemma among judges and prosecutors on the application of the Law on Amnesty as stated in paragraph 10 above.

16. 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."*

17. The Court notes that the Applicant submitted his Referral under 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 notes that the Applicant's request for interpretation and clarification is not based on a constitutional or legal basis. Furthermore, the Applicant does not show how and why he might be a victim of the Judgment of the Court in Case KO108/13 of 9 September 2013, or that any of his constitutional rights might be affected by this Judgment, because, as alleged by the Applicant, the Judgment is unclear.

19. As understood by the Court, where it concerns a request for an interpretation regarding the territorial application of the Law on Amnesty, there is no constitutional right that empowers individuals to bring such a Referral before the Court.

20. The Court reiterates that under Article 113.8 of the Constitution, the regular courts are authorized *"[...] 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."*

21. Furthermore, under Article 113.5 of the Constitution it is provided that *"Ten (10) or more deputies of the Assembly of Kosovo, within eight (8) days from the date of adoption, have the right to contest the constitutionality of any law or decision adopted by the Assembly as regards its substance and the procedure followed."*

22. In addition, the Constitution under Article 113.2 (1) also empowers "The Assembly of Kosovo, the President of the Republic of Kosovo, the Government, and the Ombudsperson [...] 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;".

23. The Court having in mind the quoted provisions of the Constitution concludes that the Applicant is not an authorized party to bring such a request.

24. As far as the Applicant's alleged observation that there exists a dilemma among the Judges and prosecutors as to the application and interpretation of certain provisions of the Law on Amnesty, the Court notes that there is no constitutional basis for such a request.

25. Thus, the Court taking into consideration the abovementioned constitutional provisions concludes that the Applicant is not an authorized party.

26. 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 21 January 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**
Dr. sc. Kadri Kryeziu	Prof. Dr. Enver Hasani

KI215/13, Selim Emërllahu, Resolution of 11 February 2014 - Constitutional Review of the non-application of the Law on Amnesty

Case KI215/13, decision of 11 February 2014

Key words: individual referral, criminal offence, non-exhaustion of legal remedies.

Applicant filed the referral pursuant to Article 113.7 of the Constitution of Kosovo, without challenging any decision of the public authority, but requesting the assessment of the constitutionality of non-application of the Law on Amnesty.

By final Judgment Ap. no. 23/2012, of the District Court in Gjilan, of 12.03.2012, the Applicant was sentenced to imprisonment of three (3) months due to co-perpetration of criminal offence of Election Fraud, as per Article 180, in conjunction with Article 23 of the CCK.

The Applicant claimed that *"we are aware that the Law on Amnesty has also included this kind of criminal offenses, in relation to which the Basic Court in Gjilan branch in Viti has rendered to the police the order for serving the sentence, but the Law on Amnesty that amnesties this criminal offense has not been applied, due to the fact that the offense as it is claimed was committed in 2007".*

Deciding on the Referral of the Applicant Selim Emërllahu, the Constitutional Court found that the Applicant has not exhausted the possibility of filing a complaint against the decision on amnesty, to which the Applicant is entitled to, in compliance with Article 10, paragraph 1, of the Law on Amnesty, no. 2013/04-L-209.

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 Constitutional Court concluded that the Applicant has not exhausted all legal remedies provided by the Law, for him to be able to file a referral with the Constitutional Court, and therefore, the Referral must be declared 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. KI215/13
Applicant
Selim Emërllahu
Constitutional Review of the "non-application of the Law on Amnesty"

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

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

Applicant

1. The Referral is filed by Mr. Selim Emërllahu (hereinafter: the Applicant), village of Ramjan, Municipality of Viti.

Challenged decision

2. The applicant does not challenge any decision of public authorities.

Subject matter

3. The subject matter is "non-application of the Law on Amnesty".

Legal basis

4. The Referral is based upon Articles 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 20 November 2013, the Applicant filed his 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. KI215/13 appointed Judge Ivan Čukalović as Judge Rapporteur. On the same date, the President of the Court, by Decision no. KSH. KI215/13 appointed the Review Panel, composed of judges: Altay Suroy (Presiding), Snezhana Botusharova and Arta Rama-Hajrizi.

7. On 11 February 2014, having considered the report of the Judge Rapporteur Ivan Čukalović, the Review Panel, composed of Judges: Altay Suroy (Presiding), Snezhana Botusharova and Arta Rama-Hajrizi made a recommendation to the full Court on the inadmissibility of the Referral.

Summary of facts

8. By a final Judgment of the District Court in Gjilan, Ap. no. 23/2012, of 12.03.2012, the Applicant was convicted to imprisonment of three (3) months due to co-perpetration of criminal offence of Election Fraud, as per Article 180, in conjunction with Article 23 of the CCK.

Applicant's allegations

9. The Applicant claims that "*We are aware that the Law on Amnesty has also included this kind of criminal offenses, in relation to which the Basic Court in Gjilan branch in Viti has rendered to the police the order for serving the sentence, but the Law on Amnesty that amnesties this criminal offense has not been applied, due to the fact that the offense as it is claimed was perpetrated in 2007*".

10. The Applicant requests from the Constitutional Court "*We seek from you as the above mentioned title and as the President of the Supreme Court of the R. of Kosovo to notify us on this matter as*

well as the Competent Court and the Kosovo Police and if necessary the probation service".

Admissibility of the Referral

11. The Court notes, that in order to be able to adjudicate the Applicant's Referral, it 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.

12. In this regard, the Court refers to the Article 113.7 of the Constitution, which provides:

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

13. The Court also refers to Article 47 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".*

14. Furthermore, the Court must also take into consideration the 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".*

15. 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* ECHR, Selmouni vs. France, no. 25803/94, decision of 28 July 1999).

16. 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.

17. Having this in mind, that on the basis of documentation submitted to the Constitutional Court by the Applicant, by which he directly addresses the Constitutional Court, without filing "*... the request by the convicted person, perpetrator of the criminal offence*", in compliance with Article 7, paragraph 1.2 of the Law on Amnesty, no. 2013/04-L-209, in order that the competent court could render a ruling.

18. Likewise, the Applicant has not exhausted the possibility of filing a complaint against the decision on amnesty, to which the Applicant is entitled to, in compliance with Article 10, paragraph 1, of the Law on Amnesty, no. 2013/04-L-209, which provides:

> *„1. Against a decision for amnesty an appeal may be initiated in the Court of Appeals within seven (7) days from the day the decision was rendered. The Court of Appeals shall render a decision for the appeal three (3) days from the day that it received the request for appeal*".

19. Therefore, the Applicant has not exhausted all legal remedies provided by the Law on Amnesty, no. 2013/04-L-209, for him 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, paragraph 7 of the Constitution, Articles 20 and 47 of the Law and Rule 36 (1) a) of the Rules of Procedure, in its session held on 11 February 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
Ivan Čukalović

President of the Constitutional Court
Prof. Dr. Enver Hasani

KI76/13, Durije Kurshumlija, Shpresa Kurshumlija and Orhan Kurshumlija, Resolution of 16 October 2013 - Constitutional Review of Judgment Rev. nr. 218/2010 of the Supreme Court of the Republic of Kosovo, of 7 February 2013.

Case KI76/13, decision of 16 October 2013

Keywords: individual referral, manifestly ill-founded.

The applicants filed a Referral pursuant to Article 113.7 of the Constitution of Kosovo challenging Judgment Rev.nr.218/2010 of the Supreme Court of the Republic of Kosovo, dated 7 February 2013, Judgment Ac. nr. 424/2008 of the District Court of Prishtina, dated 23 June 2010 and Judgment C. no. 180/2002 of the Municipal Court of Prishtina, dated 14 September 2007, as being taken in violation of Article 7 [Values]; Article 21 [General Principles on Fundamental Rights and Freedoms]; Article 22 [Direct Applicability of International Agreements and Instruments]; Article 31 [Right to Fair and Impartial Trial]; Article 46 [Protection of Property]; Article 53 [Interpretation of Human Rights Provisions] of the Constitution; and Article 6 of the European Convention on Human Rights [Right to a Fair Trial]; and Article 1of the Additional Protocol of the ECHR [Protection of Property].

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 pursuant to Rule 36 (1) c) and 36 (2) d) of the Rules of Procedure. Furthermore, the Court also held that in respect to the alleged violation of the principle that a case must be decided within a reasonable time, it is declared as inadmissible for non-exhaustion because the Applicant has not raised this complaint before the regular courts in accordance with Article 113.7 of the Constitution and Article 47 of the Law.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI76/13
Applicants
Durije Kurshumlija,
Shpresa Kurshumlija and
Orhan Kurshumlija
Constitutional Review of Judgment Rev. nr. 218/2010 of the Supreme Court of the Republic of Kosovo, dated 7 February 2013

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

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

Applicant

1. The Applicants are Mrs. Durije Kurshumlija, Mrs. Shpresa Kurshumlija and Mr. Orhan Kurshumlija. They are represented by Mr. Teki Bokshi, a lawyer from Gjakova.

Challenged decisions

2. The Applicants challenge Judgment Rev.nr.218/2010 of the Supreme Court of the Republic of Kosovo, dated 7 February 2013, Judgment Ac. nr. 424/2008 of the District Court of Prishtina, dated 23 June 2010 and Judgment C. no. 180/2002 of the Municipal Court of Prishtina, dated 14 September 2007.

3. The judgment of the Supreme Court of Kosovo was served on the Applicants on 6 April 2013.

Subject matter

4. The subject matter is the constitutional review of the challenged court decisions which, allegedly, violated Article 7 [Values]; Article 21 [General Principles on Fundamental Rights and Freedoms]; Article 22 [Direct Applicability of International Agreements and Instruments]; Article 31 [Right to Fair and Impartial Trial]; Article 46 [Protection of Property]; Article 53 [Interpretation of Human Rights Provisions] of the Constitution; and Article 6 of the European Convention on Human Rights (hereinafter, ECHR) [Right to a Fair Trial]; and Article 1 of the Additional Protocol of the ECHR [Protection of Property].

Legal basis

5. 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 (2) of the Rules of Procedure (hereinafter, the Rules).

Proceedings before the Court

6. On 29 May 2013, the Applicants submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).

7. On the same date, the President appointed Judge Kadri Kryeziu as Judge Rapporteur and the Review Panel composed of Judges Robert Carolan (Presiding), Almiro Rodrigues and Ivan Čukalović.

8. On 10 June 2013, the Court notified the Applicants and the Supreme Court of the registration of the Referral.

9. Also on 10 June 2013, the Court requested the Applicants' lawyer to submit all documents listed in the Referral.

10. On 18 June 2013, the Applicants submitted some of the documents requested by the Court.

11. On 16 October 2013, the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

12. On 5 November 1985, the District Court in Prishtina, by Judgment C. no. 526/84, confirmed that the father of the Applicants was entitled to the right of permanent use of a plot of land, recorded as cadastral parcel n. 6177 of 1.67,53 ha in "Vreshtat" as per the possession list no. 1941 CZ Prishtina, and to allow the registration of this property in the cadastral register in his name within a deadline of 15 days from the rendering of the judgment.

13. Thereupon, the respondent appealed to the Supreme Court, complaining that the District Court had violated substantial provisions of the Law on Contested Procedure (hereinafter, LCP), had erroneously ascertained the factual situation and erroneously applied material law.

14. On 17 July 1986, the Supreme Court of Kosovo, by Judgment Ac. no. 125/86, quashed the judgment of the District Court in Pristina, stating that the allegations by the complainant (the respondent before the District Court) were justified, and ordered the case file to be submitted for review to the Municipal Court in Prishtina as the competent court to decide on the case. The Supreme Court further ruled that, in the repeated procedure, all circumstances should be clarified, inter alia, by demanding a detailed report from the Geodesy Department on the property dispute.

15. When the complainant died in 1987, the son joined all his rights and inherited the property concerned.

16. On 25 April 1994, an expertise was prepared by expert P. G. providing the full history of the property dispute, as later confirmed by a further expert Q. H.

17. On an unknown date, the Applicants, after the death of their father, initiated the repeated procedure before the Municipal Court in Prishtina as ordered by Judgment Ac. no. 125/86 of the Supreme Court, dated 17 July 1986.

18. On 14 September 2007, the Municipal Court in Prishtina, by Judgment C.nr.180/2002, rejected the claim of the Applicants as ill-founded, considering the respondent as the owner of the plot officially registered in his name at the Cadastral Office Prishtina.

19. On 6 November 2007, the Applicants filed an appeal against the Judgment of the Municipal Court with the District Court of

Prishtina, claiming that the first instance court had not acted upon the instructions laid down in Judgment Ac. no. 125/86 of the Supreme Court, dated 17 July 1986 and had breached Article 354(1) in conjunction with Articles 377 and 354 (2) LCP, in that its judgment was the result of the erroneous and incomplete determination of the factional situation and the erroneous application of substantive law.

20. On 24 June 2010, the District Court of Prishtina, by Judgment Ac.nr.424/2008 upheld the Judgment of the Municipal Court and rejected as ill-founded the appeal of the Applicants. The Court stated that the Municipal Court had correctly and completely determined all facts that were of decisive importance to determine the fact that the Applicants' late father from Pristina did not enjoy the right of ownership of the contested immovable property. The District Court concluded that the judgment of the Municipal Court contained an understandable enacting clause and that, in the reasoning of the judgment, full and understandable reasons were presented about all facts which were relevant for the right adjudication of the contested matter.

21. On 5 August 2010, the Applicants filed a revision with the Supreme Court of Kosovo due to substantial violations of the provisions of the LCP and erroneous implementation of the material law, proposing to the Supreme Court that the lower instance courts' judgments be amended so that the Applicants' claim is accepted as grounded or that these judgments are annulled and the matter is returned for retrial.

22. On 7 February 2013, the Supreme Court of Kosovo, by Judgment Rev. nr. 218/2010, rejected the revision as ill-founded and accepted all the factual and legal findings given by the lower instance courts, stating that the challenged Judgments were clear and did not contain contradictions in their content or reasoning.

Applicants' allegations

23. The Applicants allege that the Municipal and District Courts did not make a real and meaningful analysis of the testimonies of both the witnesses for the Applicants as well as of the witnesses for the respondent and of the respondent himself. In particular, these courts did not provide proper grounds for rejecting the evidence which the Applicants had presented. Furthermore, in their opinion, the Supreme Court did not consider the witness statements which they had obtained.

24. The Applicants request the Court to find that the Supreme Court, the District Court and the Municipal Court violated their fundamental human rights guaranteed by the Constitution, in particular, Articles 7 [Values], 21 [General Principles], 22 [Direct Applicability of International Agreements and Instruments], 31 [Right to Fair and Impartial Trial], 46 [Protection of Property] and 53 [Interpretation of Human Rights Provisions] of the Constitution as well as Article 6 [Right to Fair Trial] ECHR and Article 1 [Protection of Property] of the Additional Protocol to the ECHR.

25. They also claim that, when calculating the time limits from the date that the court proceedings were initiated until the judgment of the Supreme Court was rendered, the requirement that the case must be decided within a reasonable time limit as guaranteed by Article 31 of the Constitution in conjunction with Article 6 ECHR, was not respected.

26. The Applicants propose to the Court to annul all Judgments rendered in the case and to decide that the case be returned for retrial.

Assessment of the Admissibility of the Referral

27. In order to be able to adjudicate the Applicants' Referral, the Court needs first to examine whether the Applicants have fulfilled the admissibility requirements laid down in the Constitution and as further specified in the Law and the Rules.

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

> *"7. Individuals are authorized to refer violations by public authorities of their individual rights and freedoms guaranteed by the Constitution, but only after exhaustion of all legal remedies provided by law".*

29. The Court also refers to Article 49 of the Law, stipulating:

> *"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 (...)".*

30. In the instant case, the Court notes that the Applicants have sought recourse to protect their rights before the Municipal and District

Courts and, finally, before the Supreme Court of Kosovo. The Court also notes that the Applicants were served with the judgment of the Supreme Court on 6 April 2013 and filed their Referral with the Court on 29 May 2013.

31. Thus, the Court considers that the Applicants are authorized parties, have exhausted all legal remedies available to them under applicable law and have submitted the Referral within the four months time limit.

32. The Court further refers to Article 48 of the Law which provides:

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

33. In addition, Rule 36 (1) (c) and 36 (2) (a) and (d) of the Rules, foresees that:

> *(1). The Court may only deal with Referrals if:*
> *[...]*
> *(c) the Referral is not manifestly ill-founded.*
>
> *(2). The Court shall reject a Referral as being manifestly ill-founded when it is satisfied that:*
> *(a) the Referral is not prima facie justified, or*
> *[...]*
> *(d) the Applicant does not sufficiently substantiate his claim.*

34. In the present case, the Applicants allege that they disagree with the rulings of the Municipal and District Courts in the repeated procedure ordered by Judgment Ac. no. 125/86 of the Supreme Court dated 17 July 1986, because both courts completely ignored the recommendations contained in that Judgment. Furthermore, in their opinion, also Judgment Rev.no.218/2010 of the Supreme Court of 7 February 2013 infringed the right of access to justice, in that it did not consider the entire matter.

35. The Applicants further allege that these courts did not make a real and meaningful analysis of the witnesses for the Applicants and that no proper explanation was given for each piece of evidence presented to them.

36. They claim that the entire matter was decided by the courts in violation of Articles 7 [Values], 21 [General principles], 22 [Direct applicability of International Agreements and Instruments] and Article 31 [Right to Fair and Impartial Trial] of the Constitution as well as Article 6 [Right to Fair Trial] ECHR and 1 Article [Protecttion of Property] of Protocol No. 1 to the ECHR.

37. As to the Applicants' complaints, the Court observes that under the Constitution, it is not the task of the Constitutional Court to deal with errors of fact or law (legality) allegedly committed by the lower instance courts and the Supreme Court, unless and so far as they may have infringed rights and freedoms protected by the Constitution (constitutionality). Thus the Court is not to act as a court of fourth instance, when considering the decisions taken by 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, para. 28, European Court of Human Rights [ECtHR] 1999-I). The simple dissatisfaction with the contested court decisions cannot be a constitutional ground for submitting a referral to the Constitutional Court.

38. The Constitutional Court can only consider whether the proceedings, viewed in their entirety, have been conducted in such a way that the Applicant has had a fair trial (see, *mutatis mutandis*, Report of the EComHR in case Edwards v. UK, Appl. No. 13071/87, 10 July 1991).

39. As to the present case, the Court notes that Applicants merely complain that the Supreme Court, in its Judgment Rev. No. 218/2010 of 7 February 2013,, rejected their revision against the judgment of the District Court of Prishtina as ill-founded for the reasons that it completely accepted the factual and legal findings given by the Municipal and District Courts and that these findings were clear and did not contain any contradictions as to their contents or reasoning.

40. In this respect, after having examined the Applicants' complaint, the Court finds that the relevant proceedings were in no way unfair or tainted by arbitrariness. (see, *mutatis mutandis*, Shub v. Lithuania, ECtHR Decision on Admissibility of Appl. No. 17064/06 of 31 May 2009).

41. Moreover, the Court considers that the Applicants have neither build a case on a violation of the rights invoked by them, nor have they submitted *prima facie* evidence on such violations (see, Vanek v. Slovak Republic, ECtHR Decision on Admissibility of Appl. No. 53363/99 of 31 May 2005, and Case KI 70/11, Faik Hima, Magbule Hima, Bestar Hima, constitutional Review of the Judgment of the Supreme Court No. 983/08, dated 07 February 2011, Resolution on Inadmissibility of 13 December 2011).

42. It follows that this part of the Referral is manifestly ill-founded, pursuant to Rules 36 (1) c) and 36 (2) a) and d) of the Rules of Procedure.

43. The Applicants further complain that, when calculating the time limits from the date that the court proceedings were initiated until the judgment of the Supreme Court was rendered, the requirement that the case must be decided within a reasonable time limit as guaranteed by Article 31 of the Constitution in conjunction with Article 6 ECHR, was not respected.

44. However, the Court notes that it appears from the documents submitted that the Applicants have not raised this complaint either before the Municipal and District Courts, or in highest instance before the Supreme Court.

45. In this respect, the Court observes that, before submitting a referral to the Court, the exhaustion rule does not only require an applicant, to exhaust all legal remedies available under Kosovo law, including the highest instance court, but also to have raised the alleged violations of fundamental rights in the proceedings before these instances.

46. The Court emphasizes that the rationale for the exhaustion rule, as interpreted by the European Court of Human Rights (hereinafter: ECtHR) is to afford the public authorities concerned, including the courts, the opportunity to prevent or put right the alleged violation of fundamental rights guaranteed by the Constitution and/or international instruments directly applicable in Kosovo. The rule is based on the assumption that the Kosovo legal order will provide for an effective remedy to deal with an alleged violation of such fundamental rights. This is an important aspect of the subsidiary character of the proceedings before the Constitutional Court (see, *mutatis mutandis*, Selmouni v. France, ECtHR, no 25803/94, Judgment of 28 July 1999).

47. Thus, in the present case, the Applicants have not shown that, in respect of their claim that their case had not been decided within a reasonable time limit in violation of Article 31 of the Constitution and Article 6 ECHR, they have exhausted all legal remedies available to them under Kosovo law as they were required to do, pursuant to Article 113.7 of the Constitution and Article 47.2 of the Law.

48. It follows that this part of the Referral must be rejected on the ground that the Applicants have not exhausted all legal remedies available to them under Kosovo law.

49. In these circumstances, the Court concludes that the Referral is inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Articles 47 and 48 of the Law and Rule 36 (1) (c) and Rule 56 (2) of the Rules, on 16 October 2013, unanimously,

DECIDES

I. TO REJECT the Referral as Inadmissible;

II. TO NOTIFY the Party 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 immediately effective.

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

KI32/14, Arben Krasniqi, Resolution of 12 March 2014 - Constitutional Review of the Decision of the Pre-trial Judge of the Basic Court in Prishtina, PKRNR 47/13, PPS No. 107/2012, of 20 January 2014

Case KI32/14, decision of 12 March 2014

Key words: Individual Referral, Request for interim measure, *prima facie not justified*, manifestly ill-founded.

The subject matter is the constitutional review of the Decision of the Pre-trial Judge of the Basic Court in Prishtina. In its Decision, the Pre-trial Judge of the Basic Court in Prishtina rejected the Applicant's request for full access to case files.

The Applicant has been on detention on remand and was being investigated for criminal offences, whereby an indictment has not yet been issued.

In his Referral, the Applicant also requested from the Constitutional Court of the Republic of Kosovo to impose an interim measure, namely to oblige the Pre-trial Judge to order the Prosecution to grant the Applicant full access to the parts of the case files, that are allegedly the grounds for ordering the Applicant's detention on remand.

The Applicant alleged that the Decision of the Pre-trial Judge of 20 January 2014 violated the principle of equality of arms, which according to the Applicant is guaranteed by Article 5 [Right to Liberty and Security] and Article 6 [Right to a Fair Trial] of the European Convention on Human Rights (hereinafter: the ECHR).

The Constitutional Court, taking into account the stage of the proceedings, considered that it cannot follow the Applicant's argument in relation to Article 6 of the ECHR and held that Article 6 of the ECHR is not applicable as argued by the Applicant. Furthermore, based on the case file, the Court noted that the Applicant had not submitted a request to the Pre-trial Judge to determine the lawfulness of the detention, nor is he specifically requesting the Constitutional Court to challenge the detention on remand. Hence, the Court held that Article 5 of the ECHR was not applicable as it concerned the detention issue, which was not challenged by the Applicant.

The Constitutional Court, based on the above-mentioned reasoning and referring to the current stage of the proceedings declared the Applicant's Referral as inadmissible because it was *prima facie* not justified.

In addition, the Constitutional Court rejected the Applicant's Request for interim measure as manifestly ill-founded.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI32/14
Applicant
Arben Krasniqi
Constitutional Review of the Decision of the Pre-trial Judge of the Basic Court in Prishtina, PKRNR 47/13, PPS No. 107/2012 of 20 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
Kadri Kryeziu, Judge and
Arta Rama-Hajrizi, Judge

Applicant

1. The Applicant is Mr. Arben Krasniqi (hereinafter: the Applicant), with residence in Prishtina, represented by Dr. Donat Ebert, a practicing lawyer registered with the Bar in Germany and Hungary.

Challenged Decision

2. The Applicant challenges the Decision of the Pre-trial Judge of the Basic Court in Prishtina, PKRNR 47/13, PPS No. 107/2012, dated 20 January 2014, served on the Applicant on an unspecified date.

Subject Matter

3. The subject matter is the constitutional review of the Decision of the Pre-trial Judge of the Basic Court in Prishtina, PKRNR 47/13, PPS No. 107/2012, dated 20 January 2014. In its Decision, the Pre-trial Judge of the Basic Court in Prishtina rejected the request of the Applicant for full access to case files.

4. The Applicant also requests from the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) to impose an interim measure, namely to oblige the Pre-trial Judge to order the Prosecution to grant the Applicant full access to the parts of the case files, that are allegedly the grounds for ordering the Applicant's detention on remand.

Legal basis

5. 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) 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 19 February 2014, the Applicant submitted the Referral to the Constitutional Court.

7. On 25 February 2014, the President of the Court based on Decision GJR. KI32/14 appointed Judge Snezhana Botusharova as Judge Rapporteur. On the same date, the President of the Court based on Decision KSH. KI32/14 appointed the Review Panel composed of Judges, Almiro Rodrigues (presiding), Ivan Čukalović and Enver Hasani.

8. On 25 February 2014, the Constitutional Court informed the Applicant on the registration of the Referral and requested the following additional documents: 1. Decision on detention on remand; 2. Decision/Decisions for protective measures which are referred to in the case file; and 3. Request for access to the case file submitted to the Special Prosecution Office of the Republic of Kosovo.

9. On the same date, the Court also notified the Pre-trial Judge of the Basic Court in Prishtina and the Office of the Special Prosecution of the Republic of Kosovo on the Referral.

10. On 6 March 2014, the Applicant submitted to the Court additional documents.

11. On 12 March 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 and to reject the request for interim measures.

The Facts of the Case

12. The Applicant, pursuant to the Decision on Initiation of Investigation, dated 6 March 2013, is being investigated for the following criminal offences: Organised Crime, contrary to Article 283, paragraph 2, of the Criminal Code of Kosovo (hereinafter: the CCK), in conjunction with criminal offence of Extortion, contrary to Article 340, paragraph 2, of the CCK, punishable by a fine of up to five hundred thousand (500,000) EUR and by imprisonment of at least ten (10) years.

13. Following a search conducted on 28 October 2013 at the Applicant's residence in Prishtina, the Applicant is further being investigated for unauthorised ownership, control and possession of weapons, contrary to Article 374, paragraph 1, of the CCK, punishable by a fine of up to (7,500) EUR and imprisonment of up to five (5) years.

14. The Applicant has been on detention on remand since 28 October 2013.

15. On 20 November 2013, the Applicant had submitted a request for access to the case files to the Office of the Special Prosecution Office of the Republic of Kosovo.

16. On 28 November 2013, the Special Prosecution Office in its Decision decided the following:

> *"1. Defence Counsel for the defendant Arben Krasniqi shall have access to the case file to the extent that Article 213, par. 3 permits.*
> *2. Defence Counsel for the defendant Arben Krasniqi shall not have access to other materials in the case file.*
> *3. Defence Counsel will be notified, and invited to participate in, all investigative actions for which there is an obligation on the State Prosecutor to provide such notification and/or invitation."*

17. Regarding the part of the Decision for not granting access to other materials in the case file, the Special Prosecution Office reasoned as following:

[…]

"Whilst pursuant to Article 213, par. 2 CPCK [Criminal Procedure Code of Kosovo] *there is a positive obligation on the Prosecutor to allow a defendant or his defence counsel access to the case file ("general access"), that obligation is subject to the exceptions provided within Article 213. It is on the basis of those exceptions, and provisions regarding protective measures for witnesses, that a "general access" to the case file is refused."*

[…]

"This is an on-going investigation against a potentially large, organised criminal group. To allow the Defence Counsel to have general access to the case files has potential seriously to jeopardise the purpose of the investigation, namely to discover the full extent of the illegal activities of the organised criminal group and its members. In addition, general accesses to the case file may endanger the lives and health of people. Whilst there are a number of witnesses who have been afforded protective measures by the court, access to the case files could lead to the discovery of the identity of those present and future witnesses who have nor, or are not, given those same measures. Given the modus operandi of the organised criminal group – that is, the use of serious threats and violence for the purpose of monetary gain – it is not unreasonable to expect that were members of the organised criminal group to discover the identity of witnesses (current or potential) then steps would be taken – including the violence – to prevent them from cooperating with the criminal investigation and any future court proceedings.

[…]

"In addition to a reliance on the exceptions provided in Article 213, par. 6, the undersigned Prosecutor relies on Article 222, par. 2 CPCK, which clearly indicates that where other provisions of the CPCK conflict with the protective measures provided to a witness, the other CPCK provisions shall not apply."

18. On 21 November 2013, the Special Prosecution Office rendered a Decision on Expansion of the Investigations.

19. On 7 January 2014, the Applicant filed a motion with the Basic Court in Prishtina, requesting the Pre-trial Judge to oblige the State Prosecutor:

> *"1. To supply defence with full access to the complete case file in the possession of the prosecution as concerns the investigation against Arben Krasniqi,*
> *2. in case there might be profound justification to deny full access to the named case file to supply all documents that do not contain privileged information,*
> *3. alternatively to supply defence with a redacted version of the full case file or unprivileged parts of it."*

20. The Applicant concluded his request submitted to the Pre-trial Judge, arguing:

> *"Here it is important to see that the objects of the alleged crimes and the alleged witnesses seem to be identical. This makes it easy for the prosecution to assert that when their identity is disclosed, there is a high danger of tampering with evidence by threatening the witnesses on the one hand, and on the other hand there is profound suspicion against the defendants without giving the defense the slightest chance to contest this and assess the validity of these claims.*
>
> *[…]*
> *To summarize it can be said that the refusal to give any access to the case file is neither in line with the ECHR, nor with the CPC of the Republic of Kosova and this needs to be healed by an order of the pre-trial judge."*

21. On 20 January 2014, the Pre-trial Judge of the Basic Court in Prishtina, with its Decisions PKRNR 47/13, PPS No. 107/2012 rejected the Applicant's request for access to case files.

22. In its aforementioned Decision, the Pre-trial Judge held the following:

> […]
>
> *"The Pre-trial Judge considers that defendant's rights were not violated by denying access to witnesses' statements and ruling on initiation of investigation because these rights are subject of protective measures. This is explicitly foreseen in paragraph 8*

> *of Article 213 of CPCK. Moreover Article 222, par. 2 of the CPCK provides that other provisions of the CPCK shall not apply where they conflict with protective measures. The Court concludes that granting such access would conflict with protective measures ordered by this Court."*

23. The Pre-trial Judge concluded that: *"Balancing the right of defendants and the defence counsels to have access to some parts of the case file and the potential danger to lives or health of people who were granted protective measures the Court considers the latter should prevail. The Court is bound by principle of innocence at this stage however, high consideration should also be given to the fact that all witness hesitated to testify until they were granted protective measures."*

24. The aforementioned Decision of the Pre-trial Judge contains the following legal advice: *"This ruling is final thus no appeal shall be permitted against it (Article 213, par. 6 of the CPCK)"*

25. Based on the case files, at this stage, an Indictment has not yet been issued.

Applicant's allegations

26. The Applicant alleges that the Decision of the Pre-trial Judge of 20 January 2014 violated the principle of equality of arms, which according to the Applicant is guaranteed by Article 5 [Right to Liberty and Security] and Article 6 [Right to a Fair Trial] of the European Convention on Human Rights (hereinafter: the ECHR).

27. The Applicant argues that: *"[...] the prosecution is obliged to give full access to the whole of the case file as it is taken as grounds for the ordering of the detention on remand. Otherwise neither the defendant nor his defense counsel can check whether detention on remand is lawful or not."*

28. The Applicant further argues that:

> "The Criminal Procedure Code of the Republic of Kosova leaves room for the prosecution to redact the file and for example make the identities of the witnesses unrecognizable.
> The argumentation of the Pre-trial judge that the circumstance of the witnesses' testimonies themselves already would make their identities recognizable cannot convince. It lies in the

nature of it that a description of an alleged crime or offence is so specific that it would make the author of the testimony identifiable. This is practically always the case, unless the testimony has no resemblance with real factual circumstances. Without any information as to the testimonies of the witnesses it is impossible to verify the truth of their statements and their credibility."

29. The Applicant concludes requesting the Court:

"- Oblige the pre-trial judge to give an order to the prosecution to give the undersigned full access to the parts of the file that are actually the grounds for the ordering of detention on remand.
- Pass an interim measures to oblige the court to do so as quickly as possible."

Relevant provisions of the Criminal Procedure Code of the Republic of Kosovo No. 04/ L-123

1. Article 213 [Access to the Case File by Suspects and Defendants]

"1. During initial steps by the police, the suspect shall have access to the evidence that is collected upon his or her request, except when paragraph 6 or 7 of this Article is applied mutatis mutandis

2. At the initiation of the investigative stage, the state prosecutor has a positive obligation to provide access to the case file to any named defendant or their defense counsel, subject to the exceptions within this Article.
3. At no time during the investigative stage may the defense be refused inspection of records of the examination of the defendant, material obtained from or belonging to the defendant, material concerning such investigative actions to which defense counsel has been or should have been admitted or expert analyses.

4. Upon completion of the investigation, the defense shall be entitled to inspect, copy or photograph all records and physical evidence available to the court.

5. Upon the filing of an indictment, the defendant or defendants named in the indictment may be provided with a copy or copies, respectively, of the case file.

6. In addition to the rights enjoyed by the defense under paragraphs 2, 3 and 4 of the present Article, the defense shall be permitted by the state prosecutor to inspect, copy or photograph any records, books, documents, photographs and other tangible objects in the possession, custody or control of the state prosecutor which are material to the preparation of the defense or are intended for use by the state prosecutor as evidence for the purposes of the main trial, as the case may be, or were obtained from or belonged to the defendant. The state prosecutor may refuse to allow the defense to inspect, copy or photograph specific records, books, documents, photographs and other tangible objects in his or her possession, custody or control if there is a sound probability that the inspection, copying or photographing may endanger the purpose of the investigation or the lives or health of people. In such case, the defense can apply to the pre-trial judge, single trial judge or presiding trial judge to grant the inspection, copying or photocopying. The decision of the judge is final.

7. Information can be redacted or marked out by a thick black line to obscure specific information by the state prosecutor on copies of documents that contain sensitive information. The defendant may challenge the redaction with the pretrial judge, single trial judge or presiding trial judge within three (3) days of receiving the redacted copy.
The state prosecutor shall be permitted the opportunity to explain the legal basis of the redaction without disclosing the sensitive information. The judge shall review the redacted information and shall decide within three (3) days whether the redaction is legally justified.

8. Provisions of the present Article are subject to the measures protecting injured parties and witnesses and their privacy and the protection of confidential information as provided for by law."

2. Article 222, (1) and (2) [Order for Protective Measures]

"1. The competent judge may order such protective measures as he or she considers necessary, including but not limited to:

1.1. omitting or expunging names, addresses, place of work, profession or any

other data or information that could be used to identify the injured party,
cooperative witness or witness;

1.2. non-disclosure of any records identifying the injured party, cooperative
witness or witness;

1.3. efforts to conceal the features or physical description of the injured party,
cooperative witness or witness giving testimony, including testifying behind an opaque shield or through image or voice-altering devices, contemporaneous examination in another place communicated to the courtroom by means of closed circuit television, or video-taped examination prior to the court hearing with the defense counsel present;

1.4. assignment of a pseudonym;

1.5. closed sessions to the public:

1.6. orders to the defense counsel not to disclose the identity of the injured party, cooperative witness or witness or not to disclose any materials or information that may lead to disclosure of identity;

1.7. temporary removal of the defendant from the courtroom if a cooperative
witness or witness refuses to give testimony in the presence of the defendant or if circumstances indicate to the court that the witness will not speak the truth in the presence of the defendant; or

1.8. any combination of the above methods to prevent disclosure of the identity of the injured party, cooperative witness or witness.

2. Other provisions of the present Code shall not apply where they conflict with protective measures under paragraph 1 of the present Article."

Admissibility of the Referral

30. 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, as further specified in the Law and the Rules of Procedure of the Court.

31. In this respect, Article 113, paragraph 7, of the Constitution provides:

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

32. In addition, Article 49 of the Law provides that *"The referral should be submitted within a period of four (4) months. The deadline shall be counted from the day upon which the claimant has been served with a court decision.*"

33. In the present case, the Court notes that the Decision of the Pre-trial Judge to reject the Applicant's request for full access to the case file is final and, based on the provisions of the Criminal Procedure Code of Kosovo, no appeal shall be permitted against it. The Court also notes that the challenged Decision was rendered on 20 January 2014, and the Applicant filed his Referral with the Court on 19 February 2014.

34. The Court also takes into account Rule 36 of the Rules of Procedure, which provides that:

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

35. In his Referral, the Applicant alleges that the Pre-trial Judge and the Prosecution violated their obligations arising from Article 5 [Right to Liberty and Security] and Article 6 [Right to a Fair Trial] of the ECHR. In this regard, the Applicant alleges the violation of the principle of equality of arms, because he was not granted full access to the case file of the Prosecution.

36. The Court notes that the Prosecution and the Pre-trial Judge regarding proceedings on access to case file 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.

37. In this regard, 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).

38. The Constitutional Court cannot substitute the role of the regular courts. The role of the regular courts is to interpret and apply the pertinent rules of both procedural and substantive law. (See, *mutatis mutandis,* Garcia Ruiz vs. Spain, No. 30544/96, ECtHR, Judgment of 21 January 1999; see also case KI70/11 of the Applicants Faik Hima, Magbule Hima and Bestar Hima, Resolution on Inadmissibility of 16 December 2011).

39. Furthermore, the Court notes that the reasoning given in the Decision of the Pre-trial Judge to reject the Applicant's request for access to the whole case file is clear and after having reviewed all the proceedings, the Court has also found that the proceedings before the Pre-trial Judge have not been unfair or arbitrary (See, *mutatis mutandis*, Shub vs. Lithuania, no. 17064/06, ECtHR, Decision of 30 June 2009).

40. In this relation, the Court wishes to refer to the meaning of the criminal charge, developed by the ECHR case law, which established that "it *is the official notification given to an individual by the competent authority of an allegation that he has committed a criminal offence or some other act which carries the implication of such an allegation and which likewise substantially affects the situation of the suspect*." (See Corgliano v. Italy, App. No. 8309/78, ECtHr, Judgment of 10 December 1982, par. 34).

41. The Court notes that the investigation procedure is still ongoing and an indictment has not yet been issued.

42. In this context, the Court cannot follow the Applicant's argument in relation to Article 6 and therefore the Court considers that, based on the circumstances of the Referral and stage of the proceedings, Article 6 of the ECHR is not applicable as argued by the Applicant.

43. Furthermore, based on the case file, it appears that the Applicant had not submitted a request to the Pre-trial Judge to determine the lawfulness of the detention, nor is he specifically requesting the Constitutional Court to challenge the detention on remand. Hence, Article 5 of the ECHR is not applicable as it concerns the detention issue, which has not been challenged by the Applicant.

44. Thus, the Court considers that the proceedings requesting access to the prosecution file that the Applicant is challenging do not come within the scope of either Article 5 or Article 6 of the ECHR and, therefore, the claim is manifestly ill-founded.

45. Based on the above-mentioned reasoning and referring to the current stage of the proceedings, whereby the investigation procedure is still ongoing and an indictment has not yet been issued, the Court considers that the Applicant's Referral is *prima facie* not justified.

46. Thus, the Court concludes that the Referral is inadmissible.

Request for Interim Measure

47. The Applicant also requires from the Court to impose an interim measure, namely oblige the Pre-trial Judge to order the Prosecution to grant the Applicant full access to the parts of the case files.

48. In this regard, the Applicant holds that: *"This is necessary and appropriate, because the refusal to give access – as it is now – the defense is unable to check whether the conditions for the ordering of detention on remand are fulfilled and whether detention is lawful here."*

49. In order for the Court to allow an interim measure, in accordance with Rule 55 (4) of the Rules of Procedure, it needs to determine 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.

(...)

If the party requesting interim measures has not made this necessary showing, the Review Panel shall recommend denying the application".

50. As concluded above, the Referral is inadmissible and, therefore, there is no *prima facie* case for imposing an interim measure. For these reasons, the request for an interim measure is manifestly ill-founded.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 27 of the Law, and Rules 36 (2), a) and 55 (4) of the Rules of Procedure, on 12 March 2014, unanimously:

DECIDES

I. TO DECLARE the Referral as Inadmissible;

II. TO REJECT the Request for Interim Measures;

III. TO NOTIFY this Decision to the Parties;

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

V. TO DECLARE this Decision effective immediately

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

KI156/13, Reshat Sahitaj, Resolution of 21 January 2014 - Constitutional Review of the Notification of the Directorate for Urbanism, Construction, and Environment Protection – Prishtina.

Case KI156/13, decision of 21 January 2014

Keywords: individual referral, right to property, non-exhaustion.

The applicant, Reshat Sahitaj, filed a Referral pursuant to Article 113.7 of the Constitution of Kosovo challenging Notification of the Directorate for Urbanism, Construction, and Environment Protection – Prishtina because "everywhere in the civilized world private property is considered to be sacred." The Applicant did not specify any constitutional provision.

On the issue of the admissibility of the Referral, the Court held, that the Referral was inadmissible because the Applicant has not exhausted all legal remedies available to him under the applicable law as required for him to be able to pursue a claim to the Court. Hence, the Court held that the Referral was inadmissible pursuant to Article 113.7 of the Constitution, Article 47.2 of the Law and Rule 36 (1) a) of the Rules of Procedure.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI156/13
Applicant
Reshat Sahitaj
Constitutional Review of the Notification of the Directorate for Urbanism, Construction, and Environmental Protection – Prishtina.

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

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

Applicant

1. The Referral was submitted by Mr. Reshat Sahitaj (hereinafter: the "Applicant"), residing in Fushë-Kosovë.

Challenged decision

2. The Applicant challenges the Notification from the Directorate for Urbanism, Construction and Environmental Protection of 12 April 2013, which was served on the Applicant on an unspecified date.

Subject matter

3. The subject matter is the constitutional review of the Notification of the Directorate for Urbanism, Construction and Environmental Protection, alleging that *"everywhere in the civilized world private property is considered to be sacred."*

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 of the Constitutional Court of the Republic of Kosovo (hereinafter: the "Rules of Procedure").

Proceedings before the Court

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

6. On 28 October 2013, the President of the Court, by Decision No. GJR. KI156/13, appointed Judge Altay Suroy as Judge Rapporteur. On the same date, the President of the Court, by Decision No. KSH. KI156/13, appointed the Review Panel composed of Judges Robert Carolan (Presiding), Ivan Čukalović, and Enver Hasani.

7. On 12 November 2013, the Court notified the Applicant of the registration of the Referral and requested that the Applicant submit any court decisions related to the matter, within fifteen (15) days, which the Applicant so far has not yet submitted. On the same day, the Court notified the Directorate for Urbanism, Construction and Environmental Protection – Prishtina, of the Applicant's referral to the Court.

8. On 21 January 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. At some point in 2003, the Applicant began construction of a house.

10. On 6 March 2013, the Applicant submitted a request to the Municipality of Pristina for a construction permit, no. 05-350-25236. The Applicant claims that he never received a response from the *"competent urban authorities."* As a result, the Applicant proceeded to commence the construction of his house.

11. On 12 April 2013, the Applicant was notified by the Municipality of Prishtina that the *"Urban Planning of [his] neighborhood would be finished on 12.05.2013 and that [he] would be notified in detail on the newest urban plan*", but did not specify that the Applicant should cease construction of the house.

12. On 14 April 2013, the Applicant filed a complaint with the Ministry of Environment and Spatial Planning. However, according to the Applicant, the Applicant has not received a final decision regarding the matter.

Applicant's allegations

13. The Applicant alleges that his *"right of private property has been violated, every professional regulation has been violated because there is no normal architect that would plan a road like this."*

14. The Applicant also argues that "*[e]verywhere in the civilized world private property is considered to be sacred. Due to the fact that the Municipality did not respond in time to my request; Due to the fact that the Ministry of Environment and Spatial Planning did never respond to my complaint; Due to the fact that the land in cadastral plot 461/3 is my property. I have started constructing my house pursuant to the plan of my architect pursuant to all the necessary norms and restrictions for the construction of a 4 floor residential house."*

15. The Applicant therefore seeks *"[t]he annulment of the absurd decision to construct the local road that will cause the demolition of several new houses. If there would be no other alternative we would agree with it but the road exists."*

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 113.7 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 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."

19. Finally, 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."

20. The Court wishes to emphasize that the rationale for the exhaustion rule is to afford the authorities concerned, including the courts, the opportunity to prevent or put right the alleged violation of the Constitution. The rule is based on the assumption that the Kosovo legal order will provide an effective remedy for the violation of constitutional rights. (See Case KI65/11, Applicant Holding Corporation "Emin Duraku," Resolution on Inadmissibility of 21 January 2013).

21. Bearing this in mind, it is clear from the documentation submitted by the Applicant that the Applicant has not utilized all legal remedies afforded to him under the law. The Applicant has not received a final decision from the Directorate for Urbanism, Construction and Environmental Protection – Pristina and has only received a notification letter informing the Applicant the Directorate will inform him of their decision regarding the matter at a later date. Furthermore, the Applicant has not shown that he has pursued his complaint with the regular courts.

22. In this respect, the Court notes that the Applicant's petition is still pending before the public authorities. Thus, the Applicant's Referral is premature because there is no final decision to be challenged before this Court. However, the Court notes that the Applicant is not precluded to submit a Referral again to this Court

alleging a constitutional violation of his rights after he has exhausted all available legal remedies.

23. It therefore follows that the Applicant has not exhausted all legal remedies available to him under the applicable law as required for him to be able to pursue a claim to the Court.

24. Therefore, the Referral must be deemed inadmissible for non-exhaustion pursuant to Article 113.7 of the Constitution, Article 47.2 of the Law and Rule 36 (1) a) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 47.2 of the Law and Rule 36 (1) a) and Rule 56.2 of the Rules of Procedure, on 21 January 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**
Altay Suroy	Prof. Dr. Enver Hasani

KI123/13, Afrim Karaxha, Resolution of 20 January 2014 - Constitutional Review of the Judgment of the Supreme Court, Rev. Mlc. No. 93/2011, of 1 February 2013

Case KI 123/13, decision of 20 Jnuary 2014

Key words: Individual Referral, division of property, delay of proceedings, *ratione temporis*, manifestly ill-founded.

The subject matter is the request for constitutional review of the Judgment of the Supreme of 1 February 2013. In its Judgment, in a case related to division of property acquired during the marriage relationship, the Supreme Court approved the request for protection of legality filed by the State Prosecutor and the request for revision filed by the Applicant's former spouse, whereby it amended the Judgment of the District Court in Prishtina and upheld the Judgment of the Municipal Court in Prishtina.

The Applicant alleges delay of the proceedings before the Municipal Court in Prishtina and further claims that the Judgment of the Supreme Court was rendered in violation of the rights guaranteed by the Constitution, the European Convention on Human Rights and the Universal Declaration of Human Rights.

In relation to the Applicant's allegation regarding the delay of the proceedings before the Municipal Court between 2001 and 2005, the Constitutional Court held that the Applicant's allegations are incompatible *ratione temporis* with the Constitution.

In relation to the Applicant's allegation regarding the Judgment of the Supreme Court, the Constitutional Court, the Constitutional Court held that the facts presented by the Applicant do not in any way justify the allegations of a violation of his constitutional rights. The Constitutional Court declared the Referral as inadmissible.

RESOLUTION ON INADMISSIBILITY
In case No. KI123/13
Applicant
Afrim Karaxha
Constitutional Review
of the Judgment of the Supreme Court, Rev. Mlc. No. 93/2011, of 1 February 2013

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

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

The Applicant

1. The Referral is submitted by Mr. Afrim Karaxha (hereinafter: the Applicant), represented by Mr. Mahmut Halimi and Mr. Betim Shala, practicing lawyers from Prishtina.

Challenged decision

2. The challenged Decision is the Judgment of the Supreme Court, Rev. Mlc. No. 93/2011 of 1 February 2013, which was served on the Applicant on 25 April 2013.

Subject matter

3. The subject matter is the request for constitutional review of the Judgment of the Supreme Court, Rev. Mlc. No. 93/2011 of 1 February 2013. In its Judgment, in a case related to division of property acquired during the marriage relationship, the Supreme Court approved the request for protection of legality filed by the State Prosecutor and the request for revision filed by the Applicant's former spouse, whereby it amended the Judgment of

the District Court in Prishtina and upheld the Judgment of the Municipal Court in Prishtina.

Legal basis

4. The Referral is based on Article 113.7 of the Constitution, Article 47 of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law), and Rule 56 (2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Court

5. On 14 August 2013, the Applicant filed the Referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 30 August 2013, based on Decision GJR.KI123/12 of the President, Judge Snezhana Botusharova was appointed as Judge Rapporteur. On the same date, by Decision KSH.KI123/12 of the President, the Review Panel was appointed, composed of Judges: Robert Carolan (presiding), Almiro Rodrigues and Enver Hasani.

7. On 23 September 2013, the Court informed the Applicant and the Supreme Court of the registration of the Referral. On the same date, the Court notified the Basic Court in Prishtina and requested the submission of the return receipt, which shows the date when the Judgment of the Supreme Court, Rev. Mlc. No. 93/2011 of 1 February 2013 was served on the Applicant.

8. On 2 October 2013, the Basic Court in Prishtina submitted to the Court the copy of the return receipt, which shows that the Judgment of the Supreme Court, Rev. Mlc. No. 93/2011 of 1 February 2013 was served on the Applicant on 25 April 2013.

9. On 20 January 2014, the Review Panel considered the report of Judge Rapporteur and made a recommendation to the full Court on the inadmissibility of the Referral.

The facts of the case

10. The Applicant was married to his former spouse from 1978 until 2000.

11. On 5 November 1980, the Applicant concluded with his former spouse a contract of purchase of an Apartment in Prishtina. Based on the case files, the father of the Applicant contributed a certain amount for the purchase of that Apartment.

12. On 12 August 1982, the Applicant, his father and his former spouse concluded an agreement stipulating that, in case of dispute between the parties, the parties agree that the ownership of the Apartment will be divided based on the investment of each party. This agreement was certified by the Municipal Court in Prishtina (Decision No. 2709/12)

13. After the divorce, on 11 May 2000, the former spouse of the Applicant and their three children remained in their joint Apartment.

14. On 10 July 2000, the Applicant filed a claim with the Municipal Court in Prishtina, requesting the division of the property acquired during the marriage relationship and also requested the ownership over the Apartment for the part for which he and his father contributed to its purchase.

15. On 12 July 2005, the Municipal Court in Prishtina rendered Judgment C. No. 330/2000, whereby it partly rejected the Applicant's claim and approved in its entirety the counterclaim of his former spouse, confirming that the Applicant and the former spouse are co-owners, each for ½ part of the Apartment.

16. In the above-mentioned Judgment, the Municipal Court in Prishtina argued:

> *[…]*
> *"In this manner, the allegations of the claimant/counter-respondent that his contribution is larger, is assessed to be of no influence in the conviction of the court. This is due to the fact that it derives from the statements of litigating parties themselves, when heard as parties to the proceeding, and it can be clearly confirmed that both spouses have engaged as per circumstances of the case, and they had both similar income from work, and that the difference in income and earnings was not of such volume to represent any exploitation of one spouse by the other, and that the respondent, apart from her job in the enterprise, took care also of the claimant and the three children they had together, and for all the housework, which is additional duty, and which in the sense of Article 314 of the*

Law on Marriage and Family Relations is of influence in rendering the judgment on the extent of contribution of each spouse in gaining assets during marriage."

[…]
Hence, considering the fact that the contracting parties in the contract on purchase of apartment were both claimant Afrim and respondent […], that the apartment was registered in their names in cadastral records, and the circumstance that there was no third party claim against them, the Court finds that the case must be reviewed only as marital co-ownership. The allegations of the claimant, that he was helped by his father and brother, are considered to be of no influence in this case, since this was not done only for one of the spouses. Therefore, in accordance with legal rules, the assistance provided to a marital union is considered to have been provided to both spouses, unless explicitly provided otherwise."
[…]

17. The Applicant submitted a complaint to the Judicial Inspection Unit of the Department of Justice (UNMIK) alleging improper behavior of the Judge of the Municipal Court assigned to the case and unnecessarily delay of proceedings.

18. Consequently, on 5 December 2005, the Director of the Department of Justice, responded to the complaint of the Applicant, stating that, based on the investigations carried out by the Judicial Inspection Unit, the Unit could not find convincing evidence which would support the allegations of the Applicant. Referring to the length of proceedings, it established that the Court held 15 sessions between 10 April 2001, the date when the Judge was assigned to the case, and 12 July 2005, the date when the Municipal Court in Prishtina rendered its Judgment. According to this Unit, the delays of the proceedings were due to the complexity of the case.

19. Against the Judgment of the Municipal Court (C. No. 330/2000 of 12 July 2005), the Applicant filed an appeal with the District Court in Prishtina.

20. On 12 December 2007, the District Court in Prishtina by Decision Ac. No. 953/2005 quashed the Judgment of the Municipal Court in Prishtina (C. No. 330/2000 of 12 July 2005) and remanded the case for retrial to the first instance court.

21. On 10 June 2008, the Municipal Court by Judgment C. No. 302/2007 approved the claim of the Applicant's former spouse and upheld that the Applicant and the former spouse are co-owners each for ½ part of the Apartment.

22. The Applicant filed an appeal with the District Court in Prishtina against the Judgment of the Municipal Court (C. No. C. No. 302/2007 of 10 June 2008).

23. On 24 February 2011, the District Court in Prishtina by Judgment Ac.No.1546/2008 approved the appeal of the Applicant and amended the Judgment of the Municipal Court (C. No. 302/2007 of 10 June 2008), whereby it approved the claim of the Applicant and decided that the Applicant is the owner of the part of the Apartment for 85.48 % and his former spouse, the owner of the part of the Apartment for 14.52 %.

24. In the above-mentioned Judgment, the District Court held:

> *[...]*
> *"Since the first instance court has fully ascertained the factual situation, but the court erroneously applied the substantive law, when dividing assets of spouses as per contribution of marital spouses, and not in accordance with their written agreement, therefore, the first instance judgment should have been modified and to ascertain the ownership of the apartment of this case as per contract Vr. No. 2709/82, of 12.08.1982, and the conclusion of the expert, which confirmed the ownership shares in percentage, as per contribution of spouses."*

25. On 19 April 2011, the Applicant filed a proposal for Execution of the Judgment of the District Court in Prishtina (Ac. no. 1546/08 of 24 February 2011) with the Municipal Court in Prishtina, namely to oblige his former spouse to handover the possession of the Apartment to the Applicant.

26. On 6 June 2012, the Municipal Court rejected the proposed execution. Against the Decision of the Municipal Court in Prishtina, the Applicant filed an appeal with the District Court in Prishtina.

27. The District Court in Prishtina, by Decision (Ac. no. 574/2012 of 6 November 2012) approved the appeal of the Applicant as grounded and remanded the case for retrial to the Municipal Court in Prishtina.

28. Against the Judgment of the District Court in Prishtina (Ac. no. 1546/08 of 24 February 2011), the State Prosecutor filed a request for protection of legality and the former spouse of the Applicant, as a respondent-counterclaimant filed for a revision with the Supreme Court, alleging erroneous application of substantive law and violations of the provisions of the contested procedure.

29. On 1 February 2013, the Supreme Court, by Judgment Rev. Mlc.No.93/2011, approved as grounded the request for protection of legality and the revision of the respondent-counterclaimant, whereby it amended the Judgment of the District Court in Prishtina (Ac. No. 1546/2008 of 24 February 2011) in such a manner that the Judgment of the Municipal Court in Prishtina (C. No. 302/2007 of 10 June 2008) remained in force.

30. In the above-mentioned judgment, the Supreme Court held:

> *[…]*
> *"that the first instance court correctly applied the substantive law, in its finding that litigating parties are each owners of ideal halves to the apartment in dispute, as determined by the enacting clause of the Judgment."*

31. The Supreme Court, in its Judgment further argued:

> *[…]*
> *"The contract on purchase of apartment (certified by the Municipal Court in Prishtina, on 12.08.1982), concluded between Afrim Karaxha and [the spouse], and the father of Afrim Karaxha, cannot be taken to be an agreement on division of common assets of the litigants, as erroneously found by the second instance court. The manner of purchase and acquisition of ownership over the apartment in dispute is determined by the contract on purchase and acquisition of ownership rights over the apartment, of 05.11.1980, and this is an asset of spouses created during the marital union. Therefore, the contract concluded later, on 12.08.1982, which the second instance court grounded its judgment upon; the intention of the litigants was not the division of their assets by agreement, since the apartment was bought already in 1980. This asset was governed by agreement of both spouses, and was registered in public books to the names of both spouses, in accordance with Article 310 of the same law, which provides*

that rights of the spouses on immoveable items, which are common asset, are registered in public registers of immoveable assets to both names of both spouses, as common property in undetermined shares.

Erroneous application of the substantive law also consists in the fact that the second instance court has not grounded its position on other provisions on marital co-ownership. Article 312, paragraph 2 of the LMF, explicitly excludes the possibility of contracting to the harm of common assets acquired in marriage."

[…]
"The contributions of spouses cannot be measured as done by expertise, since the expert calculated the contribution by the loan taken by the spouses, and therefore, it cannot be considered as correct application of the law. Therefore, the revision and the request for protection of legality rightfully claim that the second instance judgment was rendered in erroneous application of material law, for which reason, this court modified the challenged judgment and upheld the first instance court judgment."
[…]

Applicant's Allegation

32. With regards to the Applicant's claims and request addressed to the Court, the Applicant's allegations are to be divided as following:

A. Allegation regarding the proceedings before the Municipal Court in Prishtina; and

B. Allegation regarding the Judgment of the Supreme Court.

33. Regarding the proceedings before the Municipal Court in Prishtina, the Applicant argues: […] *"the Municipal Court by its actions and, in some cases, by omissions has violated rights, guaranteed by domestic laws, by the Constitution of Kosovo and by the international acts. The Municipal Court has delayed the procedure, which is sensitive procedure and is connected to family relations, held around 15-16 court hearings from 10 April 2001 until 12 July 2005. The trial judge did not behave and did not treat equally the parties in the procedure. The latter neglected the permanent allegations of the Applicant for evaluation of separate property in the property of the marriage relationship, has rejected*

without any reason the Applicant's allegations for Imposition of Interim Measure of the joint property, has delayed the executive procedure of the second instance Judgment, did not allow so far the Applicant to use and possess his part of the property. The executive procedure by the Municipal Court has started with the proposal of the Applicant C. No. 572/11 on 19.04.2011 and it has not been finished yet. The Applicant has been deprived arbitrarily from his part of the property by the Court's actions."

34. In this respect, he alleges violation of Article 31.1 and 2 [Right to Fair and Impartial Trial], Article 46 [Protection of Property] and Article 54 [Judicial Protection of Rights] of the Constitution and Article 6, par. 1 [Right to a Fair Trial], and Article 1 of Protocol No.1 of the European Convention on Human Rights (hereinafter: ECHR).

35. Regarding the Judgment of the Supreme Court Rev. Mlc. 93/2011 of 1 February 2013, the Applicant argues that: [...]*"Supreme Court has decided same as the Municipal Court, has not administered as relevant evidence the separate property of the Applicant during the time of the marriage relationship, which allegations were presented all the time by the Applicant, in order to confirm the influence or non-influence of this evidence in the division of property. In the Judgment's reasoning, which was the last opportunity for the Applicant and on which the Applicant hoped to triumph the justice. The Court did not give clear legal-constitutional reasons in the aspect of facts-evidence, which are relevant for rendering a lawful decision, but immediately evaluated as ungrounded the Applicant's allegations. It has not mentioned at all Article 5 of the Contract, which clearly specified that in case of dispute in spouse-parental relations, the parties agreed that they will divide the apartment based on the investment of each person."*

36. The Applicant further argues that *[...] "due to rendering of incorrect Judgment by the Supreme Court, violation of rights of presentation of relevant evidence, honesty of the proceedings, that the interference of this nature is not proportional and sufficient to provide the individual for the procedural guaranties, which are necessary in a democratic society and especially in a society, which is going towards strengthening of principles and standards to fair trial and respect of the protection of human rights and freedoms, guaranteed by the Constitution and international acts."*

37. In this relation, the Applicant alleges violation of Article 31 [Right to Fair and Impartial Trial] and Article 46 [Protection of Property] of the Constitution, Article 6 [Right to a Fair Trial], and Article 1 of Protocol No.1 of ECHR, Article 7, Article 10 and Article 17 of the Universal Declaration of Human Rights.

38. The Applicant concludes by requesting the Court:

> *"To declare the Applicant's Referral admissible.*
>
> *• Pursuant to Rule 39 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo, to order the holding of a hearing session.*
>
> *• To find a violation of the Applicant's individual rights of the Applicant Afrim Karaxha, as guaranteed by Articles 31, 46 and 54 of the Constitution of the Republic of Kosovo, Article 7, 10 and 17 of the Universal Declaration on Human Rights, Article 6 and Article 1 Protocol 1 of the European Convention on Human Rights, in the court proceedings of the Municipal Court in Prishtina and in rendering the Judgment of the Supreme Court of Kosovo, and*
>
> *• To determine any right or responsibility for the parties in the Referral that this honorable Court evaluates as legally and reasonably grounded."*

Assessment of the admissibility of the Referral

39. 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.

40. 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."*

41. 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".

42. In the instant case, the Court notes that all legal remedies provided by law have been exhausted. The Court also notes that the Applicant was served with the Supreme Court Judgment on 25 April 2013 and filed his Referral with the Court on 14 August 2013.

43. Thus, the Court considers that the Applicant is an authorized party and has exhausted all legal remedies afforded to him by the applicable law and the Referral was submitted within the four months time limit.

44. However, the Court also must take into account Rule 36 of the Rules, which provides:

> *"(1) The Court may review referrals only if: (c) The referral is not manifestly ill- founded."*
>
> *"(2) The Court shall reject a Referral as being manifestly ill-founded when it is satisfied that:*
>
> > *(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".*

Allegation regarding the proceedings before the Municipal Court in Prishtina

45. In this relation, the Applicant argues that: [...]"*The Municipal Court has delayed the procedure, which is a sensitive procedure and is connected to family relations, held around 15-16 court hearings from 10 April 2001 until 12 July 2005. The trial judge did not behave and did not treat equally the parties in the procedure. The latter neglected the permanent allegations of the Applicant for evaluation of separate property in the property of the marriage relationship, has rejected without any reason the Applicant's allegations for Imposition of Interim Measure of the joint property, has delayed the executive procedure of the second instance Judgment, did not allow so far the Applicant to use and*

posses his part of the property. The executive procedure by the Municipal Court has started with the proposal of the Applicant C. No. 572/11 on 19.04.2011 and it has not been finished yet. The Applicant has been deprived arbitrarily from his part of the property by the Court's actions."

46. The Applicant alleges delay of proceedings by the Municipal Court in Prishtina during the period between 2001 and 2005 and the period after he filed a proposal for execution of the Judgment of the District Court in Prishtina Ac. No. 1546/08 of 24 February 2011.

47. With regards to the first aforementioned allegation, namely the period 2001-2005, in order to establish the Court's temporal jurisdiction, it is essential to identify, in each specific case, the exact timeframe 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 constitutional right alleged to have been violated (see, *mutatis mutandis*, Bleèiæ v. Croatia, Application No. 59532/00, ECtHR, Judgment of 8 March 2006).

48. In this respect, the Court also refers to Rule 36 (3) (h), which establishes:

[...]

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

h) the Referral is incompatible rationae temporis with the Constitution."

49. The Court notes that the Applicant's allegation regarding the court proceedings before the Municipal Court between 2001 and 2005 refer to a time period prior to 15 June 2008, the date when the Constitution entered into force, and before the Court had temporal jurisdiction. Therefore the Applicant's aforementioned allegations are considered as incompatible *ratione temporis* with the Constitution (see, KI25/09, Applicant Shefqet Haxhiu, Resolution on Inadmissibility of 25 June 2010).

50. With regards to the proceedings on the execution of the Judgment of the District Court in Prishtina (Ac. No. 1546/08 of 24 February 2011), the Court notes that the Municipal Court in Prishtina in its Decision of 6 June 2012 rejected as ungrounded the Applicant's proposal on the execution of the aforementioned Judgment.

51. The Municipal Court in Prishtina reasoned its Decision, holding that the Judgment of the District Court of 24 February 2011, for which the Applicant proposed the execution, does not contain elements of execution, as provided by Article 26 of the Law on Executive Procedure.

52. Against the aforementioned Decision, the Applicant had filed an appeal with the District Court in Prishtina, which decided (Decision of 6 November 2012) to remand the case for retrial in the Municipal Court in Prishtina. In the meantime, namely on 1 February 2013, the Supreme Court, by its Judgment, decided to amend the Judgment of the District Court in Prishtina (Ac. No. 1546/08 of 24 February 2011), for which the Applicant proposed the execution, and decided to uphold the Judgment of the Municipal Court in Prishtina.

53. In this respect, the Applicant did not substantiate his allegations by demonstrating how the delay of the execution of the Judgment of the District Court in Prishtina (Ac. No. 1546/08 of 24 February 2011) by the Municipal Court in Prishtina violated his rights guaranteed by the Constitution.

54. Based on the case files, the Applicant has not raised this delay of execution proceedings before the regular courts, neither he has proved that he tried to accelerate the proceedings.

55. Therefore, this Applicant's allegation is manifestly ill-founded.

Allegation regarding the Judgment of the Supreme Court

56. Regarding the Judgment of the Supreme Court, the Applicant argues that: [...]"*Supreme Court has decided same as the Municipal Court, has not administered as relevant evidence the separate property of the Applicant during the time of the marital union, which allegations were presented all the time by the Applicant, in order to confirm the influence or non-influence of this evidence in the division of property. In the Judgment's reasoning, which was the last opportunity for the Applicant and on which the Applicant hoped to triumph the justice. The Court did not give clear legal-constitutional reasons in the aspect of facts-evidence, which are relevant for rendering a lawful decision, but immediately evaluated as ungrounded the Applicant's allegations. It has not mentioned at all Article 5 of the Contract[12 August*

1982], which clearly specified that in case of dispute in spouse-parental relations, the parties agreed that they will divide the apartment based on the investment of each person."

57. In the Applicant's case, the Supreme Court upheld the Judgment of the Municipal Court in Prishtina and amended the Judgment of the District Court in Prishtina (Ac. No. 1546/08 of 24 February 2011), whereby it concluded that the District Court in Prishtina had erroneously applied the substantive law.

58. In this respect, the Court emphasizes that it is not the task of the Constitutional Court to deal with errors of fact or law allegedly committed by the Supreme Court, unless and in so far as it may have infringed rights and freedoms protected by the Constitution.

59. The 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. It is the role of the latter to interpret and apply the pertinent rules of both procedural and substantive law (See, *mutatis mutandis*, García Ruiz v. Spain, No. 30544/96, ECtHR, Judgment of 21 January 1999, para. 28; see also case No. KI70/11, Applicants Faik Hima, Magbule Hima and Bestar Hima, Resolution on Inadmissibility of 16 December 2011).

60. The Constitutional Court can only consider whether the evidence has been presented in a correct manner and the proceedings in general, viewed in their entirety, have been conducted in such a way that the Applicant had a fair trial (see, *inter alia,* Edwards v. United Kingdom, Application No. 13071/87, Report of the European Commission on Human Rights adopted on 10 July 1991).

61. The Supreme Court in its Judgment clearly reasoned that; [...]"*The contract on purchase of apartment (certified by the Municipal Court in Prishtina, on 12.08.1982), concluded between Afrim Karaxha and [the spouse], and the father of Afrim Karaxha, cannot be taken to be an agreement on division of common assets of the litigants, as erroneously found by the second instance court. The manner of purchase and acquisition of ownership over the apartment in dispute is determined by the contract on purchase and acquisition of ownership rights over the apartment, of 05.11.1980, and this is an asset of spouses created during the marital union"* and confirmed that*: [...]"that the first instance court correctly applied the substantive law, in its finding that litigating parties are each owners of ideal halves to the apartment in dispute and [...] "the second instance*

judgment was rendered in erroneous application of substantive law, for which reason, this court modified the challenged judgment and upheld the first instance court judgment."

62. Therefore, the Court notes that the reasoning 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 regular courts have not been unfair or arbitrary (See, *mutatis mutandis,* Shub vs. Lithuania, no. 17064/06, ECtHR, Decision of 30 June 2009).

63. For the aforementioned reasons, the Court considers that the facts presented by the Applicant do not in any way justify the allegations of a violation of his constitutional rights.

64. Therefore, the Court concludes that the Applicant's Referral is inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Rules 36 (1) c), 36 (2) b) and 36 (3), h) of the Rules of Procedure, on 20 January 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

KO44/14, Judgment of 31 March 2014 - Assessment of amendments to the Constitution proposed by the Government and submitted by the President of the Assembly of the Republic of Kosovo on 11 March 2014 by letter No. 04-DO-2186

Case KO44/14, decision of 31 March 2014

Key words: proposed amendments to the Constitution, Referral of the President of the Assembly, Chapter II of the Constitution, admissible Referral, Kosovo Armed Forces.

The President of the Assembly, in accordance with Article 113.9 and Article 144.3 of the Constitution referred the Government's proposal for sixteen (16) amendments to the Constitution to the Constitutional Court, for a prior assessment that the proposed amendments do not diminish any of the rights and freedoms guaranteed by Chapter II of the Constitution.

The Constitutional Court decided unanimously that the Referral is admissible and that the proposed amendments to the Constitution do not diminish the human rights and freedoms set forth in Chapter II of the Constitution.

JUDGMENT
in
Case No. KO44/14
Assessment of amendments to the Constitution proposed by the Government and submitted by the President of the Assembly of the Republic of Kosovo on 11 March 2014 by letter No. 04-DO-2186

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. By Decision No. 1/174 of 6 March 2014, the Government of the Republic of Kosovo (hereinafter: the "Government"), by virtue of Article 144.1 of the Constitution of the Republic of Kosovo (hereinafter, the "Constitution") proposed a number of amendments to the Constitution.

2. On 11 March 2014, the President of the Assembly of Kosovo, in accordance with Article 144.3 of the Constitution referred the Government's proposal for Amendments to the Constitution to the Constitutional Court of the Republic of Kosovo (hereinafter: the "Court"), for a prior assessment that the proposed amendments do not diminish any of the rights and freedoms guaranteed by Chapter II of the Constitution.

3. Therefore, the President of the Assembly is the Applicant in the proceedings before the Court (hereinafter: the "Applicant").

Subject matter

4. The subject matter of the Referral is sixteen (16) amendments of the Constitution, which were adopted on 6 March 2014 by Decision of the Government, No. 01/174.

Legal Basis

5. The Referral is based on Articles 113.9 and 144.3 of the Constitution, Articles 20 and 54 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

6. On 11 March 2014, the Applicant, by letter No. 04-DO-2186, referred the Government's proposed amendments to the Court, requesting it to assess whether these amendments do not diminish any of the rights and freedoms set forth in Chapter II of the Constitution. These amendments are set out in the Annex attached hereto.

7. On 11 March 2014, the President of the Court, by Decision No. GJR. KO44/14, appointed Judge Altay Suroy as Judge Rapporteur. On the same date, the President of the Court, by Decision No. KSH. KO44/14, appointed the Review Panel consisting of Judges Robert Carolan (Presiding), Ivan Čukalović and Arta Rama-Hajrizi.

8. On 14 March 2014, the Court notified the Applicant of the registration of the Referral and requested the Applicant to submit information and supporting documents regarding the procedures undertaken pursuant to Article 144 of the Constitution not later than 20 March 2014. Moreover, the Court requested the Applicant to provide a copy of the notification to each Deputy of the Assembly in order to allow him/her to submit, not later than 22 March 2014, comments on the above request to the Court, in particular, in light of the interpretation of Article 144.3 of the Constitution by this Court in similar cases.

9. On 14 March 2014, the Court also notified the Prime Minister of the registration of the Referral and requested him to submit, not later than 22 March 2014, information and supporting documents regarding the procedures undertaken pursuant to Article 144 of the Constitution.

10. On 14 March 2014, a copy of the Referral was communicated to the President of the Republic of Kosovo and the Ombudsperson.

11. To this date, the Court has not received the requested information and supporting documents neither from the Applicant, nor from the Prime Minister.

12. On 31 March 2014, the Court deliberated on the Referral and decided unanimously that the Referral is admissible and the proposed amendments to the Constitution do not diminish the human rights and freedoms set forth in Chapter II of the Constitution.

Summary of facts

13. The Assembly approved the text of the Constitution, which entered into force on 15 June 2008. In its Chapter XIII [Final Provisions], Article 144 [Amendments] of the Constitution empowers the Government, the President or one fourth (1/4) of the deputies of the Assembly of Kosovo to propose amendments to this Constitution.

14. On 6 March 2014, the Government, pursuant to Article 93.9 of the Constitution, adopted Decision No.01/174 proposing sixteen (16) amendments to the Constitution.

15. On 10 March 2014, the Prime Minister, by letter No. 57/2014, forwarded the Government's Proposal for Amendments to the Applicant.

16. On 11 March 2014, the Applicant, by letter No. 04-DO-2186, and in accordance with Article 144.3 of the Constitution, referred the Government's Proposal for amending the Constitution to the Court, requesting the Court to assess whether the proposed amendments do not diminish any of the rights and freedoms set forth in Chapter II of the Constitution.

Assessment of the admissibility of the Referral

17. In order to be able to adjudicate the Applicant's referral, the Court must examine whether the admissibility requirements have been fulfilled, as laid down in the Constitution and further specified in the Law and the Rules of Procedure.

18. In this respect, the Court needs first to determine whether it has jurisdiction to provide the assessment of the Government's proposed amendments to the Constitution.

19. The Court recalls that, pursuant to Article 113.9 of the Constitution:

> *"The President of the Assembly of Kosovo refers proposed Constitutional amendments before approval by the Assembly to confirm that the proposed amendment does not diminish the rights and freedoms guaranteed by Chapter II of the Constitution".*

20. Consequently, the Court has jurisdiction to assess that the proposed amendments do not diminish the rights and freedom guaranteed by Chapter II of the Constitution.

21. Furthermore, the question needs to be answered who can be considered as an authorized party to refer the referral to the Court, pursuant to Article 113.9 of the Constitution. The Court reiterates that, pursuant to the same Article, "*The President of the Assembly of Kosovo refers proposed constitutional amendments…"* In the present Referral, the President of the Assembly, by letter of 11 March 2014, submitted the request for a prior assessment of the proposed amendments to the Constitution to this Court. It follows that, by virtue of Article 113.9 of the Constitution, the Applicant is an authorized party, entitled to refer this case to the Court.

22. Therefore, since the Court has jurisdiction to deal with it and the Applicant is an authorized party, pursuant to Article 113.9 of the Constitution, the Referral is admissible.

Scope of the Constitutional assessment

23. As stated in the section "Proceedings before the Court" above, the Applicant submitted to the Court sixteen (16) amendments to the Constitution proposed by the Government.

24. In this respect, the Court emphasizes that the Constitution, as the highest legal act of the Republic of Kosovo, must be respected formally and solemnly when proposing amendments to it. Therefore, the Court, mindful of the necessity for legal certainty in relation to this issue, refers to Article 112 [General Principles] of Chapter VIII [Constitutional Court] of the Constitution, providing that the Constitutional Court is the final authority for the

interpretation of the Constitution and compliance of laws with the Constitution.

25. Furthermore, the Court confirms that the constitutional review under Article 144.3 of any proposed amendment to the Constitution must be considered in light of Chapter II [Fundamental Rights and Freedoms], including the legal order of the Republic of Kosovo, the very basis of which – by virtue of Article 21 [General Principles] of Chapter II of the Constitution - consists of human rights and freedoms mentioned in that Chapter (See, Case Nos. KO29/12 and KO48/12, Applicant: President of the Assembly of the Republic of Kosovo, Judgment of 20 July 2012; see, also Case No. KO61/12, Applicant: President of the Assembly of the Republic of Kosovo, Judgment of 31 October 2012, par. 18).

26. The Court is also of the view that Chapter III [Rights of Communities and Their Members] and other rights may be applicable in this process, since the specific rights set forth therein, are an extension of the human rights and freedoms provided in Chapter II of the Constitution, in particular, of those laid down in Article 24 [Equality before the Law]. This is particularly so in light of the provisions of Article 21 [General Principles], paragraph 2, which provides that Kosovo shall protect and guarantee human rights and fundamental freedoms as provided by the Constitution, but not necessarily only those contained in Chapter II alone (See, Cases Nos. KO29/12 and KO48/12, Applicant: President of the Assembly of the Republic of Kosovo, Judgment of 20 July 2012).

27. The Court also considers that Article 21 of the Constitution should be read in conjunction with Article 7.1 of the Constitution that defines the values of the constitutional order of the Republic of Kosovo which is based *"on the principles of freedom, peace, democracy, equality, respect for human rights and freedoms and the rule of the law, non-discrimination, the right to property, the protection of environment, social justice, pluralism, separation of state powers and a market economy."*

28. Therefore, the assessment of the constitutionality of the proposed amendments by this Court will not only be made by taking into account the human rights and freedoms contained in Chapter II, but also the entire letter and spirit of the Constitution (See, Cases Nos. KO29/12 and KO48/12, Applicant: President of the Assembly of the Republic of Kosovo, Judgment of 20 July 2012).

29. The Court will now deal in turn with each of the proposed amendments.

Assessment of the Constitutionality of the Proposed Amendments

I. Proposed Amendment no. 24: Article 2, paragraph 2

30. Amendment no. 24 proposes to replace the word "means" in Article 2, paragraph 2 of the Constitution by the word "mechanisms".

31. According to the current Article 2 [Sovereignty], paragraph 2: *"The sovereignty and territorial integrity of the Republic of Kosovo is intact, inalienable, indivisible and protected by all means provided in this Constitution and the law."*

32. The amended Article 2, paragraph 2 would read as follows: *"The sovereignty and territorial integrity of the Republic of Kosovo is intact, inalienable, indivisible and protected by all* ***mechanisms*** *provided in this Constitution and the law."*

Assessment of the constitutionality of proposed Amendment no. 24

33. The Court considers that the wording of the proposed amendment does not diminish any of the rights and freedoms set forth in Chapter II of the Constitution.

34. Therefore, the Court confirms that the proposed Amendment no. 24 is in conformity with Chapter II of the Constitution.

II. Proposed Amendment no. 25: Article 73, paragraph 1, point 2

35. Amendment no. 25 proposes that Article 73, paragraph 1, point 2, of the Constitution be deleted and amended as follows:

> *"(2) members of the Kosovo Armed Forces*."

36. According to the current Article 73 [Ineligibility], paragraph 1, point 2:

"1. The following cannot be candidates or be elected as deputies of the Assembly without prior resignation from their duty:

[...]

(2) members of the Kosovo Security Force;

[...]."

37. The amended Article 73 paragraph 1, point 2 would read as follows:

"1. The following cannot be candidates or be elected as deputies of the Assembly without prior resignation from their duty:

[...]

(2) ***members of the Kosovo Armed Forces****;*

[...]."

Assessment of the constitutionality of proposed Amendment no. 25

38. The Court considers that the wording of the proposed amendment does not diminish any of the rights and freedoms set forth in Chapter II of the Constitution.

39. Therefore, the Court confirms that the proposed Amendment no. 25 is in conformity with Chapter II of the Constitution.

III. Proposed Amendment no. 26: Article 84, paragraph 12

40. Amendment no. 26 proposes to delete paragraph 12 of Article 84 of the Constitution and to amend it as follows:

"*(12) is the Supreme Commander of the Kosovo Armed Forces".*

41. According to the current Article 84 [Competencies of the President], paragraph 12:

"The President of the Republic of Kosovo:

[...]

(12) is the *Commander-in-Chief of the Kosovo Security Force;*

[…].”

42. The amended Article 84, paragraph 12 would read as follows:

“*The President of the Republic of Kosovo:*

[…]

(12***) is the Supreme Commander of the Kosovo Armed Forces;***

[…].”

Assessment of the constitutionality of proposed Amendment no. 26

43. The Court considers that the wording of the proposed amendment does not diminish any of the rights and freedoms set forth in Chapter II of the Constitution.

44. Therefore, the Court confirms that the proposed Amendment no. 26 is in conformity with Chapter II of the Constitution.

IV. Proposed Amendment no. 27: Article 84, paragraph 20

45. Amendment no. 27 proposes to delete paragraph 20 of Article 84 of the Constitution and to amend it as follows:

“*(20) appoints and dismisses the Chief of Defence, upon recommendation of the Prime Minister;”*

46. According to the current Article 84 [Competencies of the President], paragraph 20:

“The President of the Republic of Kosovo:

[…]

(20) appoints the Commander of the Kosovo Security Force upon recommendation of the Government [N.B.: the Court notes that in the Albanian and Serbian version of this Article, instead of “the Government”, the words “the Prime Minister” appear]*;*

[…].”

47. The amended Article 84, paragraph 20 would read as follows:

“The President of the Republic of Kosovo:

[…]

“(20) appoints ***and dismisses the Chief of Defence****, upon recommendation of the Prime Minister****;***

[…].”

Assessment of the constitutionality of proposed Amendment no. 27

48. The Court notes that an additional competence has been vested in the President, as the Supreme Commander of the Kosovo Armed Forces, namely, the competence to dismiss the Chief of Defence.

49. The Court considers that the wording of the proposed amendment does not diminish any of the rights and freedoms set forth in Chapter II of the Constitution.

50. Therefore, the Court confirms that the proposed Amendment no. 27 is in conformity with Chapter II of the Constitution.

V. Proposed Amendment no. 28: Article 94, paragraph 7

51. Amendment no. 28 proposes to add the word “and defence policy” following the word “Intelligence” in paragraph 7 of Article 94 of the Constitution.

52. According to the current Article 94 [Competencies of the Prime Minister], paragraph 7:

“The Prime Minister has the following competencies:

[…]

(7) consults with the President of the Republic of Kosovo on matters of intelligence;

[…].”

53. The amended Article 94, paragraph 7 would read as follows:

“*The Prime Minister has the following competencies:*

[…]

(7) consults with the President of the Republic of Kosovo on matters of intelligence ***and defence policy;***

[…].”

Assessment of the constitutionality of proposed Amendment no. 28

54. The Court considers that the wording of the proposed amendment does not diminish any of the rights and freedoms set forth in Chapter II of the Constitution.

55. Therefore, the Court confirms that the proposed Amendment no. 28 is in conformity with Chapter II of the Constitution.

VI. Proposed Amendment no. 29: Title of Chapter XI

56. Amendment no. 29 proposes to delete the title of Chapter XI of the Constitution and to amend it as follows:

*“Chapter XI - **Defence** and Security Sector.”*

57. The current title of Chapter XI reads *“Chapter XI - Security Sector”*.

Assessment of the constitutionality of proposed Amendment no. 29

58. The Court considers that the new title of Chapter XI does not diminish any of the rights and freedoms set forth in Chapter II of the Constitution.

59. Therefore, the Court confirms that proposed Amendment no. 29 is in conformity with Chapter II of the Constitution.

VII. Proposed Amendment no.30: Article 125, paragraph 1

60. Amendment no. 30 proposes to add the word "defence" following the words "law enforcement" in paragraph 1 of Article 125 [General Principles] of Chapter XI of the Constitution.

61. According to the current Article 125, paragraph 1:

> *"1. The Republic of Kosovo has authority over law enforcement, security, justice, public safety, intelligence, civil emergency response and border control within its territory."*
>
> *[…]."*

62. The amended Article 125, paragraph 1 would read as follows:

> "*1. The Republic of Kosovo has authority over law enforcement,* ***defence,*** *security, justice, public safety, intelligence, civil emergency response and border control within its territory."*
>
> *[…]."*

Assessment of the constitutionality of proposed Amendment no. 30

63. The Court considers that the wording of the proposed amendment does not diminish any of the rights and freedoms set forth in Chapter II of the Constitution.

64. Therefore, the Court confirms that the proposed Amendment no. 30 is in conformity with Chapter II of the Constitution.

VIII. Proposed Amendment no.31: Article 125, paragraph 2

65. Amendment no. 31 proposes to delete paragraph 2 of Article 125 of the Constitution and to amend it as follows:

> *"****Defence and*** *Security Institutions in the Republic of Kosovo shall protect* ***and ensure independence of the country****, public safety and the rights of all people in the Republic of Kosovo. The Institutions shall operate in full transparency and in accordance with internationally recognized democratic standards and human rights.* ***Defence and*** *Security Institutions shall reflect the ethnic diversity of the population of the Republic of Kosovo."*

66. According to the current Article 125 [General Principles], paragraph 2:

> *"2. Security institutions in the Republic of Kosovo shall protect public safety and the rights of all people in the Republic of Kosovo. The institutions shall operate in full transparency and in accordance with internationally recognized democratic standards and human rights. Security institutions shall reflect the ethnic diversity of the population of the Republic of Kosovo."*

Assessment of the constitutionality of proposed Amendment no. 31

67. The Court considers that the wording of the proposed amendment does not diminish any of the rights and freedoms set forth in Chapter II of the Constitution.

68. Therefore, the Court confirms that the proposed Amendment no. 31 is in conformity with Chapter II of the Constitution.

IX. Proposed Amendment no. 32: Article 125, paragraph 3

69. Amendment no. 32 proposes to add the words "of Defence" following the words "international bodies" in paragraph 3 of Article 125 of Chapter XI of the Constitution.

70. According to the current Article 125 [General Principles], paragraph 3:

> *"3. The Republic of Kosovo fully respects all applicable international agreements and the relevant international law and cooperates with the international security bodies and regional counterparts."*

71. The amended Article 125, paragraph 3 would read as follows:

> "*3. The Republic of Kosovo fully respects all applicable international agreements and the relevant international law and cooperates with the international [security] bodies* ***of Defence****, and regional counterparts."*
> *[...]*

Assessment of the constitutionality of proposed Amendment no. 32

72. The Court considers that the wording of the proposed amendment does not diminish any of the rights and freedoms set forth in Chapter II of the Constitution.

73. Therefore, the Court confirms that the proposed Amendment no. 32 is in conformity with Chapter II of the Constitution.

X. Proposed Amendment no.33: Article 125, paragraph 4

74. Amendment no. 33 proposes to add the words "of Defence and" following the words "over institutions" in paragraph 4 of Article 125 of Chapter XI of the Constitution.

75. According to the current Article 125 [General Principles], paragraph 4:

> "4. *Civilian and democratic centrol over security institutions shall be guaranteed.*"

76. The amended Article 125, paragraph 4 would read as follows:

> "4. *Civilian and democratic control over institutions* ***of Defence and*** *Security shall be guaranteed."*

Assessment of the constitutionality of proposed Amendment no. 33

77. The Court considers that the wording of the proposed amendment does not diminish any of the rights and freedoms set forth in Chapter II of the Constitution.

78. Therefore, the Court confirms that the proposed Amendment no. 33 is in conformity with Chapter II of the Constitution.

XI. Proposed Amendment no. 34: Article 125, paragraph 5

79. Amendment no. 34 proposes to add the words "Defence and" following the words "institutions of" in paragraph 5 of Article 125 of Chapter XI of the Constitution.

80. According to the current Article 125 [General Principles], paragraph 5:

"5. *The Assembly of the Republic of Kosovo oversees the budget and policies of the security institutions as provided by law*."

81. The amended Article 125, paragraph 5 would read as follows:

"5. *The Assembly of the Republic of Kosovo oversees the budget and policies of institutions of* ***Defence and*** *Security as provided by law."*

Assessment of the constitutionality of proposed Amendment no. 34

82. The Court considers that the wording of the proposed amendment does not diminish any of the rights and freedoms set forth in Chapter II of the Constitution.

83. Therefore, the Court confirms that the proposed Amendment no. 34 is in conformity with Chapter II of the Constitution.

XII. Proposed Amendment no.35: Article 126

84. Amendment no. 35 proposes to delete Article 126 of the Constitution and to amend it as follows:

"Article 126 [Kosovo Armed Forces]

1. ***Kosovo Armed Forces are the national military armed forces of*** *the Republic of Kosovo, and may send its members abroad in full conformity with its international responsibilities.*

2. ***Kosovo Armed Forces shall protect the sovereignty, territorial integrity, citizens, property and interests of the Republic of Kosovo, and contribute to building regional stability and global peace.***

3. *The President of the Republic of Kosovo is the* ***Supreme Commander of the Kosovo Armed Forces****, which shall always subject to control by democratically elected civilian authorities.*

4. ***Kosovo Armed Forces*** *shall be professional, reflect ethnic diversity of the people of the Republic of Kosovo and shall be recruited from among the citizens of the Republic of Kosovo.*

5. ***Chief of Defence is also*** *Commander of the Kosovo* ***Armed Forces****, who shall be appointed* ***and dismissed*** *by the President of the Republic of Kosovo, upon recommendation of the* ***Prime Minister****.*

6. *Internal organization of the Kosovo Armed Forces shall be regulated by a special law".*

85. According to the current Article 126 [Kosovo Security Force]:

> *"1. The Kosovo Security Force shall serve as a national security force for the Republic of Kosovo and may send its members abroad in full conformity with its international responsibilities.*
>
> *2. The Kosovo Security Force shall protect the people and Communities of the Republic of Kosovo based on the competencies provided by law.*
>
> *3. The President of the Republic of Kosovo is the Commander-in-Chief of the Kosovo Security Force, which shall always be subject to control by democratically elected civilian authorities.*
>
> *4. The Kosovo Security Force shall be professional, reflect ethnic diversity of the people of the Republic of Kosovo and shall be recruited from among the citizens of the Republic of Kosovo.*
>
> *5. The Commander of the Kosovo Security Force shall be appointed by the President of the Republic of Kosovo upon the recommendation of the Government. Internal organization of the Kosovo Security Force shall be determined by law."*

Assessment of the constitutionality of proposed Amendment no. 35

86. The Court considers that the wording of the proposed amendment does not diminish any of the rights and freedoms set forth in Chapter II of the Constitution.

87. Therefore, the Court confirms that the proposed Amendment no. 35 is in conformity with Chapter II of the Constitution.

XIII. Proposed Amendment no. 36: Article 127, paragraph 1

88. Amendment no. 36 proposes to delete Article 127, paragraph 1 of the Constitution and amend it as follows:

> *"The Security Council of the Republic of Kosovo in cooperation with the President of the Republic of Kosovo and the Government develops the* ***defence and*** *security strategy for the Republic of Kosovo. The Security Council shall also have an advisory role on all matters relating to* ***defence and*** *security in the Republic of Kosovo."*

89. According to the current Article 127 [Kosovo Security Council], paragraph 1:

> *"1. The Security Council of the Republic of Kosovo in cooperation with the President of the Republic of Kosovo and the Government develops the security strategy for the Republic of - Kosovo. The Security Council of the Republic of Kosovo shall also have an advisory role on all matters relating to security in the Republic of Kosovo."*

Assessment of the constitutionality of proposed Amendment no. 36

90. The Court considers that the wording of the proposed amendment does not diminish any of the rights and freedoms set forth in Chapter II of the Constitution.

91. Therefore, the Court confirms that the proposed Amendment no. 36 is in conformity with Chapter II of the Constitution.

XIV. Proposed Amendment no.37: Article 129, paragraph 1

92. Amendment no.37 proposes to replace the word "in the Republic of Kosovo", in paragraph 1 of Article 129 of the Constitution by the word "of the Republic of Kosovo".

93. According to the current Article 129 [Kosovo Intellegence Agency], paragraph 1:

> *"1. The Kosovo Intelligence Agency shall identify, investigate and monitor threats to security in the Republic of Kosovo."*

94. The amended Article 129, paragraph 1 would read as follows:

> *"1. The Kosovo Intelligence Agency shall identify, investigate and monitor threats to security* ***of the Republic of Kosovo."***

Assessment of the constitutionality of proposed Amendment no. 37

95. The Court considers that the wording of the proposed amendment does not diminish any of the rights and freedoms set forth in Chapter II of the Constitution.

96. Therefore, the Court confirms that the proposed Amendment no. 37 is in conformity with Chapter II of the Constitution.

XV. Proposed Amendment no. 38: Article 131, paragraph 7

97. Amendment no. 38 proposes to replace the word "Kosovo Security Force" in paragraph 7 of Article 131 of the Constitution by the word "Kosovo Armed Forces".

98. According to the current Article 131 [State of Emergency], paragraph 7:

> *"7. The President of the Republic of Kosovo may, upon consultation with the Government and the Assembly, order mobilization of the Kosovo Security Force to assist in the State of Emergency."*

99. The amended Article 131, paragraph 7 would read as follows:

> *"7. The President of the Republic of Kosovo may, upon consultation with the Government and the Assembly, order mobilization of the* ***Kosovo Armed Forces*** *to assist in the State of Emergency."*

Assessment of the constitutionality of proposed Amendment no. 38

100. The Court considers that the wording of the proposed amendment does not diminish any of the rights and freedoms set forth in Chapter II of the Constitution.

101. Therefore, the Court confirms that the proposed Amendment no. 38 is in conformity with Chapter II of the Constitution.

XVI. Proposed Amendment no. 39

102. Amendment no. 39 proposes to add a new Article following Article 128 [Kosovo Police] of the Constitution. The proposed amendment reads as follows:

Article 128 A
[Parliamentary Commissioner for the Armed Forces and Kosovo Police]

1. *"Parliamentary Commissioner for the Armed Forces and Kosovo Police is an independent institution which shall respond to the Assembly of Kosovo.*

2. *The role, duties and responsibilities of the Parliamentary Commissioner shall be defined by a special law."*

Assessment of the constitutionality of proposed Amendment no. 39

103. The Court notes that the proposed Amendment establishes a new independent public institution, the role, duties and responsibilities of which shall be defined by a special law.

104. In this regard, the Court recalls that a similar institution exists in a number of European countries such as Austria, Germany, Netherlands, Norway, Sweden, and others. For instance, the Basic Law of Germany, as amended, provides for a Parliamentary Commissioner for the Armed Forces, vesting it with powers "to safeguard basic rights and to assist the Bundestag in exercising parliamentary oversight over the Armed Forces"; adding also that "Details shall be regulated by a federal law." (See, German Law on Parliamentary Commissioner for Armed Forces, dated 16 June 1982, BGBl. IS. 677 and amended on 5 February 2009, BGBl. IS. 160). Such an institution also functions in the region (e.g., in Bosnia and Herzegovina).

105. The Court considers that the proposed new Article 128 A of the Constitution does not diminish any of the rights and freedoms set forth in Chapter II of the Constitution.

106. Therefore, the Court confirms that the proposed Amendment no. 39 is in conformity with Chapter II of the Constitution.

XVII.

107. With regards to point XVII of the Draft Amendments proposed by the Government (See, Annex), the Court notes that the entry into force of the Amendments to the Constitution is regulated by Article 144, paragraph 4 of the Constitution.

FOR THESE REASONS

The Constitutional Court, based on Articles 113.9 and 144.3 of the, Constitution, Article 20 of the Law and Rule 56.1 of the Rules of Procedure, in its session held on 31 March 2014,

UNANIMOUSLY, DECIDES AS FOLLOWS:

I. The Referral containing the Government's Proposal for Amendments to the Constitution, submitted by the President of the Assembly of the Republic of Kosovo on 11 March 2014, is admissible;

II. The Court confirms that all sixteen (16) Amendments contained in the Government's Proposals for Amendments of the Constitution, submitted by the President of the Assembly on 11 March 2014, do not diminish the rights and freedoms set forth in Chapter II of the Constitution;

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

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

KI120/13, Ismete Veseli, Resolution of 20 January 2014 - Constitutional Review of the Judgment Rev. No. 60/2012, of the Supreme Court of Kosovo, of 4 June 2013

Case KI120/13, decision of 20 January 2014

Key words: Individual Referral, manifestly ill-founded.

The Applicant claimed that by Judgment of the Supreme Court, and lower instance courts, "was violated Article 22 of the Constitution of the Republic of Kosovo on protection of property ".

The Applicant further claimed that regular courts had failed to apply accurate law in rendering rulings related to this dispute.

The Court notes that the Applicant had erroneously invoked Article 22 of the Constitution, thereby referring to the guaranteed right to property, since the Article 22 of the Constitution in fact refers to direct application of international treaties and instruments, while property rights are guaranteed by Article 46 of the Constitution.

The Court finds that the facts submitted by the Applicant do not in any way justify the allegation of violation of a constitutional right.

Pursuant to Article 113.7 of the Constitution, Article 20 of the Law and Rule 36 of the Rules of Procedure, the Constitutional Court in its session held on 20 January 2014 unanimously declares the Referral inadmissible as manifestly ill-founded.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI120/13
Applicant
Ismete Veseli
Constitutional Review of the Judgment of the Supreme Court of Kosovo, Rev. No. 60/2012, of 4 June 2013

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

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

The Applicant

1. The Applicant in this Referral is Mrs. Ismete Veseli (hereinafter: Applicant), from the Rogoqica village in Kamenica, duly represented by Lawyer Mr. Mustafë Musa.

Challenged decision

2. The challenged decision is the Judgment of the Supreme Court of Kosovo, Rev. no. 60/2012, of 4 June 2013, served upon the Applicant on 27 June 2013.

Subject matter

3. The subject matter is constitutional review of the Judgment of the Supreme Court of Kosovo, Rev. no. 60/2012, for which the applicant claims to have violated her rights guaranteed by the Constitution, thereby unlawfully depriving her of the ownership right over an immoveable property, acquired upon life endowment contract.

Legal basis

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

Proceedings before the Court

5. On 5 August 2013, the Applicant filed her Referral with the Constitutional Court.

6. On 30 August 2013, the President of the Court appointed Judge Robert Carolan as Judge Rapporteur, and a Review Panel composed of Judges: Snezhana Botusharova (Presiding), and Kadri Kryeziu and Arta Rama-Hajrizi.

7. On 4 October 2013, the Constitutional Court had notified the Applicant and the Supreme Court on registration of Referral.

8. On 14 October 2013, the Court required from the Applicant to submit additional documentation necessary for review of the Referral.

9. On 5 November 2013, the Court received from the Applicant the additional documentation requested.

10. On 20 January 2014, after having considered the report of judge rapporteur, the Review Panel made a recommendation to the full Court on inadmissibility of the Referral

Summary of facts

11. From the documentation attached to the Referral, the Court notes that the Municipal Court in Gjilan had certified the life endowment contract, as no. Vr. No. 1504/08, on 7 April 2008, signed by now the late A. V. from Gjilan and the Applicant, I. V., also from Gjilan, and both parties were at the time of contract signature spouses, and based on this contract, the rights over the immoveable property owned by A. V., after his death would be transferred to the Applicant as compensation for life endowment.

12. On 10 February 2009, the Municipal Court in Gjilan rendered the Judgment C. no. 306/08, by which in item I of the enacting clause rejected the claim suit of claimant Sh. L. from Prishtina (biological daughter of the late A. V.) as ungrounded, by which she had claimed annulment of contract on permanent tenure between now the late A. V. from Gjilan and the Applicant.

13. By item II of the enacting clause of the judgment, the Municipal Court in Gjilan had approved as grounded the claim suit of the claimant, in her second claim, thereby annulling the contract on sale of immoveable property, signed by the Applicant as seller, and F. D. as buyer, certified by the Municipal Court in Gjilan as Vr. no. 4611/08, on 26 August 2008, due to absolute invalidity, because the subject of contract was outside of legal order, since the Municipal Court had earlier rendered a decision imposing an interim measure, thereby prohibiting alienation of such property until conclusion of the dispute, by a final decision.

14. On 28 September 2009, acting upon complaints of both litigating parties, the District Court in Gjilan rendered the Judgment Ac. No. 162/09, thereby quashing the Judgment C. no. 306/08 of the Municipal Court in Gjilan in item I of the enacting clause, thereby ordering the reopening of procedure at the Municipal Court, while upholding item II of the Judgment, and rejecting the complaints of both litigating parties in that part of the judgment.

15. In its reasoning, the District Court had found that the enacting clause and "*the reasoning of the Municipal Court judgment are contradictory" and that "a contract on permanent tenure is a public document, and as such, it should have been formally compiled, and be certified by a judge".*

16. On 21 December 2010, the Municipal Court in Gjilan, in a repeated procedure, in accordance with the judgment of the District Court in Gjilan, rendered the Judgment C. No. 733/2009, thereby approving the claim of claimant Sh. L. from Prishtina, and annulling the contract on permanent tenure, Vr. no. 1504/2008, certified on 07.04.2008.

17. On 26 January 2012, the District Court in Gjilan, rendered the Judgment Ac. no. 60/2011 thereby rejecting as ungrounded the complaint of the Applicant's attorney.

18. On 4 June 2013, the Supreme Court of Kosovo rendered the Judgment Rev. No. 60/2012, thereby rejecting as ungrounded the revision filed by the Applicant against the Judgment of the District Court in Gjilan Ac. No. 60/2011 of 26 January 2012.

19. In the reasoning of the Revision Judgment, the Supreme Court, inter alia, found that "*lower instance courts, by properly and fully ascertaining the factual situation, have properly applied material law in finding that the claim suit of the claimant was grounded*".

Applicant's allegations

20. The Applicant claimed that by judgment of the Supreme Court, and lower instance courts, "*Article 22 of the Constitution of the Republic of Kosovo on protection of property was violated*".

21. The Applicant further claimed that regular courts had failed to apply accurate law in rendering rulings related to this dispute.

Preliminary assessment of admissibility of the Referral

22. To be able to adjudicate on the Referral of the Applicant, the Court must first assess whether the Applicant has met admissibility criteria as provided by the Constitution, the Law on the Constitutional Court and the Rules of Procedure of the Court.

23. In this regard, the Court refers to the Article 113.7 of the Constitution, which provides:

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

24. In this regard, the Court notes that the Applicant's referral was filed with the Court by an individual, within the timeline of 4 months as provided by law, and upon exhaustion of legal remedies, and therefore, the Referral is found proper for review by the Constitutional Court.

Review on substantive aspects of the case

25. In its assessment of the substantive aspects of the case, the Court notes that the Applicant disputes the Judgment of the Supreme Court Rev. No. 60/2012 of 4 June 2013, thereby claiming that this

judgment and other lower instance judgments have violated her rights as guaranteed by the Constitution.

26. The Court notes that the Applicant had erroneously invoked Article 22 of the Constitution, thereby referring to the guaranteed right to property, since the Article 22 of the Constitution in fact refers to direct application of international treaties and instruments, while property rights are guaranteed by Article 46 of the Constitution.

27. Independently of the legal qualification of the constitutional provisions claimed by the Applicant to have been violated, the Court finds that the Applicant in fact disagrees with the final judgment of the Supreme Court in her case before this Court.

28. The Court wishes to reiterate that the sole fact of Applicant's being dissatisfied with the case outcome cannot serve as her entitlement to raise an arguable application on violation of Constitution provisions (see, *mutatis mutandis,* ECtHR judgment, Application no. 5503/02, Mezotur-Tiszazugi Tarsulat vs. Hungary, or Constitutional Court Decision, case KI128/12, of 12 July 2013, of Applicant Shaban Hoxha, in a request for Constitutional Review of Judgment of the Supreme Court of Kosovo, Rev. no. 316/2011).

29. In this regard, the Court notes that the Applicant has in no manner presented facts on how the alleged violation of the constitutional provision occurred, in what stage of judicial proceeding, or eventual arbitrary elements in rulings disputed, and that she only claims that the law on inheritance was erroneously applied instead of the law on family, and as a consequence, the Applicant lost her right to property acquired by contract on permanent tenure.

30. In referring to this allegation, the Court emphasizes the fact that the Supreme Court, in the reasoning of the Judgment Rev. no. 60/2012 of 4 June 2013 has noted that *"lower instance court,... (.....) ..., have properly applied material law",* and therefore, in these circumstances, the Court cannot find that there were violations of human rights to the detriment of the Applicant.

31. Related to the above, one must remember that one of the foundation principles of 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, [DHM], § 140), and therefore, in this regard, the Court notes that the matter addressed by the Applicant has been effectively reviewed by the Supreme Court, thereby providing reasons and arguments on the ruling rendered.

32. The Court is not a fact finding court , and the ascertainment of proper and full factual situation is in the jurisdiction of the regular courts, in this case the Supreme Court and lower instance courts, and the role of this Court is only to ensure compliance with the rights guaranteed by the Constitution and other legal instruments, and therefore, it cannot act "as a fourth instance court" (see, *mutatis mutandis*, i.a., Akdivar vs. Turkey, 16 September 1996, R.J.D, 1996-IV, para. 65).

33. Furthermore, to declare a public authority decision as unconstitutional, the Applicant should prima facie show before the Constitutional Court that "the public authority decision, as such, would be an indicator of a violation of a request to fair trial, and if the unfairness of that decision is so evident that the decision may be considered as extremely arbitrary" (see ECtHR, Khamidov vs. Russia, Judgment of 15 November 2007, § 175).

34. In these circumstances, the Court finds that the facts submitted by the Applicant in no manner justify the allegation of violation of a constitutional right; therefore, it cannot be concluded that the Referral was grounded and in compliance with Rule 36, paragraph 2, item b, the Court hereby finds that the Referral must be declared inadmissible as manifestly ill-founded.

FOR THESE REASONS

Pursuant to Article 113.7 of the Constitution, Article 20 of the Law and Rule 36 of the Rules of Procedure, the Constitutional Court in its session held on 20 January 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; and

III. This Decision is effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Robert Carolan	Prof. Dr. Enver Hasani

KI148/13, Sylejmon Pllana, Resolution of 20 January 2014- Constitutional Review of the Judgment, Rev. no 30/2013, of the Supreme Court of the Republic of Kosovo, of 12 July 2013

Case KI148/13, decision of 20 January 2014

Key words: Individual referral, manifestly ill-founded.

In his written submission of 25 November 2013, the Applicant clarified his allegations emphasizing that by the Judgment P. no. 2287/07, of the Municipal Court in Prishtina, of 27 February 2009, he was acquitted of indictment. He alleges that this judgment should be implemented in his labour dispute case and not the KEK decisions that were adopted in the disciplinary procedure

The Applicant further argues that, as a citizen of Kosovo, he has the constitutional right to work as envisaged in Article 49 of the Constitution. He also argues that his right to property guaranteed by Article 46 of the Constitution has been violated because he has not obtained his income. Finally the Applicant argues that his right for judicial protection of his rights provided by Article 54 of the Constitution has also been violated.

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. In addition, the mere fact that one disagrees with the legal conclusions a court makes in his or her case does not make that decision a denial of the right to an effective legal remedy as set forth in Article 54 of the Constitution. Moreover, the mere fact that a person is terminated from their employment for the offense of theft does not mean that the person's right to work somewhere in some capacity if there is available work and they are qualified to perform the work as guaranteed by Article 49 of the Constitution has been denied nor that their right to own property as been arbitrarily denied as guaranteed by Article 46 of the Constitution.

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 20 January 2014, unanimously declared the Referral as manifestly ill-founded.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI148/13
Applicant
Sylejmon Pllana
Constitutional Review of the Judgement, Rev. no 30/2013, of the Supreme Court of the Republic of Kosovo, dated 12 July 2013

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

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

The Applicant

1. The Referral was submitted by Mr. Sylejmon Pllana (hereinafter: "the Applicant") residing in Fushë-Kosova, who is represented by Mr. Hamdi Podvorica, a lawyer practising in Pristina.

Challenged decision

2. The Applicant challenges the Judgement, Rev. no 30/2013, of the Supreme Court of the Republic of Kosovo, dated 12 July 2013, which was served on him on 27 August 2013.

Subject matter

3. The subject matter is the constitutional review of the challenged judgment which allegedly was adopted in contradiction of Articles 7 [Values], 31 [Right to Fair and Impartial Trial], Article 46 [Protection of Property] and Article 49 [Right to Work and Exercise Profession] of the Constitution.

Legal basis

4. The Referral is based on Art. 113.7 of the Constitution, Articles 46, 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. On 13 September 2013, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter, "the Court").

6. On 24 September 2013, the President of the Court with Decision No. GJR KI148/13 appointed Judge Robert Carolan as Judge Rapporteur and the Review Panel composed of Judges Snezhana Botusharova (Presiding), Kadri Kryeziu and Arta Rama-Hajrizi.

7. On 9 October 2013, the Court notified the Applicant and Supreme Court of the registration on the Referral. On the same date the Court also notified Kosovo Energy Corporation (KEK) with the Referral.

8. On 18 October 2013 KEK submitted the written submission challenging the Applicant's referral as inadmissible.

9. On 25 November 2013, the Court received the written submission of the Applicant's representative who challenged the allegations of KEK arguing that the Applicant has been the victim of the human rights violation.

10. On 27 November 2013, the Court received the judgment of the Municipal Court Judgment P. no. 2287/2007 dated 27 February 2009.

11. On 20 January 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

12. On 1 January 2007 the Applicant entered into permanent employment relationship with KEK.

13. On 16 May 2007, Decision No. 06/178, the Applicant was suspended from his work.

14. Following the disciplinary procedure against the Applicant, the KEK Disciplinary Committee on 27 July 2007 issued a Decision No. 06/273 and terminated the Applicant's employment. The Applicant was declared responsible for stealing property belonging to KEK. This action was determined to be a grievous violation of the Applicant's employment duties.

15. The Applicant challenged the decision of the Disciplinary Committee of 27 July 2007. By Decision No. 4559 of 6 August 2007, KEK rejected the Applicant's appeal and confirmed the decision of 27 July 2007.

16. On 27 February 2009 the Municipal Court in Pristina in the criminal case against the Applicant and another person (A. B.), related to the same act, issued a Judgment P. no. 2287/ dismissing the criminal indictment against the Applicant.

17. It was confirmed during the criminal procedure against the Applicant that, *inter alia*, he took 120 meters of type wire F-120 mm and loaded it on to a vehicle owned by A. B. It was also confirmed that these actions constituted elements of the criminal offence of theft pursuant Article 252.1 in conjunction with Article 23 of the Provisional Criminal Code of Kosovo. Notwithstanding these legal conclusions, the Municipal Court found that the actions of the Applicant and A. B. did not constitute a criminal offence because that offence was of little significance and there was lack of harmful and significant consequences.

18. On 19 October 2009 the Municipal Court in Pristina in the labour dispute, initiated by the Applicant, adopted a Judgement C1. no. 322/2007, and approved as grounded the Applicant's petition. By the same judgement the KEK Decisions of 27 July 2007 and 6 August 2007, regarding the termination the Applicant's employment were nullified and KEK was obliged to restore the Applicant into his previous work place.

19. The Municipal Court in Pristina based its reasoning on the Judgment issued in the criminal procedure case against the Applicant (P. no. 2287/07 on 27 February 2009), by which the Applicant was released of the indictment. The Municipal Court

found that the criminal judgement of 27 February 2009 dismissing the indictment against the Applicant because it determined that the Applicant's actions of theft against KEK, his employer, were insignificant should influence the legality of the KEK decisions issued in the disciplinary procedure

20. Against that judgement KEK submitted an appeal on unspecified date.

21. On 28 September 2012 the District Court in Pristina issued the Judgment Ac. No. 133/2010 by which KEK's appeal was rejected and the Judgement of the Municipal Court of 19 October 2009 was confirmed.

22. Against the judgement of the District Court, KEK filled a revision alleging substantial violations of provisions of contentious procedure and erroneous application of the material law.

23. On 12 July 2013, the Supreme Court of Kosovo issued the challenged judgement Rev. no.30/2013 and approved as grounded the revision of the KEK. It also amended the judgements of the District Court dated 28 September 2012 and the Municipal Court dated 19 October 2009 and re-affirmed the KEK Decisions adopted in the disciplinary procedure against the Applicant.

24. In the reasoning the Supreme Court stated the following: "*In this case, a relevant and undisputable fact is that the claimant was terminated his employment relationship due to termination of employment contract due to grievous violation o(f) employment duties-stealing of KEK ownership…. However, by the case file it results that the respondent took its decision after having preliminary applied the disciplinary procedure in order to confirm the claimant's responsibility and after having confirmed his responsibility, the decision on termination of employment relationship was taken. SO, in this case the entire legal procedure was followed for rendering such decision as provided by Law on Employment Relationships, namely provision of Article 112, a law which as in force at time of submission of the claim, whereas it was repealed by provision of Article 99 of Labour Law no.03/L-212 of 1 November 2010.*"

Applicant's Allegations

25. In his written submission of 25 November 2013, the Applicant clarified his allegations emphasizing that by the Judgment of the

Municipal Court in Pristina, P.no.2287/07 of 27 February 2009, he was released of the indictment. He alleges that this judgement should be implemented in his labour dispute case and not the KEK decisions that were adopted in the disciplinary procedure.

26. The Applicant further argues that, as a citizen of Kosovo, he has the constitutional right to work as envisaged in Article 49 of the Constitution. He also argues that his right to property guaranteed by Article 46 of the Constitution has been violated because he has not obtained his income. Finally the Applicant argues that his right for judicial protection of his rights provided by Article 54 of the Constitution has also been violated.

Assessment of the admissibility of the Referral

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

28. The Court notes that the substance of the Applicant's argument before the Court is that the Judgment P. no. 2287/07 of 27 February 2009 issued in the criminal proceedings against him should take precedence over the KEK decisions issued in the disciplinary proceedings against him.

29. In this regard, the Court notes that the Applicant has used all available legal remedies prescribed by the Law on Contentious Procedure and that the Supreme Court in Pristina has taken into account and answered his appeals on the points of law.

30. 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).

31. 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). In addition, the mere fact that one disagrees with the legal conclusions a court makes in his or her case does not make that decision a denial of the right to an effective legal remedy as set forth in Article 54 of the Constitution. Moreover, the mere fact that a person is terminated from their employment for the offense of theft does not mean that the person's right to work somewhere in some capacity if there is available work and they are qualified to perform the work as guaranteed by Article 49 of the Constitution has been denied nor that their right to own property as been arbitrarily denied as guaranteed by Article 46 of the Constitution.

32. Therefore, this Referral is manifestly ill-grounded pursuant to Rule 36.1 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 20 January 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**
Robert Carolan	Prof. Dr. Enver Hasani

KI189/13, Avdullah Rrustemi, Resolution of 24 January 2014 - Constitutional Review of the Judgment Rev. I. no. 121/2012, of the Supreme Court of Kosovo, of 29 July 2013

Case KI189/13, decision of 24 January 2014.

Key words: Individual Referral, right to work, 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 subject matter is the constitutional review of the challenged decisions which are "allegedly unfair, unlawful and unconstitutional, because they denied the Applicant's right to a fair and impartial trial and the right to work"

In this respect, the Applicant does not explicitly specify violation of any constitutional provision in particular, however the content of his Referral implies allegations of violation of Article 31 [Right to Fair and Impartial Trial], Article 49 [Right to Work and Exercise the Profession] of the Constitution of the Republic of Kosovo.

The Applicant alleges that the regular courts have erroneously applied the material law and have not applied Article 182.1 of the Law on Contested Procedure and Article 14 of the Labor Law.

Considering the Applicant's allegations regarding the constitutional review of the Judgment Rev. I. no. 121/2012, of the Supreme Court of Kosovo, of 29 July 2013, the Constitutional Court found that the facts presented by the Applicant do not justify in any way the allegation of violation of the constitutional rights and that the Applicant has not sufficiently substantiated his claims. Therefore, the Court decided 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. KI189/13
Applicant
Avdullah Rrustemi
Constitutional review of the Judgment, Rev. I. No. 121/2012 of the Supreme Court of Kosovo, of 29 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 Mr. Avdullah Rrustemi (hereinafter: the Applicant), with residence in Poklek i Ri, Municipality of Gllogovc.

Challenged decision

2. The Applicant challenges the Judgment Rev. I. no. 121/2012, of the Supreme Court of Kosovo, dated 29 July 2013. In addition, the Applicant challenges the Judgment, Ac. Nr. 489/2010, of the District Court in Pristina, dated 15 February 2012, and the Judgment C. 37/09 of the Municipal Court in Gllogovc, dated 19 March 2010.

Subject matter

3. The subject matter is the constitutional review of the challenged decisions which are *"allegedly unfair, unlawful and unconstitutional, because they denied the Applicant's right to a fair and impartial trial and the right to work"*.

4. In this respect, the Applicant does not explicitly specify violation of any constitutional provision in particular, however the content of his Referral implies allegations of violation of Article 31 [Right to Fair and Impartial Trial], Article 49 [Right to Work and Exercise the Profession] 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 Nr. 03/121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law and Rule 56 of the Rules of Procedure of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Court

6. On 5 November 2013, the Applicant filed the Referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

7. On 2 December 2013, the President of the Court by Decision No. GJR. KI189/13, appointed Judge Arta Rama-Hajrizi Judge Rapporteur. On the same date, the President of the Court, by Decision No. KSH. KI189/13, appointed the Review Panel composed of judges: Altay Suroy (Presiding), Snezhana Botusharova and Kadri Kryeziu.

8. On 18 December 2013, the Applicant was notified of registration of the Referral. On the same date the company NewCo Ferronikeli Complex L.L.C. and the Supreme Court of Kosovo were notified of registration of the Referral.

9. On 24 January 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

10. On 24 September 2007, the manager of the NewCo Ferronikeli Complex L.L.C. (hereinafter: the Employer), with regard to the disciplinary and material responsibility at work, imposed a written warning on the Applicant reminding him that in case of repeated

violation of work duties his employment contract would be terminated early.

11. On 26 December 2008, the Employer notified the Applicant that as of 1 January 2009 his employment relationship would be terminated because of the expiry of the employment contract signed between them.

12. On 28 January 2009, the Labor Inspector, with Decision No. 164-21, ordered the Employer to review the Decision on the termination of the employment contract of their employee, respectively the Applicant.

13. On 18 February 2009, the Employer replied to the Labor Inspector, *"that they have carefully reviewed the case and that they remain with their previous decision that the contract may not be extended"*.

14. On 19 March 2010, the Municipal Court in Gllogovc, with the Judgment C. No. 37/09, specified:

> *"REJECTING as unfounded the statement of claim of claimant (Applicant) Avdullah Rrustemi from Lower Korrotice, against respondent NEWCO FERRONIKELI COMPLEX L.L.C. in Gllogovc (Employer) , requesting to confirm that claimant Avdullah Rrustemi established working relationship with the respondent, definite, to quash the Ruling of 03.02.2009 by which the working relationship was not extended after 01.01.2009 for the position of Train Conductor at the Logistics Department of the respondent, and to return the claimant to his job with the duties and responsibilities deriving from the position"*.

15. In the abovementioned Judgment, the Municipal Court in Gllogovc further reasoned:

> *"...based on the notification of date 26.12.2008 issued by the respondent, notifying claimant Avdullah Rrustemi that the respondent does not extend the employment contract with the claimant, contract of date 25.07.2007, the Court considers that claimant Avdullah Rrustemi always established definite employment relations... So, the issue of extension of contract with the employer is exclusively an issue of the employer if he is willing to extend the contract with the employee, this depending if the employer has an interest or not for the issue...*

For the time that the claimant was employed by the respondent, he received salary every month and the respondent fulfilled its obligations towards the claimant…"

"…Allegations of the claimant that his right to employment with the respondent must be recognized in the position of Train Conductor in the logistics department with all the rights and obligations are not grounded on the Essential Labor Law of Kosovo…".

16. On 15 February 2012, the District Court in Prishtina, by Judgment Ac. No. 489/2010, rejected as ungrounded the Applicant's appeal and upheld the Judgment of the Municipal Court in Gllogovc.

17. On 29 July 2013, the Supreme Court by its Judgment Rev. I. No. 121 /2012, rejected the Applicant's request for revision of the Judgment of the District Court in Prishtina as ungrounded.

18. In the above mentioned Judgment, the Supreme Court reasoned:

"… Due to this situation, the Supreme Court of Kosovo assesses that based on the determined factual situation, the Courts of lower instances, correctly applied the material right when finding the statement of claim of claimant as unfounded, because the conclusion of employment relations is done according to the vacancy by meeting the terms for employment relations, respectively the employment relation is established according to the vacancy announcement, interview and Regulation for the Essential Labour Law no.2001/27 of date October 8th 2001. In the case at hand, the litigants signed a definite employment contract, for the period of 25.07.2007 through 31.12.2008, therefore, if the claimant shows for duty after the expiration of the contract doesn't mean that he established ER, since the provisions of Article 10 of the mentioned Regulation provides the manner of establishing employment relations and in the case at hand, the employment relation of claimant with the respondent was established for a definite period of time…

This Court also assesses that the challenged judgment doesn't consist of essential violations of provisions of contested procedures, because the second instance Court reviewed the allegations of the appeal related to the decisive facts and on the

reasoning of the judgment provided sufficient justification approved by this Court as well".

19. The Applicant has also submitted to the Court the Judgment (P. No. 180/2009, of 19 September 2011) of the Municipal Court in Gllogovc, which is related to the criminal claim he filed against the management staff of the Employer, in which the Applicant claims that: *"A. B has no competencies for making such decisions (i.e. termination of employment contract), he stated this himself at the Municipal Court in Gllogovc, during the criminal proceedings against him and some other employees. As evidence, for proving this fact, attached to this submission you will find the Judgment P.nr.180/2009 of the Municipal Court of Gllogovc, in terms of provisions of Article 216 of LCP".*

Applicant's allegation

20. The Applicant alleges that the regular courts have erroneously applied the material law and have not applied Article 182.1 of the Law on Contested Procedure and Article 14 of the Labor Law (Official Gazette SAPK No. 12/89).

21. The Applicant alleges that the decisions of the regular courts are characterized by unlawful influences and connections, because according to him the higher instance courts have only upheld the decisions of the lower instance courts disregarding the evidence contained in the case file.

22. The Applicant also alleges that unauthorized and incompetent persons informed him about the termination of his employment contract without any notice, disciplinary measure and with many other shortcomings.

23. The Applicant does not explicitly specify violation of any constitutional provision in particular but the content of his Referral implies allegations of violation of Article 31 [Right to Fair and Impartial Trial] and Article 49 [Right to Work and Exercise the Profession] of the Constitution.

Relevant legal provisions

REGULATION No. 2001/27 on the ESSENTIAL LABOR LAW IN KOSOVO

Article 10

Labor Contract

10.1 A labor contract may be concluded for:

(a) an indefinite period of time, or

(b) a definite period of time.

[…]

Article 11

Termination of a Labor Contract

11.1 A labor contract shall terminate:

[…]

(c) on the grounds of serious misconduct by the employee;

(d) on the grounds of unsatisfactory performance by the employee;

(e) following the expiration of the term of employment, and

(f) by operation of law.

Admissibility of the Referral

24. The Court notes that in order to be able to adjudicate the Applicant's Referral, it needs first to assess whether all the admissibility requirements, provided by the Constitution and specified by the Law and the Rules of Procedure, have been met.

25. With regard 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".*

26. The Court also refers to Article 49 of the Law, which foresees:

"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. In the case at hand, the Court notes that the Applicant is an authorized party, that he has exhausted all legal remedies under Article 113.7 of the Constitution, and that the Referral was submitted within the legal deadline of four months, foreseen by Article 49 of the Law.

28. Regarding the allegations raised in the Referral, the Court refers to Rule 36 (1) c) of the Rules of Procedure, which proivides:

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

[...]

c) the Referral is not manifestly ill-founded".

29. In the case at hand, the Court notes that the Applicant alleges that the decisions of regular courts are characterized by erroneous application of the material right, incomplete determination of facts, alleged unlawful connections and influences on regular courts in the performance of their duties, and many other alleged shortcomings.

30. The Constitutional Court reiterates that it is not a fact finding court and that the determination of the correct and complete factual situation is a 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 "court of fourth instance" (se Case Akdivar vs. Turkey, No. 2189/93, ECtHR, Judgment dated 16 September 1996, paragraph 65, and also see Case KI86/11, Applicant Milaim Berisha, Resolution on Inadmissibility, of 5 April 2012).

31. In addition, the Referral failed to prove that regular courts have acted in arbitrary or unfair manner. It is not an obligation of the Court to replace its assessment of facts with that of regular courts,

and, as a general rule, it is the duty of those courts to evaluate the evidence presented to them. The duty of the Constitutional Court is to determine whether the proceedings before the regular courts were fair in entirety, including the way the evidence was taken (See case Edwards vs. United Kingdom, No. 13071/87, Report of the European Commission for Human rights, of 10 July 1991).

32. In the case at hand, the Court considers that the decisions of the regular courts have legal basis, are well reasoned and are logical and coherent in general, and they also clearly explain the relation between the Applicant as the employee and his Employer, the nature of the employment contract concluded between them and the ways and the requirements allowed by the law with regard to the establishment and termination of the employment contract.

33. The Court notes that the Applicant was provided ample opportunities to refer arguments regarding his case before the regular courts. The Court also emphasizes that a right to fair trial and correct trial as guaranteed by the Constitution and the European Convention on Human Rights does not imply 'material' but "procedural" correctness. This correctness in practice implies a litigation procedure in which the parties' appeals are heard and then they are put in an equal position before the regular courts (See Case Star Cate Epiletka et al vs. Greece, No. 5411/07, ECtHR, Decision of 6 July 2010).

34. With regard to the criminal claim filed by the Applicant against the management staff of the Employer (Judgment P. No. 180/2009, of the Municipal Court in Gllogovc, dated 19 September 2011), the Court considers that the Judgment at hand cannot be used for the purpose of incriminating certain individuals and it does not have and cannot have any influence on the conclusion of this case.

35. The fact that the Applicant does not agree with the outcome of the case, cannot raise an arguable Referral for the violation of Article 31 [Right to Fair and Impartial Trial] and Article 49 [Right to Work and Exercise the Profession], of the Constitution (See Case Mezotur-Tiszazugi Tarsulat vs. Hungary, No. 5503/02, ECtHR, Judgment dated 26 July 2005).

36. In such circumstances, the Applicant has failed to sufficiently substantiate his allegation for violation of Article 31 [Right to Fair and Impartial Trial] and Article 49 [Right to Work and Exercise Profession] of the Constitution, because the facts he presented do

not in any way show that the regular courts have denied him the rights guaranteed by the Constitution.

37. Consequently, the Referral is manifestly ill-founded and must be declared inadmissible, in accordance with the Rule 36 (1) c) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 47 of the Law and Rule 36 (1) c) and 56 (2) of the Rules of Procedure, on 24 January 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

KI181/13, SC "WITT` PEN" Suhareka, Resolution of 21 January 2014 -Constitutional Review of the Judgment Rev. no. 34/2013, of the Supreme Court, of 11 July 2013

Case KI181/13, decision 21 January 2014

Key words: Individual Referral, manifestly ill-founded.

The Applicant alleged that the Judgment of the Supreme Court violated his right to work, as guaranteed by Article 49 of the Constitution.

The Court finds that despite the allegation of the Applicant that the judgment violated his guaranteed rights to work, as per Article 49 of the Constitution, he has not submitted any evidence to satisfy the Court that the alleged violation has indeed occurred. The applicant has not offered any arguments on the nature of violation. He has not clarified the circumstances in which such violation has occurred, he has not specified the extent of violation or constitutional consequences, and indeed, he has only filed in his referral the court decisions related to the case, and has stated that by the seizure of medicines from his pharmacy, and the failure to compensate the damage caused due to such seizure, he was prevented from further work.

The Court considers that the facts presented by the Applicant do not in any way justify the claim of violation of constitutional rights and that the Applicant has not sufficiently substantiated his claim and that the mere statement that the Constitution was violated cannot be considered as a constitutional complaint.

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 21 January 2014, unanimously declares the Referral inadmissible as manifestly ill-founded.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI181/13
Applicant
SC "WITT` PEN", Suhareka
Constitutional Review of the Judgment of the Supreme Court, Rev. no. 34/2013, of 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
Arta Rama-Hajrizi, Judge

Applicant

1. The Applicant is the Health Enterprise – Pharmacy "Witt`pen" (hereinafter: HC "Witt`pen"), in Suhareka, owned by Mr. Gani Guraziu, duly represented by lawyer Mr. Ramiz Suka from Prishtina.

Challenged decision

2. The challenged decision is the Judgment of the Supreme Court, Rev.no.34/2013, of 11 July 2013.

Subject matter

3. The subject matter is the constitutional review of the Judgment of the Supreme Court, which rejected as ungrounded the revision of the Applicant, and by which, judgments of lower instance courts, which had rejected the claim of the Applicant for damage compensation, are valued as lawful and as such remain in force.

Legal basis

4. Article 113.7 in conjunction with Article 21.4 of the Constitution of the Republic 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 (hereinafter: the Rules).

Proceedings before the Court

5. On 23 October 2013, the Applicant submitted the Referral with the Constitutional Court.

6. On 31 October 2013, by Decision no. GJR. KI181/13, the President of the Court appointed Judge Kadri Kryeziu as Judge Rapporteur, and the Review Panel with the following composition: Robert Carolan (Presiding), Almiro Rodrigues and Ivan Čukalović.

7. On 11 November 2013, the Constitutional Court notified the Applicant and the Supreme Court on the registration of referral.

8. On 21 January 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. On 24 September 2004, by Judgment C. No. 228, the Municipal Court in Suhareka, approved the claim of the Applicant for damage compensation, and had accorded to him a certain amount of money for the damage caused due to the seizure of a considerable amount of medicines from his pharmacy in April and May 1999, by the Financial Police of the Republic of Serbia, and transfer of such medicines to the Health Care Centre in Suhareka.

10. According to this judgment, the damage caused should be compensated in a solidary manner by the Main Family Medicine Centre (MFMC) in Suhareka, and the Ministry of Health (MoH).

11. On 23 January 2006, by decision Ac. No. 368/2004, the District Court in Prizren had approved the complaints of the representatives of the respondents MoH and MFMC in Suhareka,

thereby quashing the Judgment of the Municipal Court in Prizren, and remanded the case for retrial.

12. On 14 September 2006, the Municipal Court in Suhareka by Judgment C.No.25/06 approved again the claim of the Applicant and rendered the Judgment identical to the first Judgment C. No. 228, of 14 September 2006.

13. On 3 September 2007, by Decision Ac. No. 436/2006, the District Court in Prizren approved the appeals of representatives of the Applicants MH and MFMC- Suhareka, and returned the case for retrial.

14. On 27 January 2010, the Municipal Court in Prizren finally rendered the Judgment C. No. 206/07, thereby rejecting as ungrounded the claim of the Applicant, finding that the responding parties are not liable for the damage caused to the Applicant.

15. On 24 October 2012, the District Court in Prizren rendered the Judgment Ac. No.89/2010, thereby rejecting the complaint of the Applicant as ungrounded. The District Court found that "*Since the first instance Court determined the factual situation correctly and entirely, it didn't commit any violation of the contested procedures, therefore correctly applied the material right*".

16. On 1 July 2013, the Supreme Court of Kosovo rendered the Judgment Rev. No. 34/2013, thereby rejecting as ungrounded the revision of the Applicant filed against the Judgment of the District Court in Prizren, Ac. no. 69/2010.

17. In the reasoning of its Judgment, the Supreme Court, inter alia, found that:

> "*Given this situation on the matter, the Supreme Court of Kosovo found that the lower instance courts, by correctly and fully confirming the factual situation, correctly applied the provisions of the contested procedures and the material right, by finding that the statement of claim of plaintiff is unfounded for the fact that the respondents don't have the passive legitimacy, considering the fact that the damage to the plaintiff was inflicted by the authorities of the ex-Republic of Serbia during months of April and May, 2000, while the claim was filed on date 23.11.2000*".

Applicant's allegations

18. The Applicant alleged that the judgment of the Supreme Court violated his right to work, as guaranteed by Article 49 of 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 further specified in the Law and the Rules of Procedure.

20. In this respect, the Court refers to the Article 113.7 of the Constitution, which provides:

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

21. In this regard, the Court notes that the Referral KI181/13 was filed with the Court by an individual, it was filed within the four-month time limit as provided by Article 49 of the Law on the Constitutional Court, and after the exhaustion of available legal remedies, and therefore, it meets the formal requirements to be reviewed at the Constitutional Court.

22. In assessment of allegations of the Applicant, the Court notes that the Applicant challenges the Judgment of the Supreme Court, Rev.No.34/2013, which rejected his revision as ungrounded, since according to the reasoning of the court, the responding parties did not have passive legitimacy to be party in this judicial proceeding, and therefore, they cannot be held liable for the damage caused to the Applicant.

23. The Applicant alleges in particular that his rights under Article 49 of the Constitution have been violated. And, in this respect, the Court notes that this constitutional provision expressly provides:

> *"1. The right to work is guaranteed.*

2. *Every person is free to choose his/her profession and occupation."*

24. In this regard, the Court finds that despite the allegation of the Applicant that the judgment violated his guaranteed rights to work, as per Article 49 of the Constitution, he has not submitted any evidence to satisfy the Court that the alleged violation has indeed occurred. The applicant has not offered any arguments on the nature of violation. He has not clarified the circumstances in which such violation has occurred, he has not specified the extent of violation or constitutional consequences, and indeed, he has only filed in his referral the court decisions related to the case, and has stated that by the seizure of medicines from his pharmacy, and the failure to compensate the damage caused due to such seizure, he was prevented from further work.

25. The Court has further found that the Applicant was not prevented from work by any decision of any public authority, and no prevention measure was imposed to deny his right to work and exercise profession (Article 49 of the Constitution), but he had a civil case in regular courts, related to compensation of damage, decided by regular courts in a judicial proceeding, and therefore, in such circumstances, the Court did not find that the judgment of the Supreme Court caused any violation of the Article 49 of the Constitution, as claimed by the Applicant.

26. In relation with the above, the Court finds that in fact, the Applicant is not satisfied with the final outcome of a judicial proceeding, given that he has not proved by any evidence the arbitrariness of the revision judgment of the Supreme Court, and has not provided any arguments on violation of human rights, but the matter raised by him is related to the ascertainment of the factual situation, and application of law, which are clearly legality matters and not constitutional matters.

27. The Constitutional Court is not a fact-finding court, and in this case, it reiterates that the determination of the correct and complete factual situation it is under the complete jurisdiction of the regular courts, and that its role is only to ensure compliance with the rights guaranteed by the Constitution, and therefore, it may not act as a "fourth-instance court (See, *mutatis mutandis,* i.a., Akdivar v. Turkey, 16 September 1996, R.J.D, 1996-IV, para. 65).

28. From the above-mentioned reasons, the Court considers that the facts presented by the Applicant do not in any way justify the claim of violation of constitutional rights and that the Applicant has not sufficiently substantiated his claim. And that the mere statement that the Constitution was violated cannot be considered as a constitutional complaint.

29. Under similar circumstances, the Court declared as inadmissible the Referral of the Applicant in the case KI21/13 (see, Resolution on Inadmissibility KI21/13, of 13 December 2013).

30. In such circumstances, the Applicant had not "sufficiently supported the claim of violation of the Constitution by the act a public authority". Therefore, the Court, in accordance with Rule 36, paragraph 2, item d, found that the Referral is manifestly ill-founded and must 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 21 January 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; and

III. This Decision is effective immediately.

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

KI133/13, Shefqet Hasimi, Resolution of 24 January 2014- Constitutional Review of the Judgment of the Supreme Court, Rev. no. 90/2013, of 23 July 2013

KI133/13, decision of 24 January 2014

Key words: Individual Referral, authorized party, failure to specify the constitutional right, *prima facie* not justified, manifestly ill-founded.

The Applicant, in capacity of the Senior Officer in the Division of Representation (Department of Legal Affairs) in the Ministry of Justice, was authorized to represent the Ministry of Internal Affairs in the proceedings before the regular courts. Nevertheless, the referral filed with the Constitutional Court, was filed as an individual referral on his behalf.

The subject matter is the constitutional review of the Judgment of the Supreme Court, which upheld the Judgment of the District Court in Prishtina. The lower courts' decisions concerned the annulment of the Decision of the Police General Director regarding disciplinary measure imposed on a police officer.

The Applicant without specifying the alleged violation of any specific constitutional provision claimed that the Judgment of the Supreme Court was rendered in violation with the Constitution.

The Constitutional Court held that the Applicant failed to specify the right he alleges to have been violated, and the Article of the Constitution which supported his Referral.

The Constitutional Court declared the Applicant's Referral as inadmissible for being manifestly ill-founded because it was *prima facie* not justified and the Applicant did not sufficiently substantiated his claim.

RESOLUTION ON INADMISSIBILITY
in
Case no. KI133/13
Applicant
Shefqet Hasimi
Constitutional review of the Judgment of the Supreme Court, Rev. no. 90/2013, of 23 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 Mr Shefqet Hasimi, Senior Legal Officer (Department of Legal Affairs) at the Ministry of Justice (hereinafter: Applicant), who in the proceedings before the regular courts represented the Ministry of Internal Affairs. The Applicant has filed the referral on his own behalf.

Challenged decision

2. The challenged decision is the Judgment of the Supreme Court, Rev. no. 90/2013, of 23 July 2013, served on the Applicant on 15 August 2013.

Subject matter

3. The subject matter is the request for constitutional review of the Judgment of the Supreme Court, Rev. no. 90/2013, of 23 July 2013, which upheld the Judgment of the District Court in Prishtina.

4. Lower instance judgments had approved the claim suit of the claimant Q.R., thereby annulling as unlawful the decision of the Police General Director P. no. 88/VDP/2011 of 4 February 2011, by which the disciplinary measure of 30% deduction from gross salary for two months was imposed to the claimant.

5. From the case files, it may be derived that the Applicant, in capacity of the Senior Officer in the Division of Representation (Department of Legal Affairs) in the Ministry of Justice, was authorized to represent the Ministry of Internal Affairs in the proceedings before the regular courts. Nevertheless, the referral filed with the Constitutional Court of the Republic of Kosovo (hereinafter: the Court), was filed as an individual referral on his behalf.

Legal basis

6. 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 Court

7. On 30 August 2013, the Applicant filed his Referral with the Constitutional Court.

8. On 4 September 2013, the President of the Court, by Decision No. GJR.KI 133/13 appointed Judge Arta Rama-Hajrizi as Judge Rapporteur. On the same date, the President of the Court, by Decision No. KSH. KI133/13 appointed the Review Panel, composed of judges: Altay Suroy (Presiding), Snezhana Botusharova and Kadri Kryeziu.

9. On 16 September 2013, the Court notified the Applicant of registration of the Referral, and requested from the Applicant to clarify whether he filed the referral as an individual referral, on his own behalf. On the same date, the Referral was notified to the Supreme Court of Kosovo.

10. On 23 October 2013, the Court received a letter from the Applicant, by which the Applicant confirmed his allegations for violation of

the rights guaranteed by the Constitution, but failing to specify whether the referral was filed individually.

11. On 25 October 2013, the Ministry of Justice, respectively the Director of the Legal Department, to which Department the Applicant is part, filed with the Court an Authorization for Representation.

12. On 6 November 2013, the Court notified the Ministry of Internal Affairs of registration of the referral, thereby attaching the letter submitted by the Applicant, and the representation authorization issued by the Ministry of Justice.

13. On 24 January 2014, the Review Panel considered the report of Judge Rapporteur and made a recommendation to the full Court on the inadmissibility of the Referral.

Summary of facts

14. On 28 September 2010, the Senior Police Appointment and Discipline Committee (hereinafter: SPADC) recommended that due to misconduct, namely interference with the investigation process by the District Public Prosecutor in Prishtina, Q. R. is imposed a disciplinary measure of 30% deduction from the gross salary for two months.

15. On 4 February 2011, the Kosovo Police General Director rendered a Decision, imposing Q.R. the disciplinary measure as proposed by the SPADC.

16. Against this Decision, Q. R. filed a complaint with the Ministry of Internal Affairs.

17. On 22 March 2011, by a Decision, the Minister of Internal Affairs rejected as ungrounded the complaint filed by Q.R.

18. On 8 April 2011, Q. R. filed a complaint with the Municipal Court in Ferizaj.

19. On 8 December 2011, the Municipal Court in Ferizaj, by Judgment C. no. 229/11 approved the claim of claimant Q. R. as grounded, and annulled the Decision of the Kosovo Police General Director.

20. In its Judgment, the Municipal Court in Ferizaj found that [...] "*the decision issued by the General Director of the Police was done without any legal grounds referring to the UNMIK Administrative Order 2006/9, in which direction the respondent was referring allegedly for misconduct of the claimant by not taking into consideration that this regulation is out of force upon entry into force of the Law on Police, where in Article 46 of the Law such disciplinary violation does not appear. The Law on Police clearly provides all the disciplinary violations, however, such measure as misconduct does not exist. Due to these reasons these decisions and the decision of the first and seconds instance taken by the respondent do not have any judicial or legal grounds.*"

21. On the request of the respondent that the claim and case files be submitted to the Supreme Court due to jurisdiction, the Municipal Court in Ferizaj stated that *[...]"such claim according to the Court is not based since this is a dispute from employment relationship for which, in accordance with Article 26, paragraph I, item 7 of the Law on Regular Courts, Official Gazette no. 21/78, the Municipal Court is competent to decide."*

22. Against the Judgment of the Municipal Court in Ferizaj, the Ministry of Internal Affairs, represented by the Applicant, filed a complaint with the District Court in Prishtina.

23. On 24 October 2012, the District Court in Prishtina, by Judgment Ac. No. 320/2012 rejected the complaint as ungrounded.

24. Based on the case files, on 27 November 2012, the State Prosecutor informed the Applicant that in relation to his proposal for the request for protection of legality against the Judgments of the Municipal Court in Ferizaj, and the District Court in Prishtina, upon review of the challenged Judgments and other case file, it did not find any legal grounds to file such a request for protection of legality.

25. Against the Judgment of the District Court in Prishtina, No. 320/2012, of 24 October 2012, by claiming substantial violations of contested procedure provisions and erroneous application of the material law, the Ministry of Internal Affairs, represented by the Applicant, filed a revision with the Supreme Court of Kosovo.

26. On 23 July 2013, the Supreme Court rendered, by Judgment Rev. No. 90/2013, rejected the revision as ungrounded.

27. In its Judgment, the Supreme Court found that *[...]"In this particular case the provisions for conducting the disciplinary hearing before the CHPAD have not been applied, as it is correctly emphasized in the Judgments of the lower instance courts [...]"*. Further, the Supreme Court found that [...] "*upon rendering the decision on imposing the disciplinary measure of garnishing the monthly salaries, the General Director invoked Administrative Order no.2006/9 dated 06.06.2006, which is an Administrative Order for the implementation of UNMIK Regulation no.2005/54 on the guiding framework and principles of the Kosovo Police Service, which entered into power on 20.12.2005 and was abrogated on 20.02.2008 when the Law on Police was adopted. Thus legal provisions of a law that was not in power at the critical time were applied."*

Applicant's allegations

28. The Applicant alleges that [...] "*all of the above mentioned Judgments are issued in violation of the Constitution, refusing the Decisions of the Employment body."*

29. The Applicant has requested from the Court to find whether *[...]"challenged Judgments if there are violations of applicable laws in Kosovo, did they act in violation of the Constitution of the Republic of Kosovo, that the claimant intruded without authorization in the District Prosecution Office in Prishtina, as well as to determine whether the Employment Body acted in conformity with the Constitution [...]"*, by not specifying the alleged violation of any specific constitutional provision.

Admissibility of the Referral

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

31. In this regard, the Court refers to the Article 113.7 of the Constitution, which provides:

> *"Individuals are authorized to refer violations by public authorities of their individual rights and freedoms guaranteed*

by the Constitution, but only after exhaustion of all legal remedies provided by law".

32. Therefore, the Court notes that it must first determine whether the Applicant is an authorized party as per provisions mentioned above.

33. The Court notes that from the submitted documents, it is clear that in the proceedings before regular courts, the Applicant, in capacity of a Senior Officer in the Division of Representation (Department of Legal Affairs) of the Ministry of Justice, has represented the Ministry of Internal Affairs, in the capacity of responding party. Therefore, he, himself, was not party to the proceedings.

34. In this case, upon the request of the Court to clarify whether the Referral was filed on individual behalf of the Applicant, the Applicant filed a letter on 23 October 2013, thereby confirming his allegations for violation of the rights as guaranteed by the Constitution, but failing to specify whether he had filed his Referral on his behalf. In his letter, the Applicant stated, *inter alia*:

"Since I Shefqet Hasimi, Senior Officer at the Ministry of Justice, Judicial Representation Division as authorized have represented this matter, with representations, notes, submissions, responses to claims, I PROPOSE to the Constitutional Court of Kosovo to also take into consideration this request for reviewing the Constitutionality in the Judgments as specified in the Referral, as the interests of the Ministry of Internal Affairs – Kosovo Police, Representative of the Ministry of Justice from the Kosovo Police have been affected.

In this sense I consider that the Constitution and Laws of Kosovo have been violated, upon the interference with the District Prosecution in Prishtina, therefore I consider that the Judgment violates the Constitution.

Therefore, due to these reasons we have sought from the Constitutional Court of Kosovo to provide an opinion on the Judgments of the Supreme Court of Kosovo as a final instance".

35. Further, the Court, upon receipt of letter of the Applicant on 23 October 2013, on 25 October 2013, received an authorization submitted by the Ministry of Justice, by which*: "[...] Authorized Mr Shefqet Hasimi, Senior Legal Officer of the Division for Judicial*

Representation, Department for Legal Affairs of the Ministry of Justice [...] to represent the Government of the Republic of Kosovo before the Constitutional Court of Kosovo, for filing the Referral of date 30.08.2013, registered by the Constitutional Court as KI 133/2013, pursuant to Article 113.7 of the Constitution, and Articles 46, 47, 48, 49 and 50 of the Law on the Constitutional Court of the Republic of Kosovo, the authorized is hereby obliged to represent and protect the interests of the Government in accordance with the applicable legislation. This authorization is valid until its revocation, and may not be used for other purposes."

36. The representation of public authorities by the Ministry of Justice in judicial and arbitration proceedings is regulated by relevant legislation.

37. In this regard, the Law on amending and supplementing Law no. 03-L-048 on Public Financial Management and Accountability and the Regulation of the Government 02/2011 on the Areas of Administrative Responsibilities of the Prime-Minister's Office and Ministries, and, provide that:

Article 24 of the Law:

[...]

"The Ministry of Justice shall be entitled and authorized, but not obliged, to assume responsibility for representing public authorities if (i) this is requested by the public authority; or (ii) if the Ministry of Justice determines that the relevant public authority is not being properly or competently represented. The Ministry of Justice shall be entitled to obtain independent legal counsel, provided that is not in conflict with its obligation to represent any party or interest in a proceeding."[...]

Annex I of the Regulation

"The Ministry of Justice:

[...]

IX. Represent public authorities in procedures before courts and arbitration tribunals in accordance with the law in force;"

[…]

38. *Therefore, the Court considers that the Applicant is an authorized party and has exhausted all legal remedies, as provided by Article 113.7 of the Constitution.*

39. Further, 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*". In this case, the Court notes that the Applicant was served the Judgment of the Supreme Court on 15 August 2013, while he has filed his referral with the Court on 30 August 2013.

40. Nevertheless, the Court must also take into consideration 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."*

41. The Applicant addresses the Court requesting it to find whether *[…]" challenged judgments in power and in which there are violations of applicable laws in Kosovo, acted in violation of the Constitution of the Republic of Kosovo that the claimant intruded without authorization in the District Prosecution Office in Prishtina, as well as to determined whether the Employment Body acted in conformity with the Constitution […]."*

42. In this regard, the Court notes that the Applicant fails to specify the right he alleges to have been violated, and the Article of the Constitution which supports his referral.

43. The Constitutional Court also reiterates that under the Constitution, it is not its duty to act as a fourth-instance court when considering decisions rendered by regular courts. It is the role of regular courts to interpret and apply pertinent rules of procedural and material law (See *mutatis mutandis*, Garcia Ruiz v. Spain, no. 30544/96, ECtHR, Judgment of 21 January 1999; see also case KI70/11 of the Applicants Faik Hima, Magbule Hima and Bestar Hima, Resolution on Inadmissibility, of 16 December 2011).

44. Based on the case file, the Court notes that the reasoning provided by the Judgment of the Supreme Court is clear, and upon review of

all proceedings, the Court also found that regular court proceedings have not been unfair or arbitrary (See, *mutatis mutandis,* Shub v. Lithuania, no. 17064/06, ECtHR, decision of 30 June 2009).

45. Furthermore, the Applicant has not submitted any *prima facie* evidence that would confirm the violation of rights guaranteed by the Constitution (See, Vanek v. the Republic of Slovakia, ECtHR, No. 53363/99, Decision of 31 May 2005). The Applicant has not specified what rights of the Constitution support his allegations, as required by Article 113.7 of the Constitution, and Article 48 of the Law.

46. Consequently, the Referral is manifestly ill-founded, in accordance with Rule 36 (2), a) and d) of the Rules of Procedure, which provides that *"The Court shall reject a Referral as being manifestly ill-founded when it is satisfied that: a) The Referral is not prima facie justified and d) when the Applicant does not sufficiently substantiate his claim."*

FOR THESE REASONS

The Constitutional Court, pursuant to Article 48 and Rule 36 (2) a) and d) of the Rules of Procedure, on 24 January 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

KI214/13, Kadrush Beqa, Resolution of 23 January 2014 - Constitutional Review of the Decision, Rev. no. 75/2013, of the Supreme Court of Kosovo, of 16 September 2013

Case KI214/13, decision of 23 January 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 subject matter is the constitutional review of the decisions, which upheld the allegedly "wrongful and unfair expropriation of the Applicant's property".

In this respect, the Applicant claims a violation of Article 31 [Right to Fair and Impartial Trial], of the Constitution.

The Applicant alleges that the decision of the Supreme Court of Kosovo is characterized by violations of substantive and procedural law.

Considering the Applicant's allegations regarding the constitutional review of the Judgment Rev. no. 75/2013, of the Supreme Court of Kosovo, of 16 September 2013, the Constitutional Court found that the facts presented by the Applicant do not justify in any way the allegation of violation of the constitutional rights and that the Applicant has not sufficiently substantiated his claims. Therefore, the Court decided 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. KI214/13
Applicant
Kadrush Beqa
Constitutional review of Decision, Rev. no. 75/2013, of the Supreme Court of Kosovo, dated 16 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. Kadrush Beqa (hereinafter, the Applicant) residing in Gjakova.

Challenged decisions

2. The Applicant challenges Decision Rev. no. 75/2013, of the Supreme Court of Kosovo, dated 16 September 2013 in connection with Judgment Ac. no. 566/2012, of the District Court of Peja, dated 3 December 2013; and Decision Ndr. no. 45/2008, of the Municipal Court in Gjakova, dated 23 December 2011.

Subject matter

3. The subject matter is the constitutional review of the challenged decisions of the regular courts which upheld the allegedly "wrongful and unfair expropriation of the Applicant's property".

4. In this respect, the Applicant claims a violation of Article 31 [Right to Fair and Impartial Trial], of the Constitution.

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 (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 20 November 2013, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).

7. On 3 December 2013, the President of the Constitutional Court, by Decision No. GJR. KI214/13, appointed Judge Snezhana Botusharova as Judge Rapporteur. On the same date, the President of the Constitutional Court, by Decision No. KSH. KI214/13, appointed the Review Panel composed of Judges Robert Carolan (Presiding), Almiro Rodrigues and Enver Hasani.

8. On 19 December 2013, the Court notified the Applicant about the registration of the Referral and required of him to submit additional documents. On the same date, the Supreme Court of Kosovo was notified of the Referral.

9. On 26 December 2013, the Applicant filed additional documents with the Court.

10. On 23 January 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 December 1960, the Peoples Council of Gjakova Municipality, respectively the Commission for determining the immovable property to be expropriated, by Decision no. 03-3475/60, expropriated an immovable property owned by D.B., who was the Applicant's legal predecessor.

12. On 16 May 2008, the Applicant filed a motion with the Municipal Court in Gjakova, requesting compensation for his predecessor's expropriated property.

13. On 23 December 2011, the Municipal Court in Gjakova, by Decision Ndr. no. 45/2008, rejected as unfounded the motion of the Applicant to oblige the respondent party (Municipality of Gjakova), that in the name of expropriated property respectively the cadastral plot no. 2120 ZK Gjakova-City, to pay to him the total amount of 200.000,00 euro, including legal interest to commence from the day when the respondent party took possession of the stated property in 1960, or, alternatively, to compensate the Applicant with an urban construction plot of the same size as the expropriated plot.

14. On 3 December 2012, the District Court in Peja, by Decision Ac. no. 566/2012, rejected the appeal of the Applicant as unfounded and upheld the Decision of the Municipal Court in Gjakova.

15. On 16 September 2013, the Supreme Court of Kosovo, by Decision Rev. no. 75/2013, rejected as unfounded the request for revision filed by the Applicant against the Decision of the District Court in Peja.

16. In the above-mentioned decision, the Supreme Court of Kosovo reasoned:

> *"... from the case file it is found that the proposers (Applicant) seek to oblige the counter proposer to compensate to them the dispossessed area of 0.05.38 ha, of cadastral plot no.2120 CZ Gjakova-City with the amount of 200.000 €. Or their alternative plea that they are given another piece of construction land with the same area. The Peoples Council of Gjakova Municipality – the Commission for determining the immovable property to be expropriated, with Ruling no.03-3475/60 of date 29.12.1960, expropriated the immovable property of the proposers' legal predecessor D.B – house with an area of 228 m2, that was constructed in cadastral plot no. 2120 CZ Gjakova-City, 1 stable adapted for dwelling, 5 plum trees, 2 quince trees, 1 entrance door grape vine (yard doors) granary, and orchard and on behalf of the compensation for the expropriated property he was allocated the total counter value of 1.775.320 dinars.*

[…]

The first instance court on the grounds of this situation of the case found that the proposers' plea for determining the compensation of the restituted land became statute limited and as such is not grounded. Therefore pursuant to Article 360 and in conjunction to Article 371 of the LOR decided as in the enacting clause of the Ruling.

The second instance court did correctly apply the material right when it found that the proposers' proposal for compensating the dispossessed property became statute limited because the proposers' legal predecessor was dispossessed of the contested immovable property in 1960, whereas the proposers submitted the proposal on 16 May 2008, after 45 years and pursuant to the correct assessment of the first instance court the statutory limitation limits the proposers' right to seek the fulfillment of the obligation even in case the proposers are right".

Applicant's allegations

17. The Applicant alleges that the decision of the Supreme Court of Kosovo is characterized by violations of substantive and procedural law.

18. The Applicant also alleges a violation of Article 31 [Right to Fair and Impartial Trial], of the Constitution.

Assessment of the admissibility

19. 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.

20. 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".

21. 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".*

22. In the concrete case, the Court considers that the Applicant is an authorized person, that he has exhausted all legal remedies as prescribed by Article 113.7 of the Constitution, and that the referral is filed within the four months legal deadline in compliance with Article 49 of the Law.

23. 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".*

24. As to the Applicant's claim that the Supreme Court of Kosovo has allegedly violated substantive and procedural law, the Court considers questions of fact and of law to be within the ambit of the regular courts, in this case the Supreme Court of Kosovo. The Court cannot substitute its own findings with those of the regular courts because it is neither a court of appeal nor a court of fourth instance.

25. 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 legally grounded, well reasoned and coherent because it explains to the Applicant that his alleged rights to the expropriated property are time-barred by statutory limitation.

26. 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 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 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 Article 31 [Right to Fair and Impartial Trial] of the Constitution (See case Mezotur-Tiszazugi Tarsulat vs. Hungary, No. 5503/02, ECtHR, Judgment of 26 July 2005).

29. 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.

30. 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 Rules 36 (1) c) and 56 (2) of the Rules of Procedure, on 23 January 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**
Snezhana Botusharova	Prof. Dr. Enver Hasani

KI141/13, Bajram Aliu, Resolution of 20 January 2014- Constitutional Review of the Decision of the Special Chamber of the Supreme Court of Kosovo, under case no. SCEL-09-0001-C1131

Case KI141/13, decision of 20 January 2014

Key words: Individual Referral, non-exhaustion of legal remedies.

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 Applicant does not invoke violation of any constitutional provisions in particular.

The Applicant claims that he "was not informed in due time to file the complaint" because his "wife cannot walk, and needs a permanent caretaker."

The Applicant further alleges that "The Special Chamber of the Supreme Court has violated his rights and freedoms in this case, since it rejected his complaint as time-barred without proper legal grounds. His rights as guaranteed by the Constitution of Kosovo have thus been breached." The Applicant does not invoke any constitutional violations in particular.

From the documents contained in the Referral, it appears that the Applicant has filed a complaint with the Trial Panel of the Special Chamber; however, he has not shown to also have appealed before the Appellate Panel of the Special Chamber before filing his referral with this Court.

It follows that the Referral is out of time.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI141/13
Applicant
Bajram Aliu
Constitutional Review of the Decision of the Special Chamber of the Supreme Court of Kosovo, under case no. SCEL-09-0001-C1131

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. Bajram Aliu (hereinafter: the "Applicant") residing in Podujeva.

Challenged Decision

2. The Applicant challenges Decision of the Special Chamber of the Supreme Court of Kosovo, under case no. SCEL-09-0001-C1131 (Applicant has only provided an extract of the decision) rendered at an unknown date and served to him on unknown date.

Subject Matter

3. The subject matter is the constitutional review of the challenged Decision, which allegedly "*has violated [his] rights and freedoms in this case, since it rejected [his] complaint as time-barred without proper legal grounds and denied him the entitlement to a*

share of proceeds acquired from the privatization of the Socially Owned Enterprise 'Ramiz Sadiku' Prishtina".

4. In this respect, the Applicant does not invoke violation of any constitutional provisions in particular.

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 (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

6. On 4 September 2013, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter, the "Court").

7. On 24 September 2013, the President of the Constitutional Court, by Decision No. GJR. KI141/13, appointed Judge Robert Carolan as Judge Rapporteur. On the same date, the President of the Constitutional Court, by Decision No. KSH. KI141/13, appointed the Review Panel composed of Judges Snezhana Botusharova (Presiding), Kadri Kryeziu, and Arta Rama-Hajrizi.

8. On 10 October 2013, the Court informed the Applicant of registration of his Referral and requested the Applicant to specify which decision of the Special Chamber of the Supreme Court he is challenging. On the same date, the Special Chamber of the Supreme Court of Kosovo (hereinafter, the "Special Chamber"), was notified of the Referral.

9. The Applicant has not submitted the requested information within the specified time frame.

10. On 20 January 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. At some point in time, the Applicant was employed as a worker of the SOE "Ramiz Sadiku".

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

13. On 4, 5, and 7 March 2009, the PAK published a final list of eligible employees entitled to share in the benefit from the fund of 20% of the proceeds of the privatization. The final deadline for filing a complaint against this list was 27 March 2009.

14. On 5 June 2009, the Applicant filed a complaint with the Special Chamber to be included in the final list of eligible employees.

15. On 22 March 2010, the Special Chamber (ORDER SCEL-09-001) *"issued an order asking the Complainant (Applicant) to clearly state why he had filed his complaint with the Special Chamber after the expiry of the time limit set by Section 10.6 (a) of UNMIK Regulation 2003/13, as amended by UNMIK Regulation 2004/45 and when the reason ceased to exist."*

16. On 13 April 2010, the Applicant responded to the Special Chamber's order stating that his wife was will and because of her illness, he was unable to file his complaint within the mandated time period.

17. In an unspecified date, The Special Chamber by a decision under case no. "SCEL-09-0001-C1131" (as referred by the Applicant), further noted that the Applicant did not provide a valid justification to prove that he was hindered to file the complaint in time, thereby rejecting his complaint as inadmissible.

18. On 4 September 2013, the Applicant filed the Referral with this Court.

Applicant's Allegations

19. The Applicant claims that he *"was not informed in due time to file the complaint*" because his *"wife cannot walk, and needs a permanent caretaker."*

20. The Applicant further alleges that *"[t]he Special Chamber of the Supreme Court has violated [his] rights and freedoms in this case, since it rejected [his] complaint as time-barred without proper legal grounds. [His] rights as guaranteed by the Constitution of Kosovo have thus been breached."* The Applicant does not invoke any constitutional violations in particular.

The Law

REGULATION NO. 2003/13

ON THE TRANSFORMATION OF THE RIGHT OF USE TO SOCIALLYOWNED IMMOVABLE PROPERTY

> *"10.6 Upon application by an aggrieved individual or aggrieved individuals, a complaint regarding the list of eligible employees as determined by the Agency and the distribution of funds from the escrow account provided for in subsection 10.5 shall be subject to review by the Special Chamber, pursuant to section 4.1 (g) of Regulation 2002/13.*
>
> *(a) The complaint must be filed with the Special Chamber within 20 days after the final publication in the media pursuant to subsection 10.3 of the list of eligible employees by the Agency. The Special Chamber shall consider any complaints on a priority basis and decide on such complaints within 40 days of the date of their submission".*

Assessment of Admissibility

21. 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.

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

23. The Court 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."*

24. The Court also takes into account 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, or..."*

25. Moreover, 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".*

26. The Court notes that the Applicant generally complains that *"[t]he Special Chamber of the Supreme Court has violated [his] rights and freedoms in this case, since it rejected [his] complaint as time-barred without proper legal grounds",* without specifying how and why the alleged violations occurred and also without specifying clearly what is the concrete act of a public authority that he wishes to challenge.

27. Furthermore, the Court notes that the Applicant was afforded ample time and opportunity to clarify his referral, namely to specify what decision of the Special Chamber he is challenging and also to inform the Court whether he exhausted all legal remedies in compliance with Article 113.7 of the Constitution. The Applicant did not reply.

28. From the documents contained in the Referral, it appears that the Applicant has filed a complaint with the Trial Panel of the Special Chamber; however, he has not shown to also have appealed before the Appellate Panel of the Special Chamber before filing his referral with this Court.

29. The Court wishes to emphasize that the rationale for the exhaustion rule is to afford the authorities concerned, including the courts, the opportunity to prevent or put right the alleged violation of the Constitution. The rule is based on the assumption that the Kosovo legal system will provide an effective remedy for the violation constitutional rights. (See Case KI34/11, Applicant Sami Bunjaku, Resolution on Inadmissibility of 8 December 2011).

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

31. It follows, that the Referral must be declared inadmissible due to non exhaustion of all legal remedies as prescribed by Article 113.7 of the Constitution, Article 47 (2) of the Law, and Rule 36 (1) a) of the Rules of procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 47 of the Law and Rules 36 (1) a) and 56 (2) of the Rules of Procedure, on 20 January 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 immediately effective

Judge Rapporteur	**President of the Constitutional Court**
Robert Carolan	Prof. Dr. Enver Hasani

KI155/13, Xhemajl Sylejmani, Resolution of 24 January 2014- Constitutional Review of the Judgment Rev. No. 302/2012, of the Supreme Court of Kosovo, of 3 June 2013.

Case KI155/13, decision of 24 January 2014

Key words: Individual Referral, Right to Legal Remedy, Right to Work and to Exercise Profession, manifestly ill-founded referral.

The Applicant alleges that by Judgment, Rev. No. 302/2012 of 3 June 2013, of the Supreme Court of Kosovo, were violated his rights, guaranteed by the Constitution, respectively Article 21 [General Principles], Article 24 [Equality before Law], Article 32 [Right to Legal Remedy], and Article 49 [Right to Work and Exercise Profession] of the Constitution.

Based on the case files, the Court notes that the reasoning provided by the final judgment of the Supreme Court is clear, and upon review of all proceedings, the Court also found that the proceedings in the regular courts were in no way unfair or arbitrary

The Court notes that the facts submitted by the Applicant do not support in any way the allegation of violation of the constitutional rights, and that the Applicant has not sufficiently substantiated his allegations.

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 20 of the Law and Rule 36 (2) b) and d) of the Rules of Procedure, on 24 January 2014, unanimously declares the Referral inadmissible.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI155/13
Applicant
Xhemajl Sylejmani
Constitutional Review of the Judgment of the Supreme Court of Kosovo, Rev. No. 302/2012, of 3 June 2013

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

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

Applicant

1. The Applicant is Mr. Xhemajl Sylejmani from the village Gërmova, Municipality of Viti.

Challenged decision

2. The Applicant challenges the Judgment of the Supreme Court of Kosovo, Rev. No. 302/2012, of 3 June 2013, served on the Applicant on 17 June 2013.

Subject matter

3. The subject matter is constitutional review of the Judgment of the Supreme Court of Kosovo, Rev. No. 302/2012, of 3 June 2013. The Applicant requests reinstatement to his working place, and compensation of salaries for the time the Applicant was not working.

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: Law) and Rule 56.2 of the Rules of Procedure.

Proceedings before the Court

5. On 2 October 2013, the Applicant filed a referral with the Constitutional Court of the Republic of Kosovo (hereinafter: Court)

6. On 10 October 2013, the Applicant filed with the Court an additional document.

7. On 28 October 2013, the President, by Decision GJR. No. KI155/13, appointed Judge Robert Carolan as Judge Rapporteur. On the same date, the President, by Decision No. KSH. KI99/13, appointed the Review Panel, composed of Judges: Snezhana Botusharova (Presiding), Kadri Kryeziu and Arta Rama-Hajrizi.

8. On 11 November 2013, the Court notified the Applicant and the Supreme Court on the registration of the case.

9. On 24 January 2014, the Review Panel considered the preliminary report and made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

10. On 25 September 2009, the Municipal Assembly of Viti, through the Appellate Committee, rendered a Decision, no. 03-113/4782, which rejected the complaint of the Applicant challenging the decision terminating his working relationship with the Municipality. Further, the Decision provided:

> "*Whereas, as regards to appealing allegations in relation to termination of employment relationship, the Appellate Committee concludes that, here we don't have to do with termination of contract, but with expiration, and that the same voluntarily has not signed the contract even though by notice no. 03.07/4178 of 13.08.2009 was warned on consequences for not signing the contract*".

11. On 26 February 2010, the Independent Oversight Board of Kosovo (IOBK), decided upon complaint of the Applicant, by rendering

Decision no. 02 (213) 2009, which rejected the complaint as ungrounded, and upheld the Decision no. 03-113/4782, of 25 September 2009, of the Appellate Commission, and Decision 03-118-4424 of 26 August 2009 terminating Applicant's working relationship.

12. On 2 May 2012, the Municipal Court in Viti, decided upon the claim suit of the Applicant, by rendering Judgment, C. no. 214/2011, thereby rejecting the claim suit as ungrounded. The Municipal Court further reasoned:

> *"From all mentioned above the court concludes that the statement of claim of claimant for returning him to workplace at the same time the compensation of personal incomes is ungrounded…*
> *The decision of court is based on legal grounds in relation to proceedings in contest by employment relationship pursuant to Article 475 and in conjunction with Article 477 of LCP."*

13. On 10 July 2012, the District Court in Gjilan, decided upon complaint of the Applicant, by rendering Judgment, AC. no. 207/12, thereby rejecting the complaint as ungrounded, and upholding the Judgment C. no. 214/2011 of the first instance court. The District Court further reasoned:

> *"This court also considers that the first instance court when rendering this judgment has not committed violation of the contested procedure provisions of which this court takes care mainly, that it had determined the factual situation in the correct and complete manner and it has applied the substantive law in a correct manner…".*

14. On 3 June 2013, the Supreme Court of Kosovo decided upon Revision of the Applicant, by rendering Judgment, Rev. No. 302/2012, rejecting as ungrounded the Revision against the Judgment of the District Court in AC. no. 207/12 of 10 July 2012. The Supreme Court further reasoned:

> *"… that lower instance courts by determining correctly and completely the factual situation has correctly applied the contested procedure provisions and substantive law whereby they found that the statement of claim of claimant is ungrounded."*

Applicant's allegations

15. The Applicant alleges that the Judgment of the Supreme Court of Kosovo, Rev.No.302/2012, of 3 June 2013, violated his rights guaranteed by the Constitution, as per Article 21 [General Principles], Article 24 [Equality before Law], Article 32 [Right to Legal Remedy] and Article 49 [Right to Work and to Exercise Profession] of the Constitution.

16. The Applicant concludes by requesting from the Constitutional Court:

> *"I wish to return to my workplace where I was, compensation for the period I haven't worked..."*

Preliminary assessment of admissibility of the Referral

17. In order to adjudicate the Referral of the Applicant, the Court must initially examine whether the Applicant has met the requirements as provided by the Constitution, and further specified by the Law and Rules of Procedure of the Court.

18. In this regard, 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."*

19. In addition, Article 49 of the Law provides:

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

20. In the actual case, the Court notes that the Applicant addressed the IOBK, the Municipal Court in Viti, the District Court in Gjilan, and ultimately the Supreme Court of Kosovo. The Court also notes that the Applicant was served with the Supreme Court Judgment of 3 June on 17 June 2013, while he filed his Referral with the Court on 2 October 2013.

21. Therefore, the Court considers that the Applicant is an authorized party, and has exhausted all available legal remedies according to

applicable law, and the referral was filed within the four-month timeline.

22. Nonetheless, the Court must also take into consideration the 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."*

23. The Applicant alleges that by Judgment, Rev. No. 302/2012 of 3 June 2013, by which it upheld the judgments of the Municipal Court in Viti (Judgment C. no. 214/2011, of 2 May 2012) and the District Court in Gjilan (Judgment Ac. no. 207/12, of 10 July 2012) violate his rights, guaranteed by the Constitution, respectively Article 21 [General Principles], Article 24 [Equality before Law], Article 32 [Right to Legal Remedy], and Article 49 [Right to Work and Exercise Profession] of the Constitution.

24. In this regard, the Constitutional Court reiterates that in accordance with the Constitution, it is not its duty to act as a fourth instance court upon decisions rendered by regular courts. It is the role of regular courts to interpret and apply pertinent rules of procedural and material law (see, *mutatis mutandis,* Garcia Ruiz v. Spain, no. 30544/96, ECHR, Judgment of 21 January 1999; see also case KI70/11 of Applicants Faik Hima, Magbule Hima and Bestar Hima, Inadmissibility Resolution of 16 December 2011*)*.

25. The Constitutional Court can only consider whether the evidence has been presented in a fair manner, and whether the proceedings in general, viewed in their entirety, were conducted in such a way that the Applicant has had a fair trial *(*see, *inter alia*, case Edwards

v. United Kingdom, Application no. 13071/87, Report of the European Commission for Human Rights, 10 July Co1991*)*.

26. Based on the case files, the Court notes that the reasoning provided by the final judgment of the Supreme Court is clear, and upon review of all proceedings, the Court also found that the proceedings in the regular courts were in no way unfair or arbitrary (see, *mutatis mutandis,* Shub v. Lithuania, no. 17064/06, ECHR, resolution of 30 June 2009).

27. Furthermore, the Supreme Court, in its judgment, confirmed that the *"... lower instance courts by determining correctly and completely the factual situation has correctly applied the contested procedure provisions and substantive law whereby they found that the statement of claim of claimant is ungrounded [...]".*

28. The Applicant alleges that his rights pursuant to Article 49 of the Constitution were violated. Article 49 provides:

> *"1. The right to work is guaranteed.*
>
> *2. Every person is free to choose his/her profession and occupation."*

29. In this regard, the "right to work is guaranteed" so long as an individual complies with the lawful terms of his contract for employment and the applicable laws of employment. In this referral there is no evidence that the Applicant ever signed his contract of employment or complied with the applicable employment laws of Kosovo. Indeed, the courts of Kosovo repeatedly found that he did not comply with the applicable laws of employment. Therefore, there is no evidence that the Applicant was denied the right to lawful work.

30. Based on reasons above, the Court notes that the facts submitted by the Applicant do not support in any way the allegation of violation of the constitutional rights, and that the Applicant has not sufficiently substantiated his allegations.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 20 of the Law and Rule 36 (2) b) and d) of the Rules of Procedure, on 24 January 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

KI194/13, KI202/13, KI203/13 and KI204/13, Rrahman Rashiti, Ali Dragusha, Isak Dragusha, Nazim Dragusha, Resolution of 21 January 2014 - Constitutional Review of the Decision SCEL-09-0001, of the Trial Panel of Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo related matters, of 4 February 2010

Cases KI194/13, KI202/13, KI203/13 and KI204/13, decision of 21 January 2014

Key words: individual referral, deadline, privatization, 20% share

The Applicant submitted Referral based on Article 113.7 of the Constitution of Kosovo, challenging 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 4 February 2010, which allegedly disables the Applicants from enjoying their entitlements to a share of 20% of proceeds from the privatization of the Socially-Owned Enterprise "Ramiz Sadiku" (hereinafter: SOE "Ramiz Sadiku"), in Prishtina.

The Applicants were at some time employees of the SOE "Ramiz Sadiku". On 27 June 2006, SOE "Ramiz Sadiku" concluded its privatization. The Applicants were dissatisfied with the decision of the Privatization Agency (hereinafter: the Agency), for not being included on the list of employees entitled to a share of 20% of the proceeds from the privatization of SOE "Ramiz Sadiku", and filed their complaints with the Special Chamber of the Supreme Court.

On 4 February 2010, the Trial Panel of the Special Chamber rendered the decision SCEL-09-0001, which rejected the complaints of the Applicants as ungrounded. In the reasoning of its decision, the Trial Panel found that*: "on the basis of submitted documents to the case files, and during the hearing, the Applicants at the moment of privatization of SOE 'Ramiz Sadiku' were older than 65 years, and therefore, they did not meet requirements as per Article 10.4 of the UNMIK Regulation no. 2003/13."*

Considering the Applicant's referral regarding the constitutional review of the Decision SCEL- 09-0001, the Trial Panel of the Special Chamber of the Supreme Court of Kosovo on the Privatization Agency of Kosovo related matters, of 4 February 2010,

The Constitutional Court found that the Applicants filed their referrals on 11 and 14 November 2013. Based on available case file, the Court also determined that the final decision SCEL-09-0001, of the Trial Panel of the Special Chamber was served upon them on the following dates: the decision in the case KI194/13 was served on Applicant on 10 March 2010, the decision in the case KI202/13 was served upon the Applicant on 24 February 2011, while the Applicants in cases KI203/13 and KI204/13 were served on 13 July 2011, consequently the Applicants filed their referrals with the Court after the expiry of the time limit prescribed by Article 49 of the Law, and Rule 36 (1) b) of the Rules of Procedure.

RESOLUTION ON INADMISSIBILITY
in
Cases no.
KI194/13
KI202/13
KI203/13
KI204/13
Applicants
Rrahman Rashiti, Ali Dragusha, Isak Dragusha, Nazim Dragusha
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 4 February 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. Referrals KI194/13, KI202/13, KI203/13, KI204/13, are filed by: Mr. Rrahman Rashiti from the village of Obrança, Municipality of Podujeva, Mr. Ali Dragusha, Mr. Isak Dragusha, and Mr. Nazim Dragusha, all from the village of Prugovc, Municipality of Prishtina (hereinafter: Applicants).

Challenged decision

2. The Applicants challenge 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: Trial

Panel of the Special Chamber), of 4 February 2010, served on the Applicants on various dates. The Applicant in the case KI194/13 claims that the decision was served upon him on 10 March 2010, the Applicant in case KI202/13 the decision was served upon him on 24 February 2011, while the Applicants in cases KI203/13 and KI204/13 were served on 13 July 2011.

Subject matter

3. The subject matter is constitutional review of the decision which allegedly disables the Applicants from enjoying their entitlements to a share of 20% of proceeds from the privatization of the Socially-Owned Enterprise "Ramiz Sadiku" (hereinafter: SOE "Ramiz Sadiku"), in Prishtina.

Legal basis

4. The Referral is based on Article 113.7 of the Constitution 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 29 and 37 of the Rules of Procedure of the Constitutional Court (hereinafter: the Rules of Procedure).

Proceedings before the Court

5. On 11 and 14 November 2013, the Applicants filed their Referrals with the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 02 December 2013, the President by Decision no. GJR. KI194/13 appointed Judge Ivan Čukalović Judge Rapporteur. On the same day, the President by Decision no. KSH. KI194/13 appointed the Review Panel composed of Judges: Altay Suroy (Presiding), Snezhana Botusharova and Arta Rama-Hajrizi.

7. On 10 December 2013, the President rendered decision on the joinder of cases KI202/13, KI203/13 and KI204/13 into the case KI194/13.

8. On 17 December 2013, in compliance with Rule 37 of the Rules of Procedure, the Court informed the Applicants of the registration and joinder of referrals, and the Court requested from the Applicants to submit evidence on the service of the challenged decision upon them.

9. On the same date, the Court notified the Special Chamber of the Supreme Court.

10. The Applicants have not filed any objection against the decision on the joinder of referrals, and also have not submitted the requested information.

11. On 21 January 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

12. The Applicants were at some time employees of the SOE "Ramiz Sadiku".

13. On 27 June 2006, SOE "Ramiz Sadiku" concluded its privatization.

14. The Applicants were dissatisfied with the decision of the Privatization Agency (hereinafter: the Agency), for not being included on the list of employees entitled to a share of 20% of the proceeds from the privatization of SOE "Ramiz Sadiku", and filed their complaints with the Special Chamber of the Supreme Court.

15. In their complaint to the Special Chamber of the Supreme Court, the Applicants alleged to be victims of discrimination, and that they worked with the SOE "Ramiz Sadiku" until they were forced out of their working places, and that after the war in 1999, they tried to go back to their working places. The Applicants attached to their complaints with the Special Chamber copies of their personal documents, showing that they were born: Applicant in KI194/13 on 1 December 1937; Applicant in KI202/13 on 14 February 1938; Applicant in KI203/13 on 23 May 1939, and Applicant in KI204/13 on 23 April 1939.

16. The Agency replied to the complaints of Applicants through the letter with the Special Chamber, thereby stating that the Applicants do not meet requirements to be included on the list of employees entitled to a share of 20% of the proceeds from the privatization of SOE "Ramiz Sadiku", because at the time of privatization, they had reached the age of 65.

17. On an unknown date, in a hearing before the Trial Panel of the Special Chamber, the Applicants stated that their work-booklets were destroyed during the 1999 war, and that they have filed with the Agency documents which indirectly provide evidence for their working status with the SOE "Ramiz Sadiku", and after 1999, they tried to go back to their working places, but their requests were not taken into account by the superiors in the enterprise. All Applicants filed their personal documents with the Trial Panel.

18. On 04 February 2010, the Trial Panel of the Special Chamber rendered the decision SCEL-09-0001, which rejected the complaints of the Applicants as ungrounded. In the reasoning of its decision, the Trial Panel found that: *„on the basis of submitted documents to the case files, and during the hearing, the Applicants at the moment of privatization of SOE 'Ramiz Sadiku' were older than 65 years, and therefore, they did not meet requirements as per Article 10.4 of the UNMIK Regulation no. 2003/13."*

Relevant legislation

19. UNMIK Regulation no. 2003/13, of 9 May 2003, ON THE TRANSFORMATION OF THE RIGHT OF USE TO SOCIALLY-OWNED IMMOVABLE PROPERTY

Section 10.4 (Entitlement of Employees)

„For the purpose of this section an employee shall be considered as eligible, if such employee is registered as an employee with the Socially-owned Enterprise at the time of privatisation 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

20. The Applicants in their referrals allege that the challenged decision violates their rights to work, and Articles 19 [Applicability of International Law], 22 [Direct Applicability of International Agreements and Instruments] and 24 [Equality before the Law] of the Constitution of the Republic of Kosovo.

21. All applicants address the Court with the request:

> *„to be entitled to a share of 20% of privatization proceeds, like all other employees of the SOE 'Ramiz Sadiku'. "*

Admissibility of the Referral

22. The Court notes that to be able to adjudicate upon the Applicants' complaint, the Court needs first to examine whether the Applicants have fulfilled the admissibility requirements laid down in the Constitution and further specified in the Law and the Rules of Procedure.

23. In this regard, the Court refers to the Article 113.7 of the Constitution, which provides that:

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

24. The Court also notes the 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 (...)".*

25. 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...".*

26. Based on case file, the Court finds that the Applicants filed their referrals on 11 and 14 November 2013. Based on available case file, the Court also determined that the final decision SCEL-09-0001, of the Trial Panel of the Special Chamber was served upon them on the following dates: the decision in the case KI194/13 was served on Applicant on 10 March 2010, the decision in the case KI202/13 was served upon the Applicant on 24 February 2011, while the

Applicants in cases KI203/13 and KI204/13 were served on 13 July 2011, consequently the Applicants filed their referrals with the Court after the expiry of the time limit prescribed by Article 49 of the Law, and Rule 36 (1) b) of the Rules of Procedure.

27. The Court recalls that the purpose 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).

28. It results that the Referrals are out of time.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 20 of the Law and Rule 36 (1) b) of the Rules of Procedure, on 21 January 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
Ivan Čukalović

President of the Constitutional Court
Prof. Dr. Enver Hasani

KI94/13, Avni Doli, Mustafa Doli, Zija Doli and Xhemile Osmanaj, Judgment of 24 March 2014 - Constitutional Review of the Judgment Ac. No. 324/12 of the District Court in Peja, of 21 December 2012

Case KI94/13, decision of 24 March 2014

Key words: Individual Referral, continuous situation, non-execution of administrative decision, *res judicata*, legal certainty, right to a fair and impartial trial, right to legal remedies, judicial protection of rights, legitimate expectation, protection of property

The Applicants challenged the non-execution of the Decision of the Directorate for property matters, cadastre, geodesy and land consolidation of the Municipality of Gjakova which is related with the Judgment of the District Court in Peja, dated 21 December 2012, upholding the Decision of the Municipal Court in Gjakova of 24 April 2012. The Municipal Court in Gjakova by its Decision of 24 April 2011 had annulled its own Decision on the execution of the Decision of the Directorate rendered on 22 December 2011, which became final and binding.

The Applicants claimed that the challenged decisions allegedly violated their rights to: Fair and Impartial Trial, as guaranteed by Article 31 of the Constitution and Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter, the ECHR); Judicial Protection of Rights, as guaranteed by Article 54 of the Constitution, and Protection of Property, as guaranteed by Article 46 of the Constitution and Article 1 of Protocol No.1 to the ECHR.

The Constitutional Court declared the Referral as admissible by holding that the Applicants were an authorized party, have exhausted all legal remedies, have met the deadline requirement as a result of continuous situation, and that they have accurately clarified the alleged violation of the rights and freedoms and referred to the decisions they challenge.

The Constitutional Court referring to the Strasbourg case law considered that the second Decision of the Municipal Court (dated 24 April 2012) reopened a judicial process which already had ended in a final and binding judicial decision and thus was *res judicata*.

As a result, the District Court, when upholding the second decision of the Municipal Court, infringed the principle of legal certainty and,

consequently, violated the Applicant's right to a fair trial, as guaranteed by Article 31 of the Constitution and Article 6 of the ECHR.

The Constitutional Court also held that the impossibility to bring any further legal actions for the non-execution of the Decision of the Directorate also constitutes a violation of Articles 32 and 54 of the Constitution and Article 13 of ECHR.

In addition, the Constitutional Court considered that the Decision of the Directorate constitutes a legitimate expectation for the Applicants that they would be entitled to the property.

In sum, the Constitutional Court concluded that the non-execution of the Decision of the Directorate by the competent administrative authorities and the regular courts, and the ensuing failure to ensure effective mechanisms for the enforcement of respective decisions of the relevant authorities and court decisions, constitutes a violation of Articles 31, 32 and 54 of the Constitution and Articles 6 and 13 of the ECHR.

As a result of this violation, the Applicants were deprived from registering the property in their names. Thus, the right to protection of property guaranteed by Article 46 of the Constitution and Article 1 of Protocol 1 to the ECHR was violated. Therefore, the Decision of the Directorate must be executed.

JUDGMENT
in
Case No. KI94/13
Applicants
Avni Doli, Mustafa Doli, Zija Doli and Xhemile Osmanaj
Constitutional review of the Judgment Ac. No. 324/12 of the District Court in Peja, dated 21 December 2012

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

Composed of

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

Applicants

1. The Referral was submitted by Mr. Avni Doli, Mr. Mustafa Doli, Mr. Zija Doli and Mrs. Xhemile Osmanaj from Gjakova (hereinafter, the Applicants).

Challenged Decision

2. The Applicants challenge the Non-Execution of the Decision of the Directorate for property matters, cadastre, geodesy and land consolidation of the Municipality of Gjakova (hereinafter, the Directorate), dated 1 August 2002, which is related with the Judgment Ac. No. 324/12 of the District Court in Peja, dated 21 December 2012, upholding the Decision E. No. 1395/11 of the Municipal Court in Gjakova, dated 24 April 2012. The Decision of the District Court was served on the Applicants on 18 January

2013, and was subject to a request of protection of legality, rejected on 7 March 2013.

Subject matter

3. The subject matter is the constitutional review of the Non-Execution of the Decision of the Directorate and of the related Judgment of the District Court in Peja (Ac. No. 324/12, dated 21 December 2012), which upheld the Decision (E. No. 1395/11, dated 24 April 2012) of Municipal Court in Gjakova, annulling the Execution Procedure of the Decision of the Directorate.

4. The Applicants claim that the challenged decisions allegedly violated their rights to: Fair and Impartial Trial, as guaranteed by Article 31 of the Constitution and Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter, the ECHR); Judicial Protection of Rights, as guaranteed by Article 54 of the Constitution, and Protection of Property, as guaranteed by Article 46 of the Constitution and Article 1 of Protocol No.1 of the 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 Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter, the Law) and Rule 29 the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter, the Rules of Procedure).

Proceedings before the Court

6. On 3 July 2013, the Applicants submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).

7. On 5 August 2013, the President appointed Judge Almiro Rodrigues as Judge Rapporteur and the Review Panel composed of Judges Altay Suroy (presiding), Kadri Kryeziu and Arta Rama-Hajrizi.

8. On 27 August 2013, the Court informed the Applicants and the Basic Court in Gjakova on the registration of the Referral.

9. On 11 October 2013, the Court also informed the Directorate on the registration of Referral and called for comments on the Referral, if any.

10. On 21 October 2013, the Directorate informed that it fully respects the Decision of the Directorate (No. 11 465-8/93, of 1 August 2002).

11. On 25 October 2013, the Court requested the Directorate information on the registration of the property in the name of Applicants as established in its Decision of 1 August 2002.

12. On 7 November 2013, the Court received the response given by the Directorate.

13. On 10 February 2014, the Review Panel considered the Report of the Judge Rapporteur and made a recommendation to the Court on the admissibility of the Referral.

The facts of the case

14. On 6 April 1975, the Secretariat for legal and administrative matters of Gjakova Municipality decided (No. 03-465-23/1972) on expropriation of the property of the Applicants.

15. On 1 August 2002, the Directorate, upon request of the Applicants, decided (Decision 11 No. 465-8/93) to amend the abovementioned Decision and return parts of cadastral plot No. 5531/1 MA in Gjakova with an area of 0.33.01 ha to the Applicants' possession.

16. The Directorate further decided that the Cadastre and Geodesy Service of the Directorate for property matters, cadastre, geodesy and land consolidation of the Municipality of Gjakova shall unregister the aforementioned immovable property in the name of the Municipality of Gjakova and register it in the name of the Applicants.

17. That Decision advised that *"Against the Decision an appeal can be submitted through this body to the Executive Chief of the Municipality of Gjakova within a time limit of 15 days, from the day of the receipt of this Decision"*.

18. That Decision bears a certification reading: *"Decision is final. Gjakova, 09.01.2003"*.

19. The Directorate executed its Decision 11 No. 465-8/93 dated of 1 August 2002 in relation to a third party; but not in relation to the Applicants.

20. On 4 June 2004 and on 17 September 2004, the Applicants requested to the Directorate the execution of its Decision in relation to them.

21. On 22 September 2011, the Directorate informed the Applicants that *"In relation to the expropriation 11 no. 465-8/1993 dated 01.08.2002, final from 09.01.2003, once more we notify you that this Decision as such cannot be registered in the cadastral system because it is incomplete [...]. Thus, this Directorate directs you to address the Municipal Court in Gjakova regarding the realization of the rights you seek, although so many years have passed"*.

22. Subsequently, on 13 December 2011, the Applicants proposed to the Municipal Court in Gjakova the Execution of the Decision 11 No. 465-8/93 dated 1 August 2002.

23. On 22 December 2011, the Municipal Court (E. No. 1395/11) decided that "*The Executive Debtor is obliged within the time limit of 7 days/ and in contests related to the bill of exchange and checks within the time limit of 3 days/ from the day the Decision is served to pay the debt together with the specified procedure expenses"*.

24. The Decision of the Municipal Court advises that *"The Party can challenge this Decision at this Court within 7 days starting from the day of receipt of this Decision"*.

25. Meanwhile, on 24 April 2012, the Municipal Court (E. No. 1395/11) decided [...] *"to annul the Decision E. No. 1395/11 dated 22 December 2011, (...) and annul all actions undertaken in this matter"*. The Municipal Court reasoned that [...]*" from what it stated above pursuant to Article 24 item b), the document- the quoted Decision is not an Executive Title since the enacting clause of the Decision does not foresee any monetary obligation of the debtor towards the creditors, whereas the enforcement of this Decision is not foreseen by other laws"*.

26. On 15 May 2012, the Applicants filed an appeal with the District Court in Peja against that Decision of the Municipal Court.

27. The Applicants argued that the Decision (E. No. 1395/11) of the Municipal Court, of 22 December 2011, has not been appealed by the Directorate and thus it became final and executable.

28. The Applicants further argued that [...] " *it is not clear to the creditors how is it possible to annul the Decision permitting the creditors' proposal dated 22.12.2011 when this Decision was not challenged by the debtor within the legal time frame on the grounds of any reasons mentioned in Article 55 of the LEP [Law on Execution Procedure], since Article 13.1 of the LEP provides that: "The decision against which the objection is not filed in foreseen time-limit becomes final and executable", a circumstance which defines the challenged Decision as ungrounded and illegal [...]".*

29. The Applicants concluded that *[...] "the first instance court has committed serious violations of legal provisions and has erroneously implemented the substantive law against the creditors [...]".* The Applicants further requested the District Court to approve as grounded their joint appeal and oblige the Directorate to register the immovable property in the name of the Applicants.

30. On 21 December 2012, the District Court (Judgment Ac. No. 324/12) rejected the appeal of the Applicants as ungrounded and upheld the Decision of the Municipal Court in Gjakova (E. No. 1395/11, of 24 April 2012).

31. The District Court held that [...] *"the first instance court pursuant to Article 24, item b) in conjunction with Article 44 of the Law on Executive Procedure by the challenged Decision annulled the Decision rendered in administrative procedure that is not related to monetary obligations does not represent an Executive Title"* and concluded that *[...]" the challenged Decision did not contain essential violations of the provisions of contested procedure as foreseen in Article 182.2 of LCP* [Law on Contested Procedure] *and the substantive law has been correctly implemented, considered by the second instance court in its ex officio mandate as foreseen in Article 194 of the LCP, regardless whether they have been raised or not by the submitter of appeal."*

32. The Applicants submitted a request for protection of legality to the State Prosecutor of Kosovo.

33. On 7 March 2013, the State Prosecutor notified the Applicants that, in his opinion, there was no legal basis to proceed with the request for protection of legality. On 3 July 2013, the Applicants filed their referral with this Court.

34. On 11 October 2013, the Court, in its notification of the registration of the Referral to the Directorate, invited the Directorate to comment on the Referral.

35. On 21 October 2013, the Directorate commented that: *[...] "In relation to your note the Directorate for Geodesy, Cadastre and Property of Gjakova Municipality, by analyzing all these, on this matter, notifies You, respectively this Directorate's comment is as follows: I fully remain by the final Ruling of the Directorate for legal affairs, cadastre, geodesy and land consolidation of Gjakova Municipality no.11-465-8/93, dated 01.08.2001, that became final on 09.01.2013, that obliged the DEBTOR to return in possession and permanent use to the applicants of this Referral and Rexhep Doli from Gjakova, ½ of the ideal part respectively 1/6 of the ideal part to each of plot no.5531/1 MA Gjakova- outside the city with an area of 0.33.01 ha, as emphasized in the enacting clause of this Ruling, thus the administrative Authority forwarded the Ruling to be executed pursuant to its enacting clause".*

36. On 25 October 2013, the Court additionally requested the Directorate to inform about the reasons for having registered the property at stake in the name of R.D., and for not having registered yet the same property in the name of the Applicants, as established in the Decision of the Directorate (No. 11 465-8/93, of 1 August 2002).

37. On 7 November 2013, the Directorate informed that *"the Decision of the Directorate for property, legal, cadastre, geodesy and land consolidation matters of Gjakova Municipality, that became final on 09.10.2003, was sent to the cadastre and geodesy service in Gjakova on 14.01.2003, to register it in cadastre registers, which is proven by the service note, a copy of which is enclosed to this notification. To find out in the name of which beneficiary this immovable property has been registered, or not registered, for the other beneficiaries, please refer to the cadastre and geodesy service, within the Directorate for geodesy, cadastre and property of Gjakova municipality on this matter, and this service will*

provide to you exact information on how the immovable property acquired with the above mentioned Decision has been registered".

The arguments of the Applicants

38. As said above, the Applicants claim that the District Court (Judgment Ac. No. 324/12) rejected the appeal of the Applicants as ungrounded and upheld the Decision of the Municipal Court in Gjakova (E. No. 1395/11, of 24 April 2012).

39. The Applicants argue that *[...] "Gjakova Municipality did not submit at all an appeal for the reasons stated in Article 55 of the LEP [Law on Execution Procedure]. Therefore the Decision became final pursuant to the provisions of Article 13.1 of the LEP, that confirms that the Applicants have been discriminated and their rights and freedoms have been violated, namely:*
"The right to a fair and impartial hearing in relation to the decisions on the rights and obligations guaranteed with the provisions of Article 31, paragraphs 1 and 2 of the Constitution;
The right to judicial protection in case of violations or denial of a right guaranteed,..." such as the right of property, guaranteed with the provisions of Article 54 of the Constitution, and the rights pursuant to Article 7.1 of the Constitution of Kosovo, European Convention No.6 and 13, Protocol No.14 of EU (European Union) and European Convention – Protocol No.1 of the Convention dated 20.03.1952, that entered into force on 18.05.1954, which added 6 new provisions for the protection of human rights and fundamental freedoms, among which the right for the protection of property".

40. The Applicants conclude requesting the Constitutional Court:

> *"The execution of the Decision of Directorate for Property Matters, Cadastre, Geodesy and Property of Gjakova Municipality, 11 No. 465-8/93 dated 01.08.2002 and to OBLIGE Gjakova Municipality - Directorate for Cadastre, Geodesy and Property in Gjakova, to register under the name of the Applicants, within the time limit of 8 days from the day this Decision is received, land banks no. 80, 81, 82, 84, 86 and 88 that are part of cadastral plot no.5531/1, Gjakova Cadastral Municipality – outside city limits, with a total area of 0.33.01 ha (or 3301 m2), and compensate their procedural expenses".*

Relevant legal provisions relating to procedures for the execution of administrative and court decisions

Law on Executive Procedure (Law no. 03/L-008)

Article 1 [Content of the law]

"1.1 By this law are determined the rules for court proceedings according to which are realised the requests in the basis of the executive titles (executive procedure), unless if with the special law is not foreseen otherwise.

1.2 The provisions of this law are also applied for the execution of given decision in administrative and minor offences procedure, by which are foreseen obligation in money, except in cases when for such execution, by the law is foreseen the jurisdiction of other body".

Article 24 (1) [Execution title]

"Execution titles are:

a) execution decision of the court and execution court settlement;
b) execution decision given in administrative procedure and administrative settlement, if it has to do with monetary obligation and if by the law is not foreseen something else;
c) notary execution document;
d) other document which by the law is called execution document".

Article 26 (3) [Executability of decision]

"A given decision in administrative procedure is executable if as such is done according to the rules by which such procedure is regulated".

Law on Enforcement Procedure (No. 04/L-139)

Article 22 .1 [Legal Basis for Awarding Enforcement] provides:

"*1. Enforcement documents are:*

[...]

1.2. enforcement decision awarded in administrative procedure and administrative settlement (hereinafter: the settlement).”

Admissibility of the Referral

41. First of all, the Court examines whether the Applicants have fulfilled the Referral’s admissibility requirements.

42. In that respect, the Court refers to Article 113 of the Constitution which provides:

> *“1. The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties.*
> [...]
> *7. Individuals are authorized to refer violations by public authorities of their individual rights and freedoms guaranteed by the Constitution, but only after exhausting all legal remedies provided by law.”*

43. The Court also refers to Article 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.”*

44. The Court also takes into account Rule 36 (1) of the Rules of Procedure, which foresees:

> *“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."

45. The Court notes that the Applicants may legitimately claim to be victims of the non-execution of the Decision of the Directorate, which was in their favour and also the impossibility to bring further actions for the non-execution of the Decision of the Directorate for several years.

46. The Court further notes that the Applicants have sought all judicial remedies to protect their rights before the Municipal Court, the District Court and the State Prosecutor.

47. The Court also notes that the requirement for the submission of the Referral within the time limit of four (4) months does not apply in the case of the non-execution of decisions by the public authority. (See *mutatis mutandis* Iatridis v. Greece No. 59493/00, ECtHR, Judgment of 19 October 2000). The ECtHR explicitly noted, in a similar situation arising in Iatridis v. Greece, that the time limit rule does not apply where there is a refusal of the executive to comply with a specific decision.

48. The Court further notes that the Judgment Ac. No. 324/12 of the District Court, dated 21 December 2012, was served on the Applicants on 18 January 2013 and the Applicants filed a request of protection of legality with the State Prosecutor. On 7 March 2013, the State Prosecutor rejected such a request.

49. In that respect, the Court considers that the non-execution of the Decision of the Directorate continues even today. Thus, the requirement of submitting the Referral within four (4) months after the final court decision is not applicable in the case.

50. In fact, a similar situation of the non-execution of both the Court and Independent Oversight Board of Kosovo decisions has arisen in a number of other cases before the Constitutional Court. In these cases, the Court has found the existence of a continuing situation and, thereby, the non-applicability of the established time limit of four (4) months. (See Constitutional Court Case No. KI 08/09, Applicant Independent Trade Union of the employees of the Steel Factory IMK Ferizaj, Judgment dated 17 December 2010 and Case KI 50/12, Applicant Agush Lolluni, Judgment dated 16 July 2012).

51. Therefore, the four (4) months deadline is rendered irrelevant by the continuing situation.

52. In addition, the Court notes that the Applicants have indicated what constitutional rights they claim to have allegedly been violated and they challenge the concrete Directorate Decision (No. 11 465-8/93, of 1 August 2002), the Decision of the Municipal Court (No. 1395/11), of 24 April 2012, and the Judgment of the District Court (Ac. No. 324/12), of 21 December 2012.

53. In sum, the Court considers that the Applicants are an authorized party, have exhausted all legal remedies, have met the deadline requirement as a result of continuous situation, and that they have accurately clarified the alleged violation of the rights and freedoms and referred to the decisions they challenge.

54. Therefore, the Court concludes that the Referral meets all the requirements for admissibility.

Substantive legal aspects of the Referral

55. The Applicants mainly allege a violation of their rights to

    a). Fair and Impartial Trial, as guaranteed by Article 31 of the Constitution and Article 6 of the ECHR;

    b). Judicial Protection of Rights, as guaranteed by Article 54 of the Constitution, and

    c). Protection of Property, as guaranteed by Article 46 of the Constitution and Article 1 of Protocol No. 1 of the ECHR.

56. The Court reviews the merits of each of the Applicant's allegations.

57. As said above, the Applicants claim that the challenged decision violated their right to fair and impartial trial, as guaranteed by Article 31 of the Constitution and Article 6 of the ECHR.

58. The Applicants argue that *[...] "Gjakova Municipality did not submit at all an appeal for the reasons stated in Article 55 of the LEP. Therefore the Decision became final pursuant to the provisions of Article 13.1 of the LEP, that confirms that the Applicants have been discriminated and their rights and freedoms have been violated [...]".*

59. The Court recalls that the Municipal Court decided (E. No. 1395/11, of the 22 December 2011) on the Execution of the Decision of the Directorate (hereinafter, the first Decision).

60. The aforementioned Decision of the Municipal Court advises that *"The Party can challenge this Decision at this Court within 7 days starting from the day of receipt of this Decision"*.

61. The Directorate did not file an appeal against that Decision of the Municipal Court.

62. In this respect, the Court considers that, in the absence of any appeal filed by the Directorate in its capacity of debtor, the Decision became final and binding (*res judicata*) and as such executable.

63. However, on 24 April 2012, the Municipal Court decided [...] *"to annul the Decision E. No. 1395/11 dated 22 December 2011 (...) and annul all actions undertaken in this matter"* (hereinafter, the second Decision).

64. The Court notes that that second Decision dated of 24 April 2012 was taken almost five months after the Municipal Court having rendered the Decision E. No. 1395/11 dated 22 December 2011 on execution and without any request of the interested parties.

65. In this respect, 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."*

66. In addition, Article 6 (1) of the 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."*

67. The Court 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."*

68. The European Court of Human Rights (hereinafter, the ECtHR) has quite often stressed the prominent place of the right to a fair trial in a democratic society. (See, Perez v France, No. 47281/99, ECtHR, Judgment of 12 February 2004).

69. In the instant case, the Applicants proposed to the Municipal Court the execution of the Decision of the Directorate. The Municipal Court in its first Decision granted the Applicant's proposal for the execution of the Decision of the Directorate. That decision of the Municipal Court became final and binding and thus acquiring the status of *res judicata*. However, the right of the Applicants to a court became illusory, because the same Municipal Court, with its second Decision, annulled that final and binding Decision.

70. On the other side, the right to a fair trial also implies that a final and binding Decision *(res judicata)* becomes irreversible. In fact, the ECtHR held that *"one of the fundamental aspects of the rule of law is the principle of legal certainty, which requires inter alia that where the courts have finally determined an issue, their ruling should not be called into question"*. (See, *mutatis mutandis*, Brumarescu v. Romania, No. 28342/95, ECtHR, Judgment of 28 October 1999, par. 61).

71. Accordingly, the principle of legal certainty presupposes respect for *res judicata*, which is the finality of judgments. (See Brumarescu v. Romania, No. 28342/95, ECtHR, Judgment of 28 October 1999, par. 62). *"This principle underlines that no party is entitled to seek a review of a final and binding court decision merely for the purpose of obtaining a rehearing and a fresh determination of the case. The review should not be treated as an appeal in disguise, and the mere possibility of there being two views on the subject is not a ground for re-examination. A departure from that principle is justified only when made necessary by circumstances of a substantial and compelling character"*. (See Ryabykh v. Russia, No. 52854/99, ECtHR, Judgment of 24 July 2003, par. 52. See also

KI55/11, Applicant Fatmir Pirreci, Constitutional Court, Judgment of 16 July 2012, par. 42).

72. The Court notes that the second Decision of the Municipal Court, annulling its first Decision, was rendered without any initiative or appeal filed by the parties.

73. In this relation, Article 13 (1) of the Law on Execution Procedure foresees that: *"The decision against which the objection is not filed in foreseen time-limit becomes final and executable."*

74. The Court further considers that the second Decision of the Municipal Court reopened a judicial process which already had ended in a final and binding judicial decision and thus was *res judicata*. (See Rosca v. Moldova, No. 6267/02, ECtHR, Judgment of 22 March 2005, par. 28).

75. As a result, the District Court, when upholding the second decision of the Municipal Court, infringed the principle of legal certainty and, consequently, violated the Applicant's right to a fair trial, as guaranteed by Article 31 of the Constitution and Article 6 of the ECHR.

76. In addition, the Court notes that the Municipal Court, in its second Decision, reasoned that [...] *"from what it stated above pursuant to Article 24 item b), the document- the quoted Decision is not an Executive Title since the enacting clause of the Decision does not foresee any monetary obligation of the debtor towards the creditors, whereas the enforcement of this Decision is not foreseen by other laws".*

77. On 21 December 2012, the District Court (Judgment Ac. No. 324/12) rejected the appeal of the Applicants as ungrounded and upheld the second Decision of the Municipal Court.

78. The District Court held that [...] *"the first instance court pursuant to Article 24, item b) in conjunction with Article 44 of the Law on Executive Procedure by the challenged Decision annulled the Decision rendered in administrative procedure that is not related to monetary obligations does not represent an Executive Title"* and concluded that *[...]" the challenged Decision did not contain essential violations of the provisions of contested procedure as foreseen in Article 182.2 of LCP* [Law on Contested Procedure] *and the substantive law has been correctly implemented, considered by the second instance court in its ex officio mandate as foreseen*

in Article 194 of the LCP, regardless whether they have been raised or not by the submitter of appeal."

79. In this regard, the Court refers to its case law (See among others Constitutional Court Case KI04/12 Applicant Esat Kelmendi, Judgment dated 20 July 2012 and Case KI112/12, Applicant Adem Meta, Judgment of 5 July 2013), whereby a similar situation of the non-execution of administrative decisions by courts, which also did not exclusively foresee a monetary obligation has arisen. In these cases, the Court concluded that a decision issued by an administrative body established by law, produces legal effects for the parties and, therefore, such a decision is a final administrative and executable decision.

80. The aforementioned case law of the Court is reflected in the newly adopted Law No. 04/L-139 on Execution Procedure, of 20 December 2012. In fact, Article 22 1. 2. provides:

> *"1. Enforcement documents are:*
>
> *[...]*
>
> *1.2. enforcement decision awarded in administrative procedure and administrative settlement (hereinafter: the settlement)."*

81. Therefore, the Court concludes that the decision of the Directorate was final and executable.

82. The Court considers that the execution of a final and executable decision should be taken as an integral part of the right to a fair trial, as guaranteed by Article 31 of the Constitution and Article 6 of ECHR. The above-mentioned principle is of greater importance within the administrative procedure regarding a dispute, which result is of special importance for the civil rights of the party. (See, *mutatis mutandis*, Hornsby v. Greece, Judgment of 19 March 997, reports 1997-II, p. 510, paras. 40-41).

83. It follows from the above that the District Court in Peja, when upholding the decision of the Municipal Court not to execute a final and executable administrative decision, violated the Applicant's right to a fair and impartial trial, as guaranteed by Article 31 of the Constitution and Article 6 of the ECHR.

84. Furthermore, the Applicants argue that [...] "*The right to judicial protection in case of violations or denial of a right guaranteed, such as the right of property, guaranteed with the provisions of Article 54 of the Constitution[...]*".

85. In this respect, the Court also refers to Article 32 and 54 of the Constitution and Article 13 of ECHR.

86. Article 32 [Right to Legal Remedies] establishes that:

> *"Every person has the right to pursue legal remedies against judicial and administrative decisions which infringe on his/her rights or interests, in the manner provided by law."*

87. Article 54 [Judicial Protection of Rights] establishes that:

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

88. In addition, Article 13 of the ECHR states that:

> *"Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."*

89. In that respect, the Court notes that the Applicants exhausted all legal remedies available regarding the execution of the Decision of the Directorate. However, despite their efforts, that Decision was not executed either by the competent bodies of the Municipality of Gjakova, or by the competent courts.

90. The Court reiterates that the inexistence of legal remedies or of other effective mechanisms for the execution of the Decision of Directorate affects the right to an effective legal remedy, as guaranteed by Articles 32 [Right to Legal Remedies], 54 [Judicial Protection of Rights] of the Constitution, and Article 13 of the ECHR. According to these provisions, each person has the right to use legal remedies against the judicial and administrative decisions, which violate his rights or interests as provided by law. (See *mutatis mutandis,* Voytenko v. Ukraine, No. 18966/02, Judgment dated 29 June 2004, paragraphs 46-48).

91. Furthermore, *"the competent authorities have the obligation to organize an efficient system for the implementation of decisions which are effective in law and practice, and should ensure their application within a reasonable time, without unnecessary delays"*. (See Case Constitutional Court case KI50/12, Applicant Agush Lolluni, Judgment of 16 July 2012, par. 41. See also Pecevi v. Former Yugoslavian Republic of Macedonia, no. 21839/03, ECtHR, Judgment of 6 November 2008).

92. Therefore, the Court concludes that the impossibility to bring any further legal actions for the non-execution of the Decision of the Directorate also constitutes a violation of Articles 32 and 54 of the Constitution and Article 13 of ECHR.

93. The Applicants also allege a violation of Article 46 [Protection of Property] of the Constitution and Article 1 of Protocol No.1 of the ECHR.

94. Article 46 [Protection of Property] of the Constitution establishes:

> *"1. The right to own property is guaranteed.*
> *2. Use of property is regulated by law in accordance with the public interest.*
>
> *3. No one shall be arbitrarily deprived of property. The Republic of Kosovo or a public authority of the Republic of Kosovo may expropriate property if such expropriation is authorized by law, is necessary or appropriate to the achievement of a public purpose or the promotion of the public interest, and is followed by the provision of immediate and adequate compensation to the person or persons whose property has been expropriated.*
>
> *4. Disputes arising from an act of the Republic of Kosovo or a public authority of the Republic of Kosovo that is alleged to constitute an expropriation shall be settled by a competent court."*

95. Article 1 of Protocol No. 1 of ECHR 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."

96. In that respect, the Court recalls that the Decision of the Directorate became final and binding on 9 January 2003.

97. Thus, the Court considers that the Decision of the Directorate constitutes a legitimate expectation for the Applicants that they would be entitled to the property. (See Constitutional Court case KI40/09, Imer Ibrahimi and 48 other Employees of the Kosovo Energy Corporation, Judgment of 23 June 2010).

98. Such legitimate expectation is also guaranteed by Article 1 of Protocol No. 1 to the Convention. (See *mutatis mutandis* Gratzinger and Gratzingerova v. the Czech Republic, No. 39794/98, ECHR, Decision of 10 July 2002, para 73).

99. Therefore, the Constitutional Court considers that the Applicants have a *"legitimate expectation"* to have the property registered in their names as provided in the Decision of the Directorate, which became final and binding on 9 January 2003. (See *mutatis mutandis* Pressos Compania Naviera SA and Others v. Belgium, ECHR, Judgment of 20 November 1995, Series A no. 332, para. 31).

100. For the foregoing reasons, the Court concludes that the non-execution of the Decision of the Directorate constitutes a violation of Article 46 of the Constitution in conjunction with Article 1 of Protocol No. 1 of ECHR.

Conclusion

101. In conclusion, the Court finds that the non-execution of the Decision of the Directorate by the competent administrative authorities and the regular courts, and the ensuing failure to ensure effective mechanisms for the enforcement of respective decisions of the relevant authorities and court decisions, constitutes a violation of Articles 31, 32 and 54 of the Constitution and Articles 6 and 13 of the ECHR. As a result of this violation, the Applicants are deprived from registering the property in their names. Thus, the right to protection of property guaranteed by Article 46 of the Constitution

and Article 1 of Protocol 1 of the ECHR was violated. Therefore, the Decision of the Directorate must be executed.

102. At the outset, the Court clarifies that this conclusion only relates to the alleged Constitutional violations. In fact, the conclusion does not relate to whether the judgment of the regular courts or the earlier administrative decision of the Directorate correctly interprets the applicable law, because the Constitutional Court cannot act as a court of fourth instance with respect to what is the proper interpretation of the law.

103. In sum, in accordance with the Rule 74 of the Rules, the Judgment Ac. No. 324/12 of the District Court in Peja dated 21 December 2012 is invalid and, in accordance with Article 39 (2) of the Law on Courts, the case is remanded to the Court of Appeal for reconsideration.

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 24 March 2014,

DECIDES

I. TO DECLARE the Referral admissible;

II. TO HOLD that there has been violation of Articles 31, 32, 46 and 54 of the Constitution, in conjunction with Article 6 and 13 of the ECHR and Article 1 of Protocol 1 to the ECHR;

III. TO DECLARE INVALID the Judgment Ac. No. 324/12 of the District Court in Peja, of 21 December 2012, AND REMAND the case to the to the Court of Appeal for reconsideration in conformity with the Judgment of the Constitutional Court, namely for taking into account that the Decision of the Directorate must be executed;

IV. TO REMIND the competent authorities of their obligations under Article 116 [Legal Effect of Decisions] of the Constitution and Rule 63 [Enforcement of Decisions] of the Court's Rules of Procedure;

V. TO ORDER the Court of Appeal, pursuant to Rule 63 (5) of the Rules of Procedure, to submit information to the Constitutional Court about the measures taken to enforce this Judgment of the Constitutional Court;

VI. TO NOTIFY this Judgment to the Parties;

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

VIII. TO DECLARE this Judgment effective immediately.

Judge Rapporteur
Almiro Rodrigues

President of the Constitutional Court
Prof. Dr. Enver Hasani

KI187/13, N. Jovanović, Judgment of 1 April 2014 - Constitutional Review regarding non-execution of the Decision GSK-KPAA-001/12 of the Appellate Panel of the Supreme Court, of 8 May 2012, and of the Decision of Kosovo Property Claims Commission no. KPCC/D/A/114/2011, of 22 June 2011

Case KI187/13, decision of 1 April 2014

Key words: individual referral, execution procedure, right to fair and impartial trial, right to property, manifestly ill-founded referral, admissible referral.

In the present case, the Applicant alleged that regular court proceedings violated her constitutional rights guaranteed by Articles 24, 31, 32, 46, 54; and Articles 6, 13, 14 of the ECHR, and Article 1, Protocol 1 to the ECHR. Further, the Applicant requests from the Court: 1) "To adjudicate the right to restitution of property 2) To adjudicate the compensation for the damages suffered due to violation of rights of the Applicant as guaranteed by the Constitution of Kosovo, 3)To adjudicate the amount of 300.000.00 Euros for material damages suffered by the Applicant, and 30.000,00 Euros for non-material damages, which are immeasurable in nature, due to violation of human rights 4)For the amounts decided to be paid promptly upon publication of Decision/Judgment of the Constitutional Court of Kosovo.

Regarding this case, the Court summoned a public hearing to hear arguments of Kosovo Property Agency regarding the Applicant's claims. After hearing the arguments of the parties to the proceeding, on 1 April 2014, the Court found violation of the rights guaranteed by the Constitution and the European Convention on Human Rights.

As a conclusion, the non-execution of the KPCC Decision by the KPA and the failure of competent authorities of the Republic of Kosovo to ensure efficient mechanisms for execution of final decisions are in contradiction with the principle of the Rule of Law and constitute violation of the fundamental human rights guaranteed by the Constitution. In these circumstances, the Court concludes that the non-execution of the final Decision KPCC/D/A/114/2011 constitutes a violation of Article 31 of the Constitution in conjunction with Article 6.1 of ECHR and Article 54 of the Constitution.

Furthermore, the Court found that the Applicant was unjustly deprived of her property due to the delay and non-execution of the Decision KPCC/D/A/114/2011. Thus, the Applicant's right to peaceful enjoyment of her property, as guaranteed by Article 46 of the Constitution and Article 1 of Protocol 1of ECHR, has been also violated.

JUDGMENT
in
Case No. KI187/13
Applicant
N. Jovanović
Constitutional review regarding non-execution of the Decision GSK-KPA-A-001/12 of the Appellate Panel of the Supreme Court, of 8 May 2012, and of the Decision of Kosovo Property Claims Commission no. KPCC/D/A/114/2011, of 22 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 Referral was filed by Mrs. N. Jovanović (hereinafter: the Applicant), residing in Belgrade, Republic of Serbia.

2. The Applicant requested that her identity be not disclosed.

Challenged decision

3. The Applicant challenges the non-execution of the Decision GSK-AKP-001/12, of 8 May 2012, of the Appellate Panel of the Supreme Court (hereinafter: the Appellate Panel), and of the Decision no. KPCC/D/A/114/2011, of 22 June 2011, of the Kosovo Property Claims Commission (hereinafter: the KPCC Decision).

Subject matter

4. The subject matter of this Referral is the constitutional review regarding non-execution of the Decision GSK-AKP-001/12, of 8

May 2012, of the Appellate Panel and of the KPCC Decision no. KPCC/D/A/114/2011, of 22 June 2011 in the Applicant's case no. 16008, filed with the Kosovo Property Agency on 23 August 2005.

5. The Applicant alleges that as a result of the non-execution of the above-mentioned decisions, her rights guaranteed by Article 3 [Equality before the Law], Article 31 [Right to Fair and Impartial Trial], Article 32 [Right to Legal Remedies], Article 46 [Protection of Property], Article 53 [Interpretation of Human Rights Provisions], Article 54 [Judicial Protection of Rights] of the Constitution of Kosovo, and relevant articles of the European Convention of Human Rights (hereinafter: the ECHR): Article 6, paragraph 1 [Right to Fair Trial], Article 13 [Right to Effective Legal Remedies], Article 14 [Prohibition of Discrimination], Article 1 of Protocol 1 of the ECHR [Protection of Property], were violated.

6. Amongst others, the Applicant requests from the Court to impose an interim measure.

Legal basis

7. 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), Rule 55 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

8. On 29 October 2013, the Applicant filed a Referral with the Court.

9. On 4 November 2013, the President of the Court, by Decision GJR. KI187/13, appointed Judge Ivan Čukalović as Judge Rapporteur. On the same date, the President of the Court, by Decision No. GJR. KI187/13 appointed the Review Panel, composed of Judges: Altay Suroy (Presiding), Snezhana Botusharova and Arta Rama-Hajrizi (members).

10. On 20 November 2013, the Court notified the Applicant, the Office for Legal Aid in Graçanica, as per recommendation of the Applicant, Kosovo Property Agency (hereinafter: the KPA), the Appellate Panel, and L. F., as an interested party of the registration of Referral.

11. On 22 November 2013, the Court requested from the KPA additional clarifications in relation to the case.

12. On 20 January 2014, the Review Panel, following the reporting of the case by the Judge Rapporteur, concluded that additional clarifications be requested from the KPA .

13. On 23 January 2014, the President of the Court proposed to the full Court to hold a public hearing, regarding further clarification of the case. The President's proposal was unanimously supported by all present judges in this session and it was decided that the public hearing be held on Monday, 10 March 2014.

14. On 30 January 2014, as per the request of the Review Panel, the Court requested from KPA to file its response regarding the additional clarifications..

15. On 10 February 2014, the KPA filed its response to the request.

16. On 11 February 2014, the Court summoned the Kosovo Property Agency, in capacity of the opposing party, to participate in the public hearing session, , on 10 March 2014, starting at 10:00 hrs. On the same date, the summon for participation in the hearing of 10 March 2014 was communicated to the Applicant Mrs. N. J. and to the Legal Aid Office in Gracanica, upon her recommendation.

17. On 19 February 2014, the Court received a telephone call from KPA, regarding the confirmation of participation in the public hearing of 10 March 2014. The KPA will be represented in this hearing by Mrs. Mirvete Sopjani and Florie Kika.

18. On 10 March 2014, the President of the Court confirmed the participation of the Applicant's and KPA representatives in this public hearing. The Applicant was represented by her daughter Mrs. Dragana Jovanović and by Mr. Rastko Brajković, her representative, whereas KPA was represented by Mrs. Mirvete Sopjani and Mrs. Florie Kika. The session commenced at 10:00 hrs and ended at 12:35 hrs.

19. On 1 April 2013, the Court voted on the admissibility and the merits of the Referral.

Summary of the facts

20. On 23 August 2005, the Applicant filed a claim with the KPA against L. F. for confirmation of the right of possession of the immovable property in Sofali neighborhood in Prishtina, registered in the possession list no. 361 in Prishtina.

21. On 22 June 2011, the KPCC, by Decision No. KPCC/D/A/114/2011, claim no. 16008, found that the Applicant is the holder of property right, and ordered any person occupying the property to vacate the property within a timeline of 30 days, or otherwise will be forcibly evicted from the property.

22. Furthermore, the KPCC Decision, respectively claim no.16008, which is dedicated to the Applicant reads:

"In Claim No. 16008 the Claimant N. Jovanović has filed the claim in the capacity of a property right holder. The Claimant states that she is the owner of the claimed property based on possession list No.361 and contract on gift dated 1980 issued by her late mother Leposave-Savke. Both documents have been positively verified by the Executive Secretariat. The Claimant also asserts that the property is occupied against her consent, and that a residential construction has been erected on the property without her permission. Based on the notification of the claimed property by the Executive Secretariat, such a construction exists. The current occupant of the property, L. F. (the "Respondent"), alleges that sometime in 2000 he was contacted by an unknown person who presented himself as the owner of the claimed property. He concluded a purchase contract with this individual and alleges to have paid DM 2,000 deposit to him. No further payments have been made. The Respondent states that he later found out that the individual from whom he purchased the claimed property was not the owner of the property and alleges to be in contact with the Claimant through a lawyer to negotiate the purchase of the property.
[...]
The Commission considers that the Respondent was aware when occupying the claimed property that the property did not belong to him, and that he had no permission to use the property. The Respondent therefore must also have understood that the erection of a residential property on the property was unlawful, and that he therefore has no right to the claimed property. Accordingly, the

Claimant's claim stands to be granted and an eviction order issued as set out above".

23. On 14 December 2011, Mr. L. F. filed a complaint with the Appellate Panel, against the KPCC Decision (KPCC/D/A/114/2011), thereby claiming that the KPCC decision was untrue and incomplete.

24. On 8 May 2012, the Appellate Panel, by its Judgment GSK-KPA-A-001/12, rejected the complaint of Mr. L. F. because the complaint was filed out of time and that Mr. L. F. had not provided any acceptable justification on such delay. The reasoning of the Judgment is as follows:

> "*On 22 June 2011, the KPCC with its decision KPCC/D/A/114/2011 (regarding case registered at the KPA under the number KPA16008) decided that the claim of Mrs. N. S. Jovanović was grounded, i.e. that she is the owner of the claimed property and ordered the respondent to vacate it.*
>
> *The KPA has reasoned that the Applicant has successfully confirmed her ownership right. The KPA considers "that the respondent was aware when occupying the claimed property that the property did not belong to him, and that he had no permission to use the property. The respondent therefore must also have understood that the construction of a residential property on the property was unlawful and that he therefore has no right to the claimed property.*
>
> *The respondent (hereinafter: the appellant) was served with the decision KPCC/D/A/114/2011 (regarding case file registered at the KPA under the number KPA16008) on 08 November 2011. He filed an appeal on 14 December 2011, stating that the decision was incorrect and erroneous.*
>
> *He does not dispute that the Applicant is the owner of cadastral parcel 748/1 with a surface of 18 are and 41 square meters, but he claims that he has possessed this land since 2000 and has built 3 two-floor family houses. He refers to violations of the Law on basic property relations (Official Gazette SFRY No 6/80). The appellant claims that, "given that more than 3 years have passed by since the buildings – houses were constructed…they (the owner of the land) can only ask for the market price for the land-their parcel but not for the return*

of the stated land". He also claims that the demolition of the buildings would not be socially justified and that the owner can only ask for payment. The appellant refers to Articles 2 and 5 of the Law on basic property relations but it is obvious that the numbering he proposes is wrong, because the provisions he is referring to are in Article 25, paragraphs 2 and 5 of the said law.

[...]

Legal reasoning:

The appeal is belated (Art. 186.2 of Law No. 03/L-006 on Contested Procedure). Section 12.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079 provides as follows: "Within thirty (30) days of the notification to the parties by the Kosovo Property Agency of a decision of the Commission on a claim, a party may submit through the Executive Secretariat of the Kosovo Property Agency to the Supreme Court of Kosovo an appeal against such decision.

The appellant was served with the decision on 8 November 2011. So, the time limit ended on 8 December 2011. Yet, the appellant filed his appeal only on 14 December 2011, which is outside the above noted time limit. He has given no excuse and the Court cannot detect any reason for the delay.

Therefore the appeal had to be rejected as inadmissible on procedural grounds (Section 13.3 subparagraph (b) of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079.

Accordingly, the Court does not have to decide whether and how the provisions of Art 25, paragraphs 2 and 5 of the Law on basic property relations (Official Gazette SFRY No 6/80) are applicable in this case."

25. On 14 November 2012, the Applicant filed a request with the KPA for restitution of the property into possession. The Applicant stated in her request that her right over the disputed property was confirmed by the KPCC Decision (No. KPCC/D/A/114/2011, claim no. 16008) and the Judgment of the Appellate Panel (GSK-AKP-A-001/12).

26. On 5 June 2013, the KPA, with its letter Ref. No. 00906/13/fk, replied to the Applicant, thereby clarifying the complex situation of the property, due to construction of buildings, thereby currently disallowing demolition of such buildings. Amongst others, the KPA offered the Applicant a possibility of mediation by its trained

representatives: *"the Agency may mediate between you and the user of the property, with a view of finding an amicable solution on the use of your property. The Agency employs trained mediators".*

27. On 11 July 2013, the Applicant submitted a letter with the KPA Supervisory Council, thereby complaining against the KPA Executive Secretariat in failing to execute the Judgment of the Appellate Panel (GSK-AKP-A-001/12) and the KPCC Decision No. KPCC/D/A/114/2011, claim no. 16008), but no reply is found in the case files.

28. On 19 August 2013, the Applicant sent a letter to the Office of the Disciplinary Counsel, thereby presenting her dissatisfaction with the delays in executing the decisions by the KPA Secretariat.

29. On 3 October 2013, the Applicant received from the Office of the Disciplinary Counsel the letter no. KDT/13/zp/892, by which she was notified that the Office of the Disciplinary Counsel *"does not have the legal mandate (competency) to investigate the potential unprofessional (negligence) conduct of KPA employees".*

KPA responses

30. On 22 November 2013 the Court requested from KPA additional clarifications related to the case, and on 26 November 2013, it received this reply:

> *"Pursuant to UNMIK Regulation 2006/50 amended and supplemented by Law no.03/L-079, respectively Chapter 5 Article 15: "Remedies for the execution of a decision may include, but are not limited to eviction, placing the property under administration, a lease agreement, seizure and demolition of unlawful structures and auction." The Agency in addition to eviction also applies other legal remedies for the execution of Decisions envisaged by the Standard Operating Procedure, such as: eviction, placing the property under administration, lease agreement, seizure and demolition of unlawful structures, seizure and compensation, expropriation, placing servitude, intermediation and auction.*
>
> *The Agency pursuant to the applicable legislation mentioned above and also considering the complex nature of the cases when in the property that is the object of claim new*

structures/buildings are built and in order to avoid harmful consequences to the parties, in cases similar to that of Mrs. N. Jovanović has commenced applying the legal remedy of Unbiased Intermediation.

On 3 September 2013, Mrs. N. Jovanović was again notified by the Agency officials in relation to claim KPA 16008 and she was offered the intermediation as a remedy for solving the matter but she rejected it again.

We notify you that the execution of the Decision through the legal remedy "demolition of illegal structures" at this stage is impossible for the Agency due to the lack of financial means to hire a demolition company. The Agency in the proposed budget for 2014 has sought funds to this purpose and if they are permitted it will commence to implement this legal remedy for executing the Decisions".

31. On 30 January 2014, the Court requested from the KPA to file its response, regarding the proposed question by the members of the Review Panel and by the full Court, in the deliberation session of 20 January 2014.

32. On 10 February 2014, KPA submitted the following response to the Court:

"Kosovo Property Agency (the Agency), wants to inform you that we have received your letter of 30 January 2014, No. 160/14/ZL, where you have requested information on the execution of the claim KPA 16008, submitted in the Agency by Mrs. N. Jovanović.

Pursuant to UNMIK Regulation 2006/50 on the establishment of Kosovo Property Agency (the Agency), amended and supplemented by the Law no. 03/L-079, adopted by the Assembly of the Republic of Kosovo, the Agency has competencies to accept also through Property Claims Commission to resolve the claims related to the conflict over the property and the claims that include the rights of the property use, including the circumstances related directly or which result from the armed conflict, that occurred in Kosovo between 27 February 1998 and 20 June 1999.

As we have informed you earlier, the Agency has no capacity to demolish facilities constructed on the occupied properties.

For this reason, the funds were requested from the Kosovo Budget to engage the companies to perform this work, namely to implement this legal remedy of the execution of the decisions but unfortunately the request of the Agency has not been approved. Once the financial means are provided, the Agency will start with implementation of the decision of the Commission with priority, however, we cannot provide any specific date on which these claims will be finally resolved. The Agency is making maximal efforts and will further continue to find an opportunity of implementation of these cases.

Thank you for your cooperation and if you need any additional information or clarification, please do not hesitate to contact us."

Applicant's allegations

33. The Applicant alleges that regular court proceedings violated her constitutional rights guaranteed by Articles 24, 31, 32, 46, 54; and Articles 6, 13, 14 of the ECHR, and Article 1, Protocol 1 to the ECHR.

34. Further, the Applicant requests from the Court: *1)"To adjudicate the right to restitution of property 2) To adjudicate the compensation for the damages suffered due to violation of rights of the Applicant as guaranteed by the Constitution of Kosovo 3)To adjudicate the amount of 300.000.00 Euros for pecuniary damages suffered by the Applicant, and 30.000,00 Euros for non-pecuniary damages, which are immeasurable in nature, due to violation of human rights 4)For the amounts decided to be paid promptly upon publication of Decision/Judgment of the Constitutional Court of Kosovo."*

Allegations of the Applicant's representatives in the public hearing of 10 March 2014

35. In this public hearing, the Applicant was represented by Mrs. Dragana Jovanović (the Applicant's daughter), and the Mr. Rastko Brajković (authorized representative, Legal Aid Office in Graçanica). In this public session, Mrs. D. Jovanović, stated among other things that: *in 1999, together with her son and her mother (the Applicant) they fled from Kosovo, by leaving their property. Later on, they found out that in their property were constructed houses. After four (4) months we understood the name of the*

person, who constructed the houses in our property. After this event, we addressed the KPA and submitted our evidence regarding the (immovable) property in a surface area of 0.18 ha. Based on the documents submitted by my mother (the Applicant), the KPA confirmed that she is the legitimate owner of the abovementioned property. After this, we were notified by KPA that the property over the immovable property was challenged by a person, who had constructed the houses in this property. On this occasion, Mrs. D. Jovanović requests that her property issue is fairly solved by Kosovo institutions.

36. The Applicant's representative, among other things, stated: *despite all submitted evidence, the Applicant has not been able to exercise her right over the immovable property for a long period of time, since 1999, i.e. since 2007, when she addressed KPA for confirmation of ownership. If the submitted documentation is examined from the legal point of view, it is noted that there are no disputed elements over this property. The entire procedure lasted in an unreasonable way. Taking into account that the execution of a court decision, as defined by the ECtHR case law, I refer in particular to the case Hornsby v. Greece, where is stated that the execution of a decision is an integral part of the right to a fair trial, and that the effective legal remedy should not remain only in paper, but also to be implemented in practice. In this case, there are violations of the right to a fair trial, taking into account the nature of the case and all the evidence and unreasonable delay of the entire procedure. Since the decision has been rendered and until now, the KPA decision has not been executed. Everything else represents the empty wording that does not lead to the enjoyment of the right to address the system for judicial protection of the acquired rights. Finally, taking into account the KPA response that they do not possess sufficient budget, it is expected a many-year delay, due to the fault of the authority that is competent for providing protection to these persons, so, it is clear that such a case is not expected to be resolved within a short period of time.*

Statements by KPA representatives in the public hearing of 10 March 2014

37. In this public hearing, KPA representative stated among other things that: *based on UNMIK Regulation no. 2006/50, as supplemented by Law no. 03/L-079 on KPA, the KPA is competent for resolving such cases. The Kosovo Property Claims Commission (KPCC) within the KPA, resolves the claims of the parties, related*

to the armed conflict, from February 1998 until 20 June 1999. Among these cases, the claim of Mrs. N. Jovanović was the subject of review before the KPA.

By KPCC Decision (KPCC/D/A/114/2011, claim no. 16008), Mrs. N. Jovanović. was recognized the right of possession of the immovable property in question, and ordered any person occupying the property to vacate the property within a timeline of 30 days, from the day of receiving this order. The parties were notified of this decision in a timely manner. Following this, Mr. L.F. filed appeal against the KPCC Decision with the Appellate Panel of the SC on KPA matters. On 8 May 2012, the Appellate Panel of SC rendered the decision, rejecting Mr. L.F. appeal, whereby the KPCC decision became final. Based on its practice, after the KPA is served with the decision from the Appellate Panel, it immediately notifies the parties in the procedure and takes actions in order that the decision is executed within 15 days, following the notification of the parties. However, due to created circumstances, the KPA failed to execute the KPCC decision, due to construction of the new structures in that property; it is about the construction of new houses. The obstacles appeared because, to deliver the possession of the immovable property to the legitimate owner, the KPA needed additional funds to demolish the constructed houses. Apart from the demolition of the structures, the KPA, under the law, has in disposal other legal remedies, such as the remedy of intermediation. The KPA, due to the lack of funds, could not execute the decision, since the budget has already been approved and for this reason, the KPA on 21 October 2013, requested from the Ministry of Finance the approval of the additional budget for 2014, which would ensure the KPA progress and its mandate, but although our requests were reasoned, the Ministry of Finance did not approve the request for additional budget. On 5 June 2013, in order to execute the KPCC decision, the KPA contacted Mrs. N. Jovanović and notified her of the circumstances of the case and requested from her to accept the remedy of intermediation, in order that the issue of the immovable property is solved by agreement and in a friendly manner. However, N. Jovanović. J. rejected our request. Another attempt was also made in September 2013, but we have received the same response. It is worth of being mentioned that the KPA has 42.600 cases in total. The KPA possesses only 21 cases similar to the case of Mrs. N. Jovanović, out of which 14 have accepted the remedy of intermediation.

Comments of Applicant's representatives on the statements of KPA representatives

38. The Applicant's representative stated: *the KPA had sufficient time to resolve this legal matter. However, it reacted after Mrs. N. Jovanović filed the Referral with the Constitutional Court. The Applicant was told that the KPA does not have sufficient funds to execute the KPCC Decision. This is the substance of that appeal. The remedy of intermediation is not at all disputable; perhaps the Applicant would be interested in that legal remedy. According to the Anglo-Saxon law, in this situation, there is no equality of parties, since one party was denied the right to possession of the property for 15 years in a row, while the other party benefited in an unlawful manner from the Applicant's property. We refer to the case Dogan v. Turkey, where there were violations of the rights of displaced parties, although the proceedings to overcome this had existed.*

Parties' answers to the Court's questions

39. The Applicant's representative stated that: *the Referral is based on Article 31, 32, 53 and 54 of the Constitution. These provisions may be connected to 6, 8, 13 and Article 1 of Protocol 1 of ECHR.* Furthermore, he added: *from the statements of the KPA representatives, it has been concluded that the Agency is competent for execution of the decision in question, but as it is evident, it has not provided the proceedings how to achieve this, since we do not have strict time limits to see when this right will be exercised. We have mentioned, in our appeal, several cases when the execution of the court decision is an element of the right to fair trial. The reason why the intermediation was rejected was the delay and buying in time by KPA and that was the reason why the remedy of intermediation was rejected by the Applicant. The KPA had no clear platform what would happen if the intermediation did not succeed. In addition, KPA did not foresee funds for the demolition of the erected houses. It should have been arranged in advance by proceedings. The Applicant was later told that unfortunately there were no funds to demolish those houses. This fact made that we address the Constitutional Court with our appeal.* Mrs. D. Jovanović stated on that occasion: *we were not against the intermediation; it is not that we did not want that, but this offer did not exist in the beginning and it was not convincing.*

40. Mrs. D. Jovanović stated among other things: *we do not want anybody's house to be destroyed, but we want a reasonable*

compensation for that parcel, I absolutely do not agree that the houses are demolished. The Applicant's representative, further explained, by saying: *the Applicant's response is clear, meaning that she wants an effective intermediation.* The KPA representatives replied stating that: *the property was visited several times on 16 January 2013, and Mr. L. F. was again notified of the decision of the Supreme Court Appellate Panel and he was ordered to vacate the immovable property of Mrs. N. Jovanović, but this did not happen. The KPA representatives state that when in cases the eviction is not possible, the KPA uses other available remedies, such as intermediation. On 5 June 2013, the Applicant was notified of the created situation and it was requested from her to accept the remedy of intermediation. In July 2013, the Applicant submitted a letter by which she stated that she does not agree with intermediation. On 3 September 2013, the Applicant was contacted again by KPA and she was again requested to accept the intermediation.*

41. The KPA representatives stated: *the Agency is the only competent authority for execution of these decisions of the SC Appellate Panel. Regarding the mediation proceedings, representative of KPA stated*: *if the parties agree on the intermediation, then the Agency will render a decision, which will be later communicated to the parties. The procedures provide that the intermediation takes place in several stages, usually 3 to 5 sessions. If the parties reach an agreement on this case, the KPA mandate ends. If reached agreement is not respected, the parties may later initiate other judicial proceedings. […]when the agreement fails, then the KPA proceeds with other available remedies to demolish the structures, constructed in that property. KPA representatives at the end of the session stated:* KPA is ready starting from tomorrow, 11 March 2011, to proceed with the mediation remedy.

42. However, from 11 March 2014 until the date when it was decided on the case, the Court does not possess any information from KPA on the actions taken.

Admissibility of the Referral

43. In order to be able to adjudicate the Applicant's Referral, the Court first needs to examine whether the Applicant has met the admissibility requirements provided by the Constitution, and further specified by the Law and Rules of Procedure of the Court.

44. With respect 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"*.

45. In this respect, the Applicant has exhausted all legal remedies, provided by law, and due to lack of any other available effective remedy, she has addressed the Constitutional Court with the request for execution of the Judgment GSK-KPA-A-001/12 of 8 May 2012, of the Appellate Panel, which upheld the Decision no. KPCC/D/A/114/2011 of 22 June 2011 of KPCC.

46. 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..."*

47. The Court wishes to reiterate that the requirement for the submission of the Referral within the time limit of four (4) months does not apply in the case of the non-execution of the decisions by the public authority (see, *mutatis mutandis Iatridis v. Greece No. 59493/00, ECtHR, Judgment of 19 October 2000*). The ECtHR explicitly noted, in a similar situation arising in Iatridis v. Greece, that the time limit rule does not apply where there is a refusal of the executive to comply with a specific decision.

48. 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"*.

49. Regarding the fulfillment of this requirement, the Court notes that the Applicant has accurately specified what rights, guaranteed by the Constitution have allegedly been violated to her, by non-execution of the Judgment of the Appellate Panel and of the KPCC Decision, by referring to the ECtHR case law in her case.

50. The Court further notes that the Applicant may legitimately claim to be a victim of the non-execution of the KPCC Decision, which was upheld by the Judgment of the Appellate Panel GSK-KPA-A-001/12 of 8 May 2012.

51. In sum, the Court considers that the Applicant is an authorized party; she has exhausted all legal remedies; she has met the requirement of the legal deadline as a result of a continuing situation, and that she has accurately clarified the alleged violation of the rights and freedoms and she has referred to the ECtHR case law, for exercising her right to enjoy and possess the property.

52. Since the Applicant has fulfilled the procedural requirements, provided by the Constitution, the Law and the Rules of Procedure, the Court considers that the Referral is admissible for review on the merits.

Merits of Referral

53. The Court notes that the Applicant alleges violation of her constitutional rights, guaranteed by Article 3 [Equality before the Law]; Article 32 [Right to Legal Remedies]; Article 46 [Protection of Property]; Article 53 [Interpretation of Human Rights Provisions]; Article 54 [Judicial Protection of Rights]; as well as by the respective Articles of the European Convention on Human Rights, Article 6 paragraph 1 [Right to a fair trial]; Article 13 [Right to an effective remedy]; Article 14 [Prohibition of discrimination]; Article 1 of Protocol 1 of ECHR [Protection of Property].

54. In this case, the Court will examine the merits of the Referral, pursuant to Article 31 in conjunction with Article 6.1 of ECHR, Article 46 in conjunction with Article 1 of the Protocol 1 of ECHR and 54 of the Constitution [Judicial Protection of Rights].

As to alleged violation of the right to fair and impartial trial

55. The Court notes that the Applicant mainly alleges that the delay and non-execution of the Decision of Appellate Panel GSK-AKP-001/12 and KPCC Decision (KPCC/D/A/114/2011), violate her rights to a fair trial.

56. In this respect, the Court refers to Article 31 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."

57. In addition to this, Article 6.1 [Right to a fair trial] of ECHR establishes:

"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."

58. Moreover, Article 54 of the Constitution provides that:

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

59. In the present case, under UNMIK Regulation 2006/50, as amended and supplemented by Law no. 03/L-079 of the Republic of Kosovo, the Court finds that the KPA is the only responsible and competent organ for the execution of the decision of Appellate Panel of the Supreme Court on Kosovo Property Agency Related Matters and of the decisions of the Kosovo Property Claims Commission of KPA. This fact was confirmed also by KPA representatives in the public hearing session held on 10 March 2014 in this Court.

60. The Court notes that the decision of KPCC KPCC/D/A/114/2011 recognized Applicant's right of ownership over the property in question. Against that decision, Mr. L. F. filed an appeal with the Appellate Panel of the Supreme Court. His appeal was rejected as belated. In this context, we understand that the KPCC Decision has become final and represents an adjudicated matter.

61. In the sense of the execution of those decisions, the Applicant approached KPA several times requesting to have its property returned into her possession. Further, she approached other institutions of the Republic of Kosovo. The Applicant has continuously made efforts to exercise her right in an institutional way, but this right of hers has not been exercised.

62. In this regard, the Court notes that it is the right of an unsatisfied party to initiate court proceedings in case of the failure of realization of the earned right as provided by Article 31 of the Constitution of the Republic of Kosovo and Article 6 in conjunction with Article 13 of the European Convention on Human Rights (ECHR). It would be meaningless if the legal system of the Republic of Kosovo allow that a final judicial decision remains ineffective in disfavor of one party. Interpretation of the above Articles exclusively deals with the access to the court. Therefore, non-effectiveness of procedures and the non-implementation of the decisions produce effects that bring to situations that are inconsistent with the principle of the Rule of Law (Article 7 of the Constitution), a principle that the Kosovo authorities are obliged to respect (see *ECtHR Decision in the case Romashov v. Ukraine, Submission No. 67534/01. Judgment of 25 July 2004*).

63. The Court considers that the execution of a decision rendered by a court should be considered as an integral part of the right to a fair trial, a right guaranteed by the above articles (see *case Hornsby v. Greece case, Judgment of 19 March 1997, reports 1997-II, p. 510, par. 40*). In this specific case, the Applicant should not have been deprived of the benefit of a final decision, which is in her favor.

64. No authority can justify non-execution of decisions, intending to obtain revision and fresh review of the case (*see*, *Sovtranstvo Holding against Ukraine, No. 48553/99, § 72, ECtHR 2002-II, and Ryabykh v. Rusia, No. 52854/99, § 52, ECtHR 2003-IX*).

65. Competent authorities, therefore have an obligation to organize an efficient system for implementation of decisions which are effective in law and practice, and should ensure their implementation within reasonable time, without unnecessary delays (see *Pecevi v. former-Republic of Yugoslavia and Macedonia, no. 21839/03, 6 November 2008; Martinovska v. Former-Republic of Yugoslavia and Macedonia, no. 22731/02,25 September 2006*).

66. The Court emphasizes that it is not its duty to determine what is the most appropriate way for KPA to find efficient mechanisms of execution, within its competences, in the sense of completely fulfilling the obligations it has under the Law and the Constitution. However, every individual is entitled to judicial protection in case of violation or denial of any right guaranteed by the Constitution or by law (see Article 54 of the Constitution).

67. Therefore, the burden of the responsibility for the non-execution and for not finding adequate mechanisms for the execution of the final Decision of KPCC, KPCC/D/A/114/2011, falls primarily with KPA itself. The lack of executive mechanisms of this public institution should not in any way be an excuse of the denial of the right to enjoy property.

As to the allegation of the violation of the right to protection of property

68. The Applicant alleges the violation of Article 46 of the Constitution [Protection of Property] and Article 1 of the Protocol no. 1 of ECHR.

69. Article 46 [Protection of Property] of the Constitution provides:

> 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 (…)".*
>
> *[…]*

70. Article 1 of Protocol 1 of ECHR 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."*

71. Regarding the alleged violation of the protection of property, the Court concludes that the KPCC Decision presents a legitimate expectation for the Applicant, that she is entitled to the of the property. Therefore, the Applicant is entitled to enjoy peacefully that property, as guaranteed by Article 1 of Protocol no. 1 of the Convention. Under these circumstances, her right to enjoyment

and possession of property was denied (see, *mutatis mutandis, Gratzinger and Gratzingerova v. the Czech Republic (dec.), no. 39794/98, para. 73, ECtHR 2002-VII*).

In relation to the request for imposing interim measure

72. In this regard, the Court refers to Article 116.2 [Legal Effect of Decisions] of the Constitution, which provides: *"While a proceeding is pending before the Constitutional Court, the Court may temporarily suspend the contested action or law until the Court renders a decision if the Court finds that application of the contested action or law would result in unrecoverable damages"*.

73. The Court also takes into consideration Article 27 of the Law, which provides:

> *"The Constitutional Court ex-officio or upon the referral of a party may temporarily decide upon interim measures in a case that is a subject of a proceeding, if such measures are necessary to avoid any risk or irreparable damages, or if such an interim measure is in the public interest"*.

74. Regarding this request, the Court notes that the Applicant has not substantiated or proved why and how would she suffer irreparable damages with the non-execution of the KPCC Decision. A request for imposition of an interim measure must be substantiated on real grounds for a risk or an irreparable damage, the value of which would be irrecoverable in material and monetary aspect.

75. In this respect, the Court did not find real grounds for approving the request for imposing interim measure as required by Article 27 of the Law.

76. The Court wishes to emphasize that in the public hearing, the representatives of KPA pledged that on 11 March KPA would undertake concrete measures so that within a reasonable period of time and in an expedited procedure, by mediation, it would organize three to five sessions for reaching an acceptable agreement for the Applicant which means a monetary compensation of the real value of the property. KPA representatives also pledged that in case of failure to reach an agreement, under the applicable law, KPA would finally make use of other available remedies, such as the demolition of the

structures built by the illegal user and the return of the property into possession of the legitimate owner.

77. In this regard, the Court refers to Rules 63 (4) of the Rules of Procedure which provides: *"4) The Court may specify in its decision the manner of and time-limit for the enforcement of the decision of the Court."*

78. Therefore, in accordance with the abovementioned Rule, the Court orders KPA to fulfill its pledge for execution of the KPCC decision and to inform the Constitutional Court on the measures taken to enforce this Judgment of the Court within three (3) months.

CONCLUSION

79. As a conclusion, the non-execution of the KPCC Decision by the KPA and the failure of competent authorities of the Republic of Kosovo to ensure efficient mechanisms for execution of final decisions are in contradiction with the principle of the Rule of Law and constitute violation of the fundamental human rights guaranteed by the Constitution.

80. In these circumstances, the Court concludes that the non-execution of the final Decision KPCC/D/A/114/2011 constitutes a violation of Article 31 of the Constitution in conjunction with Article 6.1 of ECHR and Article 54 of the Constitution.

81. Furthermore, the Court finds that the Applicant was unjustly deprived of her property due to the delay and non-execution of the Decision KPCC/D/A/114/2011. Thus, the Applicant's right to peaceful enjoyment of her property, as guaranteed by Article 46 of the Constitution and Article 1 of Protocol 1 of ECHR, has been also violated.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 20 of the Law and Rule 56 (1) of the Rules of Procedure, in its session held on 1 April 2014, unanimously:

DECIDES

I. TO DECLARE the Referral admissible;

II. HOLDS that there has been a violation of Article 31 of the Constitution in conjunction with Article 6.1 of ECHR;

III. HOLDS that there has been a violation of Article 54 of the Constitution;

IV. HOLDS that there has been a violation of Article 46 of the Constitution in conjunction with Article 1 of Protocol 1 of ECHR;

V. DECLARES that the Decision no. KPCC/D/A/114/2011 of 22 June 2011 must be executed by Kosovo Property Agency;

VI. ORDERS Kosovo Property Agency, pursuant to Rule 63 of the Rules of Procedure, to submit information to the Constitutional Court within three (3) months about the measures taken to enforce the Judgment of this Court.

VII. TO NOTIFY this Judgment to the Parties;

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

IX. This Judgment is effective immediately.

Judge Rapporteur
Prof. Dr. Ivan Čukalović

President of the Constitutional Court
Prof. Dr. Enver Hasani

KI200/13, Belkize Kallaq, Judgment of 24 March 2014 - Constitutional Review of the Judgments of the Supreme Court, Rev. Mlc. No. 329/2012 and Rev. No. 356/2009, dated 24 June 2013 and 20 January 2012 respectively, and Judgment Ac. No. 52/2012 of the District Court of Prizren, of 11 May 2012

Case KI200/13, decision of 24 March 2014

Key words: Individual Referral, violation of the right to property, violation of the right to a fair trial and impartial trial.

The subject matter is the constitutional review of the Judgments of the Supreme Court, Rev. Mlc. No. 329/2012 and Rev. No. 356/2009, dated 24 June 2013 and 20 January 2012 respectively, and Judgment Ac. No. 52/2012 of the District Court of Prizren, dated 11 May 2012.

The Applicant filed a claim with the Municipal Court where she requested the court to determine that the respondents from Peja obstructed her in the possession of her two room apartment in Peja by unlawfully settling down in her apartment. The Municipal Court held that it could not offer judicial protection to the Applicant since according to the Municipal Court the respondents did not commit the act of obstruction of possession but that was done by other persons. The Applicant appealed before the District Court and the latter rejected her appeal as ungrounded.

Following that, the Applicant seized the Housing and Property Claim Commission seeking an order for the registration of ownership of the apartment. Her request was approved. Following this Decision of the Housing and Property Claim Commission, the respondents requested the reconsideration of that request which was ultimately rejected.

After receiving a confirmation of ownership from the Housing and Property Claim Commission, the Applicant filed a claim with the Municipal Court in Prizren requesting the confirmation of that ownership. The Municipal Court in Prizren rejected her claim as ungrounded. She then appealed successfully before the District Court in Prizren which quashed the Decision of the Municipal Court by reasoning that the first instance court was obliged to accept the decisions of the Housing and Property Claim Commission and that the matter could not be subject to review in court proceedings. Following that, the respondents filed a revision with the Supreme Court. The latter accepted the revision filed by the respondents, quashed the Judgment of the

District Court in Prizren and returned the case to the second instance court for retrial.

As a result, the District Court in Prizren, whilst adjudicating the same matter for the second time, rejected as unfounded the appeal of the Applicant filed against the Judgment of the Municipal Court whereby the Applicant's statement of claim that she was the owner of the apartment had been rejected. The Applicant then filed a revision with the Supreme Court against this Judgment of the District Court stating that the same District Court had first quashed the Judgment of the Municipal Court and now confirmed the same judgment by using a completely different reasoning. Finally, the Supreme Court rejected as unfounded the Applicant's revision as well as the request for protection of legality filed by the State Prosecutor thus confirming the Judgment of the Municipal Court which denied the Applicant's ownership over the apartment.

The Applicant then filed a Referral with the Constitutional Court. In her Referral, the Applicant alleged that the challenged Judgments violated her right guaranteed by Article 46 [Protection of Property] in conjunction with Article 1 [Right to Property] of Protocol 1 to the European Convention on Human Rights as well as Article 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo in conjunction with Article 6 [Right to a Fair Trial] of the European Convention on Human Rights and Article 53 [Interpretation of Human Rights Provisions] of the Constitution of the Republic of Kosovo.

The Constitutional Court declared the Referral admissible and held that there has been a violation of Article 46 of the Constitution in conjunction with Article 1 of Protocol 1 to the ECHR and that there has been a violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR.

Regarding the Applicant's right to property, the Court held that the Decision of the House Property Claim Commission became res judicata after it has been certified by the Registrar of the HPCC on 24 July 2007 and since then the Applicant was entitled to enjoy the rights to ownership and possession. Thus, the Constitutional Court concluded that there has been a violation of Applicant's rights guaranteed by Article 46 of the Constitution in conjunction with Article 1 of Protocol 1 to the ECHR.

Regarding the Applicant's right to a free and impartial trial, the Constitutional Court concluded that by neglecting to properly assess the Applicant's arguments regarding her not having received a copy of respondent's revision and her not having been able to participate in the hearing before the Supreme Court to make her case, the Supreme Court has not respected the rights claimed by the Applicant. Thus, the Constitutional Court concluded that there has been a violation of Article 31 of the Constitution in conjunction with Article 6 ECHR.

JUDGMENT
in
Case No. KI200/13
Applicant
Belkize Kallaq
Constitutional review of
Judgments Rev.Mlc.nr.329/2012 and Rev.nr.356/2009
of the Supreme Court of Kosovo of 24 June 2013 and of 20 January 2012, respectively, and
Judgment Ac.nr.52/2012 of the District Court of Prizren of 11 May 2012

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

Composed of:

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

Applicant

1. The Applicant is Ms. Belkize Kallaq from Peja, who is represented by Mr. Adem Vokshi, a practicing lawyer from Mitrovica.

Challenged decisions

2. The challenged decisions are Judgment Ac. no. 52/2012 of the District Court of Prizren of 11 May 2012 and Judgments Rev. no. 356/2009 and Rev. Mlc. no. 329/2012 of the Supreme Court of Kosovo of 20 January 2012 and of 24 June 2013, respectively. Judgment Rev.Mlc.no.329/2012 was served upon the Applicant on 12 August 2013.

Subject matter

3. The subject matter concerns the Applicant's complaint that the challenged decisions violated her rights under Article 46 [Protection of Property] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) in conjunction with Article 1 [Right to Property] of Protocol 1 to the European Convention on Human Rights (hereinafter: ECHR) as well as Articles 31 [Right to Fair and Impartial Trial] in conjunction with Article 6 ECHR and 53 [Interpretation of Human Rights Provisions] of the Constitution.

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 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: "the Rules of Procedure").

Proceedings before the Court

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

6. By Decision of the President (no. GJR.200/13 dated 3 December 2013), Judge Snezhana Botusharova was appointed as Judge Rapporteur. On the same day, by Decision of the President (no.KSH.200/13), the Review Panel was appointed composed of Judges Robert Carolan (Presiding), Almiro Rodrigues and Enver Hasani.

7. By letter of 19 December 2013, the Applicant's Attorney was informed of the registration of the Referral under no. KI200/13 and requested to submit copies of Judgment Rev.Mlc.no.329/2012 of the Supreme Court of 24 June 2013; Judgment C.no.850/2005 of the Municipal Court in Vushtri of 19 April 2007; Judgment Ac.no.199/2007 of the District Court in Mitrovica of 18 September 2007; Judgment C.no.406/2006 of the Municipal Court in Prizren of 29 August 2008; Judgment Ac.23/2009 of the District Court in Prizren of 16 March 2009; Judgment of the District Court in Prizren to which the case was returned by Judgment Rev.356/2009 of the Supreme Court of 20 January 2012; Judgment N.no.223/2008 of the Municipal Court in Peja of 15 June 2009; and the Judgment of the District Court in Prizren to which the case

was assigned by Judgment C.no.14/2010 of the Supreme Court of 3 December 2010.

8. A copy of the Referral was forwarded to the Supreme Court of Kosovo for information on 19 February 2014.

9. On 24 March 2014, the Court deliberated and voted on the Case.

Summary of facts

10. On 4 June 2001, the Municipal Court in Peja, by Judgment C. no. 121/01, rejected the Applicant's statement of claim by which she requested the court to determine that the respondents from Peja obstructed her in the possession of her two room apartment located in Peja, by unlawfully settling down in the apartment on 16 February 2001, and to order the respondents to return the apartment to her within 48 hours.

11. The Municipal Court held that it could not offer judicial protection to the Applicant, due to the fact that it was undoubtedly determined that the respondents did not commit the act of obstruction of possession, but that it was done by other persons. It also observed that other evidence, such as the different sales contracts, were irrelevant for deciding differently on the matter, since the grounds for the statement of claim were *obstruction of possession* and not *determination of ownership*. The Applicant appealed the ruling in due time.

12. On 22 April 2002, the District Court in Prizren, by Judgment Ac. no. 234/2001, rejected as ungrounded the appeal filed by the Applicant, for the reason that the challenged ruling was based on the correct and complete determination of the factual situation, whereby the material right was correctly applied and that the reasons provided by the first instance court did not raise any doubt as to the fairness of the decision.

13. The Applicant then seized the Housing and Property Claims Commission (hereinafter: HPCC) seeking an order for the registration of the ownership of the apartment. Her claim was registered under No. DS001477.

14. On 15 July 2006, the HPCC, by Decision No. HPCC/D/259/2006/B&C, ruled that:
"[...]

(1) In the Category B Claim No. DS001447 the Commission orders that:

(a) the ownership of the Claimant [Applicant] in respect of the claimed property be registered in the appropriate public record;

(b) the Claimant be given possession of the claimed property;

(c) the Respondent and any other person occupying the property vacate the same within 30 days of the delivery of this order; and

(d) should the Respondent or any other person occupying the property fail to comply with the order to vacate within the time stated, they be evicted from the property.

(2) The above order is without prejudice to the jurisdiction of the competent local court to amend the relevant public record in the event that such court annuls the transaction on which the Commission's order in paragraph 1 is based.

[…]."

15. The HPCC reasoned that:

"*A. Category B claim granted*

4. The Commission has carefully reviewed the category B Claim No. DS001447 in light of the criteria set out in paragraph I above and the precedents set by the Commission in its earlier decisions. The Claimant bases her claim on an unverified purchase contract purportedly entered into between her, as purchaser, and X., as seller, on 10 May 1996 (the "Claimant's contract"). X.'s ownership of the property was based on a verified purchase contract entered into on 22 December 1992 with the organisation "DP Kombinat Koze I Obuce". It was verified in court and is clearly genuine.

5. The Respondent relies on a purchase contract purportedly entered into between her and the Claimant's former partner, Y., on 20 December 2000, registered at the local court, and an unverified purchase contract purportedly entered into on 20 March 1996 between Y. and X. (the "Y. contract"). The Claimant

contends that the Y. contract was fraudulently entered into by her former partner after the NATO air campaign, but backdated. Accordingly, she says, the Respondent could not have derived valid title from her former partner. She also says that as owner she had possession of the property from the time of purchase until the time when she left for Sweden in 2000 to join her now husband. The Respondent has been properly notified of the claim. She asserts that the Y. contract, as well as the registered contract whereby she purportedly purchased the apartment from him, are valid.

6. *The Commission, acting in terms of section 19.4 of UNMIKREG/2000/60, appointed one of its members to hear oral evidence pertaining to the claim. The Commissioner interviewed the Claimant and Z., the son of X. Z. is recorded as a witness to the Claimant's sale (along with her former partner, the second witness). It was not possible to interview X.. Y. was traced, and agreed to attend an interview with the Commission on an agreed day. He did not arrive on the agreed day, but asked for a postponement of the interview. Again he did not arrive and rescheduled. Once more he failed to attend. After that he stopped responding to the calls from the Commission's registry staff.*

7. *The Commission has concluded that the Claimant's contract was truly entered into on the dates referred to in the contract and that the Y. contract is false. In arriving at its conclusion, the Commission has had regard to the Commissioner's assessment of the credibility of the witnesses, the fact that Z. does not dispute that the Claimant's contract was truly entered into and witnessed by him (although he asserts that the Y. contract is valid, without being able to explain why the Claimant's contract would then have been entered into), the fact that the Claimant has proven that she had exclusive possession of the apartment subsequent to the Claimant's purchase (through utility bills and the testimony of Z.) and the evasive conduct of Y.*

8. *Accordingly, the Claimant has established that she entered into a voluntary transaction to purchase residential property between 23 March 1989 and 13 October 1999. The transaction was unlawful under the provisions of the Law on Special Conditions Applicable to Real Estate Transactions because it lacked the permission of the Ministry of Finance in terms of that law. The transaction would otherwise have been lawful.*

Consequently, the claim meets the requirements in paragraph I above and stands to be granted. The Commission's decision is without prejudice to the Respondent's right to seek return of the purchase price and damages from the person from whom she had purportedly purchased the claimed property.

9. *In view of its finding regarding the validity of the Claimant's contract, and pursuant to section 22.7 (b) of UNMIK/REG/2000/60, the Claimant is also entitled to an order for restoration of possession.*

[…]."

16. On 21 July 2006, the HPCC issued a "Certified Decision" regarding Decision No. HPCC/D/259/2006/B&C to the Applicant, whereupon the Respondent submitted a reconsideration request to the HPCC.

17. On 11 December 2006, the HPCC, by Decision HPCC/REC/81/2006, ordered, *inter alia*, that the reconsideration request submitted by the Respondent be rejected.

18. On 26 March 2007, the HPCC issued a "Certified Decision on Reconsideration Request" regarding Decision HPCC/REC/81/2006 of 11 December 2006, whereupon the Respondent submitted a further reconsideration request to the HPCC.

19. On 8 June 2007, the HPCC, by Decision HPCC/REC/99/2007, ordered, *inter alia*, that the reconsideration request be rejected.

20. The HPCC decided that:
"[…]

(A) No new evidence and no material error

7. *In Claim No. DS001447, listed in part B of the attached Schedule, the Requesting Party, who is the Respondent in a category B claim which was granted in the initial decision, avers that she acquired ownership of the claimed property by concluding a purchase contract with the previous owner, A, on 20 December 2000. A., it is alleged, had previously purchased the property from a certain X. The Responding Party (ie the category B Claimant), who was previously the common law*

wife of A., avers that she, not A, had purchased the property from X. The Responding Party is no longer associated with A., has remarried and moved to Sweden. After their separation, A. purported to enter into a separate purchase contract with X. and then on-sold the property to the Requesting Party. The Requesting Party insists that, although the original purchase was in the name of the Responding Party, A. was the real purchaser and that the funds were provided by A.. According to the Requesting Party, the transaction was concluded in this manner due to "family reasons."

8. The Commission notes that the Responding Party was in possession of the claimed property for a long period of time, and that she also avers that she paid most of the purchase price. The documentary evidence supports her allegations that she was the true and not the nominal owner of the property. The Commission also notes that the Requesting Party has not produced any adequate evidence to prove otherwise. Reliance can therefore not be placed on the purchase contract purportedly entered into by A. as the property had already been transferred to the Responding Party [the Applicant]. *Accordingly the Requesting Party's reconsideration request stands to be rejected.*

[…]."

21. On 24 July 2007, the HPCC issued a "Certified Decision on Reconsideration Request" regarding Decision No. HPCC/REC/99/2007 of 8 June 2007 to the Applicant.

22. On 5 December 2007, the Applicant received the HPCC Protocol concerned together with the keys of the apartment from the HPCC.

23. On 29 August 2008, the Municipal Court in Prizren, by Judgment C. no. 406/06, rejected as ungrounded the Applicant's statement of claim, by which she had requested the Court "*to confirm that she is the owner of the apartment […] concerned which the respondents have to admit and to refrain from any type of concern*". The Applicant appealed against this decision to the District Court in Prizren.

24. On 6 March 2009, the District Court in Prizren, by Judgment Ac. no. 23/2009, quashed the decision of the Municipal Court of 29 August 2008, on the ground that the first instance court had

committed substantial violations of the law in that, pursuant to Article 2.5 of UNMIK Regulation 1999/23 on the Establishment of the Directorate and the Property Claims Commission, in conjunction with Article 1.2(c) of the Regulation, as an exception to the competence of the ordinary courts, the Commission was exclusively competent for the categories of cases mentioned in Article 1.2 of Regulation 1999/23.

25. The District Court further argued that the contested matter between the parties had been decided by the HPCC and that the first instance court was obliged, pursuant to Article 2.7 of UNMIK Regulation 1999/23, to accept the decisions of the HPCC as obligatory and mandatory and that the matter could not be subject to review in court proceedings. Thereupon, the Respondent filed a revision with the Supreme Court.

26. On 20 January 2012, the Supreme Court, by Decision Rev. no. 356/2009, admitted the revision filed by the Respondent, by quashing Judgment Ac. no. 23/2009 of the District Court in Prizren, and returned the case to the second instance court for retrial.

27. The Supreme Court held that:

"According to the second instance Court's assessment, this dispute between parties was resolved by the decision of the Housing and Property Commission and the Court is obliged, in terms of Article 2.7 of Regulation 1999/23, to consider the decisions of this Commission as mandatory and obligatory and the same may not be subject of a revision in judicial context.

According to the assessment of the Supreme Court of Kosovo, the Ruling of the second instance Court was rendered in violation of provisions of Article 182 paragraph 1 in conjunction with article 391 paragraph 1, Article 18 paragraph 2 of LCP [Law on Contested Procedure] and Article 1 paragraph 2 (b) of Regulation 1999/23 for Establishing the Directorate and Commission for Reviewing the Housing and Property Claims as well as the explanation of the Special Representative of the Secretary General for UNMIK Regulation nr.2000/60 of date 31.12.2000 on housing and property claims and of Housing and Property Claims Commission (Explanation) of date 12 April 2001, which has been influential on rendering a just and lawful Ruling.

According to article 1 paragraph 2 (b) of Regulation 1999/23 as an exclusion from jurisdiction of domestic Courts, the Directorate receives and records the requests of natural person who performed unofficial transaction of real-estate, only by free will of parties after date 23 March 1989, while point 5 (b) of the Explanation provides that persons that got engaged in unofficial transactions for housing property after date of 23 March 1999 up to 13 October 1999, by free will of parties, but which were unlawful by the existing law (the so-called "Category B" of requests). Considering that the first respondent legalized the sales contract of date 20.03.1996, on date 28.09.2000 before the competent Court, after date 13 October 1999, it results that the resolution of the dispute is competency of Court and not competency of the Directorate for Housing and Property, respectively Housing and Property Commission.

According to the decision of the reviewing commission for requests of housing and property, the claimant's request nr. DS001447 belongs to "category b" and according to paragraph 2 of this decision, item I of the order of this decision doesn't prejudice the jurisdiction of the competent domestic courts to change the public records, if such courts nullify the transaction, in which the Commission's order is based on paragraph 1.

Due to the fact that the first respondent legalized the contract after 13 October 1999 and then concluded a contract on date 20.12.2000 with the second respondent for transaction of the disputed apartment, the Supreme Court of Kosovo assesses that all unofficial transactions of property and housing disputes (as well as the official ones) after date 13 October 1999, are competency of regular Courts and not competency of the Housing and Property Commission.

Due to these reasons, this Court assessed that the allegations of the revision filed by respondents and interventionist are grounded, therefore, the judgment of the appealing Court has to be quashed and the matter has to be reversed to the second instance Court for a merited decision upon request, by providing clear justification for the allegations of the appeal and every part of Judgment of the first instance Court.

The second instance Court is obliged to abolish the above mentioned flaws, having in consideration also the other allegations of the revision and then to render a lawful decision.

[…].”

28. As a result, the District Court in Prizren, by Judgment Ac. no. 52/2012 of 11 May 2012, rejected as unfounded the appeal of the Applicant filed against Judgment C. no. 406/06 of the Municipal Court of Prizren of 29 August 2008 whereby the Applicant's statement of claim that she was the owner of the apartment had been rejected.

29. On 21 June 2012, the Applicant submitted revision against Judgment Ac. no. 52/2012 of the District Court in Prizren to the Supreme Court, stating that the same District Court, which, by Judgment Ac. no. 23/2009 of 16 March 2009, had first quashed Judgment C. no. 406/2006 of the Municipal Court in Prizren of 29 August 2008, had now confirmed that same judgment of the Municipal Court, using a completely different reasoning.

30. The Applicant further argued that, on 13 June 2012, she received Judgment Rev. no. 356/2009 of the Supreme Court of 20 January 2012 by which the revision of the Respondents was admitted, quashing Decision Ac. no. 23/2009 of the District Court in Prizren of 16 March 2009 (N.B. which was in favor of the Applicant) and returning the matter to that Court for retrial. According to the Applicant, neither she nor her legal representative had received any copy of the revision filed by the Respondents against Judgment Ac. no. 23/2009 of the District Court in Prizren of 16 March 2009, although such an obligation was clearly provided in Article 219(1) of the Law on Contested Procedure (LCP), stipulating that the first instance court delivers a copy of the revision to the responding party within seven days.

31. The Applicant also stated that it was only from the Supreme Court's ruling Cn. no. 14/2010 of 3 December 2010 on the Applicant's proposal to assign the District Court in Prizren as the appeal court instead of the District Court in Peja in Case N. no. 223/2008 of 15 June 2009, that she had learned that the Respondent had filed revision with the Supreme Court from Judgment Ac. no. 23/2009 of the District Court in Prizren, by which it was declared that the decision of the HPCC on the Applicant's rights regarding the disputed apartment was obligatory and mandatory and could not be subject to review by the ordinary courts. She, therefore, allegedly, addressed a letter to the Supreme Court, requesting it to forward a copy of the revision of the Respondent to her, but the Supreme Court never replied to her letter. In her opinion, such

inaction by the Supreme Court constitutes a violation of human rights and freedoms.

32. On 17 July 2012, the State Prosecutor submitted a request for protection of legality in favor of the Applicant against Judgment Ac. no. 52/2012 rendered by the District Court on 11 May 2012, claiming that the District Court in Prizren had erroneously applied material law and proposing to the Supreme Court to quash the challenged judgment and return the case to the District Court for retrial. The State Prosecutor further stated that the HPCC was competent to decide on the matter, as provided by UNMIK Regulation no. 2000/60 of 31 October 2000, and that, on three occasions, the HPCC had decided in favor of the Applicant.

33. On 24 June 2013, the Supreme Court, by Judgment Rev. Mlc. no. 329/2012, rejected as unfounded the Applicant's revision as well as the request for protection of legality submitted by the State Prosecutor, reasoning that:

"[…]

The Case files show that the claimant, by filing a claim, seeks determination of ownership of the apartment on street "Vlladosav Guriq" nr.100/II, apartment 3, 66,00m2 in surface, based on the sales contract of date 10.05.1996 concluded by respondent Belkize Kallaç [the Applicant]*, as buyer and X. (owner of the apartment) as seller, otherwise interventionist party on respondent's side. This contract was not legalized at Court but is signed by the first respondent Y. and Z., the son of the owner X. The claimant, after signing the contract on date 10.05.1996 entered into possession of the apartment, which she possessed until date 16.02.2001.*

When the disputed apartment was bought, claimant Belkize Kallaç and respondent Y. had extramarital relationship. On date 16.02.2011, the claimant was stripped of the possession of the apartment, because the first respondent Y. on date 28.11.2000 concluded another contract with the owner of this apartment X. and the same was certified in Court under reference number Vr.nr.1237/2000. After certifying this Contract before Court, the first respondent Y. transferred the apartment on his name and sold it to the second respondent B., concluding another sales contract on date 20.12.2000, certified in Court under reference number Vr.nr.2074/2000.

The Respondent, then turned to the Housing and Property Claims Commission, filing the request nr.DS.0011447 and the mentioned commission issued a group decision HPCC/D.259/B$ of date 15.07.2006, with item I(b) the claimant is recognized the right to possession of property – apartment of dispute, while item II says "it is provided that the above order does not contain jurisdiction prejudice of the domestic competent Court to change respective public records in case such Courts dismiss the transaction on which the commission's order of paragraph I is based. Then, the same matter, by the request of Y., filed against claimant Belkize Kallaç, request DS.0011447 was reviewed by the second instance authority and on date 11.12.2006 the request for review filed by Y. was denied. The same matter, upon request of respondent B., against claimant Belkize Kallaç, was reviewed on date 08.06.2007 by the review commission and B. request for review was denied.

The first instance Court, while considering this situation, found that the contract concluded between the first respondent Y. and the second respondent B., which was legalized at Court under reference number Vr.nr.2074/2000 on date 20.12.2012, produces judicial effect and the second respondent B. by this contract earned the right of property on the disputed apartment in accordance with Article 20 and 30 of the ELLPR. According to the assessment of that Court, the internal contract of date 10.05.1996 on which is based the claimant's statement of claim, doesn't meet the necessary legal form of legalization of the apartment, therefore, it was decided as in the enacting clause.

The second instance Court, on the proceedings of the appeal, entirely acknowledged the factual determination and legal stand of the first instance, denied as unfounded the claimant's appeal and confirmed the Judgment of the second instance Court.

The Supreme Court of Kosovo, given such situation of the matter, found that the lower instance Courts, due to the correct and complete determination of the factual situation, correctly applied the provisions of contested procedures and material rights by denying the claimant's statement of claim, closely described in the enacting clause of the judgment.

[...]."

Applicant's allegations

34. The Applicant claims that Decision Ac.no.23/2009 of the District Court in Prizren of 16 March 2009 which quashed Judgment C.no.406/06 of the Municipal Court in Prizren of 29 August 2008 and denied the claim of the Responding Party as inadmissible for the reasons that that the first instance court had committed substantial violations of the law in that, pursuant to Article 2.5 of UNMIK Regulation 1999/23 on the Establishment of the Directorate and the Property Claims Commission, in conjunction with Article 1.2(c) of the Regulation, as an exception to the competence of the ordinary courts, the Commission was exclusively competent for the categories of cases mentioned in Article 1.2 of Regulation 1999/23.

35. In the Applicant's opinion, pursuant to Article 2.7 of UNMIK Regulation no.1999/23, a decision rendered by the HPCC is final and applicable and cannot be reviewed by any other judicial or administrative authority in Kosovo. Moreover, since the final HPCC decision recognized her right to property, ordered the registration of the property in the respective public records and granted the possession of the property, any other decisions related to the property constitutes a violation of the Applicant's property rights.

36. The Applicant further alleges that, after the District Court in Prizren rendered Judgment Ac. no. 23/2009 on 16 March 2009, she had not received any copy of the revision that had been filed by the respondents, although such an obligation is clearly provided in Article 219(1) LCP, stipulating that one copy of the revision, filed on time and if it is complete and admissible, will be delivered by the first instance Court, within 7 days, to the responding party. In her opinion, this omission constitutes a violation of her rights under Article 31 [Right to Fair and Impartial Trial] in conjunction with Article 6 [Right to Fair Trial] ECHR.

37. Moreover, the Applicant states that Judgment Rev. no. 356/2009 of the Supreme Court dated 20 January 2012 as well as Judgment Ac. no. 52/2012 of the District Court dated 11 May 2012 and Judgment Rev. Mlc. no. 329/2012 of the Supreme Court dated 24 June 2013, in the repeated procedure ordered by Judgment Rev. no. 356/2009, violated her rights under Articles 46 [Protection of Property], 31 [Right to Fair and Impartial Trial] and 53 [Interpretation of Human Rights Provisions] of the Constitution in conjunction with Article 6(1) ECHR. The Applicant fears that, after these judicial decisions, she will be forced out of the apartment, although the HPCC decisions are final and binding.

Applicable law

38. The provisions referred to by the HPCC in its decisions are defined in the following legal instruments:

UNMIK Regulation No. 1999/23 on the Establishment of the Housing and Property Directorate and the Housing and Property Claims Commission:

"Housing and Property Directorate

[…]

Section 1.2: "*As an exception to the jurisdiction of the local courts, the Directorate shall receive and register the following categories of claims concerning residential property including associated property*:

Claims by natural persons whose ownership, possession or occupancy rights to residential real property have been revoked subsequent to 23 March 1989 on the basis of legislation which is discriminatory in its application or intent;

Claims by natural persons who entered into transactions of residential real property on the basis of the free will of the parties subsequent to 23 Mrch 1989;

Claims by natural persons who were the owners, possessors or occupancy right holders of residential real property prior to 24 March 1999 and who do not now enjoy possession of the property, and where the property has not voluntarily been transferred."

The Directorate shall refer these claims to the Housing and Property Claims Commission for resolution or, if appropriate, seek to mediate such disputes and, if successful, refer them to the HPCC for resolution.

[…]".

Section 2:

Housing and Property Claims Commission

Section 2.1. *The Housing and Property Claims Commission (the "Commission") is an independent organ of the Directorate which shall settle private non-commercial disputes concerning residential property referred to it by the Directorate until the Special Representative of the Secretary-General determines that local courts are able to carry out the functions entrusted to the Commission.*

[…]

Section 2.7. *Final decisions of the Commission are binding and enforceable, and are not subject to review by any other judicial or administrative authority in Kosovo."*

[…].

UNMIK Regulation No. 2000/60 of 31 October 2000

"[…]

Section 2.4: "*Any person who acquired the ownership of a property through an informal transaction based on the free will of the parties between 23 March 1989 and 13 October 1999 is entitled to an order from the Directorate or Commission for the registration of his/her ownership in the appropriate public record. Such an order does not affect any obligation to pay tax or charge in connection with the property or the property transaction.*"

Section 2.5: "*Any refugee or displaced person with a right to property has a right to return to the property, or to dispose of it in accordance with the law, subject to the present regulation."*

Section 2.6: "*Any person with a property right on 24 March 1999, who has lost possession of that property and has not voluntarily disposed of the property right, is entitled to an order from the Commission for repossession of the property. The Commission shall not receive claims for compensation for damage to or destruction of property.*"

[…]."

Admissibility of the Referral

39. 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 as further specified in the Law and the Rules.

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

> *"7. Individuals are authorized to refer violations by public authorities of their individual rights and freedoms guaranteed by the Constitution, but only after exhaustion of all legal remedies provided by law".*

41. The Court also refers to Article 49 of the Law, stipulating:

> *"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 (...)".*

42. In the instant case, the Court notes that the Applicant has sought recourse before the Municipal and District Courts and, finally, before the Supreme Court of Kosovo to protect her rights attributed to her by three subsequent decisions of the HPCC. The Court also notes that the Applicant was served, on 12 August 2013, with Judgment Rev. Mlc. no. 329/2012 of the Supreme Court of 24 June 2013, and filed her Referral with the Court on 13 November 2013.

43. Thus, the Court considers that the Applicant is an authorized party, has exhausted all legal remedies available to her under applicable law and has submitted the Referral within the four months time limit.

Merits of the Referral

As to the HPCC's findings

44. As to the assessment of the merits of the Referral, the Court notes that the HPCC, by Decision No. HPCC/D/259/2006/B&C of 15 July 2006, ruled, *inter alia*, that the ownership of the Applicant in respect of the disputed property be registered in the appropriate public record and that she be given possession of that property.

45. The Court also notes that the repeated requests for reconsideration of that Decision filed by the Responding Party were rejected by the

HPCC on 11 December 2006 and 8 June 2007, respectively, no new evidence and no material error having been found. Under the heading: "Finality of Decision" the HPCC Decisions made reference to UNMIK/REG/1999/23 providing that: "*2.7 Final decisions of the Commission are binding and enforceable, and are not subject to the review by any other judicial or administrative authority in Kosovo*."

46. In the Court's opinion, this can only mean that, since the last HPCC's finding No. HPCC/REC/99/2007 of 8 June 2007 in the case became *res judicata* after having been certified by the Registrar of the HPCC on 24 July 2007, the Applicant was entitled to enjoy the rights to ownership and possession, as guaranteed by Article 46 of the Constitution and Article 1 of Protocol 1 to the ECHR and that any interference of these rights by any judicial or administrative authority would have to be considered as a violation of these rights (see also, Case KI104/10, *Applicant:* Arsic Draza, Judgment of 23 April 2012).

47. In this respect, the Court finds that, so far, the Applicant's attempts to have HPCC Decision No. HPCC/D/259/2006/B&C implemented through registration in the appropriate public record have remained unsuccessful and have created a situation of legal uncertainty for the Applicant, even while she is presently occupying the property.

48. The Court, therefore, concludes that there has been a violation of the Applicant's rights guaranteed by Article 46 of the Constitution in conjunction with Article 1 of Protocol 1 to the ECHR.

As to the complaint that the Applicant did not receive a copy of the revision filed by the Respondent

49. In this respect, the Court notes that the Applicant complains that, contrary to Article 219(1) LCP, she never received a copy of the revision filed by the Responding Party against Judgment Ac. no. 23/2009 of the District Court in Prizren dated 16 March 2009 and that, when she found out about the revision proceedings, her request to the Supreme Court to provide her with a copy of the revision remained unanswered. She complains that, as a consequence, she could not participate in the hearing before the Supreme Court, which, by Judgment Rev. no. 356/2009 of 20 January 2012, admitted the revision of the Responding Party and sent the case back to the District Court in Prizren for retrial.

50. It further appears from the Applicant's submissions that the District Court in Prizren, when retrying the case on 11 May 2012, reversed its previous opinion by following the Supreme Court's ruling and upholding the judgment of the Municipal Court of 29 August 2008, by which her statement of claim that she was the owner of the disputed apartment was denied.

51. The Court notes that, thereupon, the Applicant filed a revision against the District Court's judgment of 11 May 2012 with the Supreme Court, challenging at the same time Judgment Rev. no. 356/2009 of the Supreme Court of 20 January 2012 and expressly invoking violations of Article 31 of the Constitution and Article 6 ECHR for the reasons that "*a contested procedure cannot be initiated between two parties, one of which* [the Applicant] *didn't participate in the hearing, respectively, it was not notified of the allegations of the responding party.*"

52. Article 31 [Right to Fair and Impartial Trial] of the Constitution provides, *inter alia*:

> "Everyone shall be guaranteed equal protection of rights in the proceedings before courts, other state authorities and holders of public powers.
> 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.
>
> [...]."

53. Article 6 [Right to Fair Trial], paragraph 1 ECHR provides, *inter alia*:

> "*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.*
>
> *[...]."*

54. The Court reiterates that, pursuant to Article 53 of the Constitution, "*Human rights and fundamental freedoms guaranteed by this Constitution shall be interpreted consistent with the court decisions of the European Court of Human Rights*".

55. As to the Applicant's complaints that she was not notified of the revision proceedings, initiated by the Responding Party before the Supreme Court, and that a copy of the revision, despite her request, was never sent to her, the Court refers to the approach of the ECtHR in similar cases. For instance, in the Grozdanoski Case (see *Grozdanoski v. The Former Yugoslav Republic of Macedonia*, no. 21510/03, of 31 May 2007), the ECtHR concluded that, in civil proceedings, the principle of equality of arms implies that each party must be afforded a reasonable opportunity to present his or her case -including evidence -under conditions that do not place him/her at a substantial disadvantage vis-a-vis his/her opponent. According to the ECtHR, the concept of a fair trial, of which equality of arms is one aspect, implies the right for the parties to have knowledge of and to comment on all evidence adduced or observations filed. The ECtHR was also of the opinion that Article 6 (1) ECHR is intended, above all, to secure the interests of the parties and those of the proper administration of justice, while respect for the right to a fair trial, guaranteed by Article 6 (1) ECHR, required that the applicant be given an opportunity to have knowledge of and to comment upon the public prosecutor's request. Consequently, by failing to notify the applicant of the public prosecutor's request for protection of legality filed with the Supreme Court of Macedonia, the ECtHR found that there had been a violation of Article 6 (1) ECHR.

56. The Court further refers to the Gusak case, (See Gusak v. Russia, 7 June 2011, Application no. 28956/05, para 27.), where the ECtHR considered that "a litigant should be summoned to a court hearing in such a way as not only to have knowledge of the date and the place of the hearing, but also to have enough time to prepare his case and to attend the court hearing."

57. The Court also refers to its own case law, in particular, to Case KI 108/10, *Applicant* Fadil Selmanaj - Constitutional Review of Judgment of the Supreme Court of Kosovo, A. no. 170/2009 of 25 September 2009, where it ruled that "the Applicant should have been summoned to the court proceedings in such a way as not only to have knowledge of its existence, but also to present arguments and evidence during the course of the proceedings."

58. As to the present case, the Court finds that the Applicant could not have exercised her right to a fair trial without having been notified of the revision of the respondent and without having been able to

participate in the proceedings before the Supreme Court on 20 January 2012 to make her case.

59. Moreover, although the Applicant raised the issue in detail before the Supreme Court in her revision of 21 June 2012, the Supreme Court, in its Judgment Rev. Mlc. no. 329/2012 of 24 June 2013, did not, in any way, refer to the Applicant's complaint and her submissions in that respect.

60. In these circumstances, the Court concludes that, by neglecting to properly assess the Applicant's arguments regarding her not having received a copy of the respondent's revision and her not having been able to participate in the hearing before the Supreme Court on 20 January 2012 to make her case, the Supreme Court has not respected the rights claimed by the Applicant. It follows that there has been a violation of Article 31 of the Constitution in conjunction with Article 6 ECHR.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 20 of the Law and Rule 56(1) of the Rules of Procedure, at its session held on 24 March 2014,

DECIDES

I. TO DECLARE the Referral admissible, by unanimous vote;

II. TO HOLD that there has been a violation of Article 46 of the Constitution in conjunction with Article 1 of Protocol 1 to the ECHR, by unanimous vote;

III. TO HOLD that there has been a violation of Article 31 of the Constitution in conjunction with Article 6 ECHR, by unanimous vote;

IV. Declares null and void the Judgment Rev.Mlc.nr.329/2012 of the Supreme Court of Kosovo of 24 June 2013, by unanimous vote;

V. TO ORDER the execution of HPCC Decision No. HPCC/D/259/2006/B&C through the registration of the Applicant's right to the contested property in the appropriate public records, by majority vote;

VI. Pursuant to Rule 63 (5) of the Rules of Procedure, the public authorities responsible for the execution of HPCC Decision No. HPCC/D/259/2006/B&C shall submit information about the measures taken to enforce the decision of the Court;

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

VIII. TO ORDER this Judgment to be notified to the Parties and, in accordance with Article 20.4 of the Law, be published in the Official Gazette;

IX. This Judgment is effective immediately.

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

KI61/11 and KI55/13, Naxhije Hasani and Vjollca Shoshi, Resolution of 25 June 2013 - Constitutional Review of 2 Judgments of the Supreme Court of the Republic of Kosovo namely, Rev. no. 434/2008, of 23 February 2009 and Rev. no. 164/2010, of 11 January 2013

Case KI61/11 and KI 55/13, decision of 25 June 2013

Key words: individual referral, violation of constitutional rights and freedoms, Articles 46 and 31, inadmissible referral.

The Applicant filed her Referral based on Article 113.7 of the Constitution of Kosovo, claiming that her constitutional rights and freedoms have been violated by the judgment of regular courts. The subject matter of the Referrals is the review of the constitutionality of the challenged Judgments of the Supreme Court, which allegedly violated the right to property and to a fair trial of the Applicants, as guaranteed by Articles 46 and 31 of the Constitution,

The present cases are identical to the following case already decided by the Constitutional Court "the Case of Vahide Hasani and others" (See the Resolution on Inadmissibility of the Constitutional Court of Kosovo, dated 22 January 2013).

The Court ascertained that pursuant to Rule 36.1.c of the Rules of Procedure, the Referrals are manifestly ill-founded and therefore they are inadmissible. In sum, the Applicants did not show why and how their rights as guaranteed by the Constitution have been violated. A mere statement that the Constitution has been violated cannot be considered as a constitutional complaint.

The Constitutional Court reiterates that it is not its task under the Constitution to act as a court of appeal, or a court of fourth instance, in respect of the decisions taken by ordinary courts. It is the role of the latter to interpret and apply the pertinent rules of both procedural and substantive law. Due to the abovementioned reasons, the Court decided to reject the referral as inadmissible.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI61/11 and KI55/13
Applicant
Naxhije Hasani and Vjollca Shoshi
Constitutional Review of 2 Judgments of the Supreme Court of the Republic of Kosovo namely, Rev. no. 434/2008 dated 23 February 2009 and Rev. no. 164/2010 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 Referrals were submitted by Ms. Naxhije Hasani and Ms. Vjollca Shoshi (hereinafter, the Applicants).

Challenged decision

2. The challenged decisions are the Judgments of the Supreme Court Rev no. 434/2008 dated 23 February 2009 and Rev. no. 164/2010 dated 11 January 2013.

Subject matter

3. The subject matter of the Referrals is the review of the constitutionality of the challenged Judgments of the Supreme Court, which allegedly violated the right to property and to a fair trial of the Applicants, as guaranteed by Article 46 of the Constitution, in conjunction with Article 1 Protocol 1 to the

European Convention on Human Rights (hereinafter, the ECHR), and Article 31 of the Constitution, in conjunction with Article 6 of the ECHR.

4. The present cases are identical to the following case already decided by the Constitutional Court "the Case of Vahide Hasani and others" (See the Resolution on Inadmissibility of the Constitutional Court of Kosovo dated 22 January 2013).

Legal basis

5. The Referrals are based on Article 113 of the Constitution of the Republic of Kosovo (hereinafter referred to as the Constitution), Article 20 of the Law No. 03/L-121 on the Constitutional Court of the Republic Kosovo (hereinafter, the Law) and Section 56 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter, the Rules of Procedure).

Summary of the facts

6. In general, the facts of these Referrals are identical to those cases abovementioned under paragraph 4.

7. In fact, in the course of 2001 and 2002, the Applicants signed an Agreement for Temporary Compensation of Salary for Termination of Employment Contract with their employer Kosovo Energy Corporation (hereinafter, KEK).

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

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

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

shall be relieved from liabilities to the User as per this Agreement".

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

12. On 25 July 2006, the KEK Executive Board annulled the above mentioned Decision on the Establishment of the Supplementary Pension Fund and terminated the funding and functioning of the Supplementary Pension Fund, with effect from 31 July 2006.

13. According to the Decision of 25 July 2006, all beneficiaries were guaranteed full payment in line with the Fund Statute. The Decision further stated that KEK employees that are acknowledged as labour disabled persons by the Ministry of Labour and Social Welfare shall enjoy rights provided by the Ministry.

14. On 14 November 2006, KEK informed the Central Banking Authority that *"decision on revocation of the KEK Pension Fund is based on decision of the KEK Executive Board and the Decision of the Pension Managing Board… due to the financial risk that the scheme poses to KEK in the future".*

15. In the summer of 2006, KEK terminated the payment stipulated by the Agreement without any notification.

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

17. The Municipal Court in Prishtina approved the Applicants' claims and ordered monetary compensation. The Municipal Court of Prishtina found (e.g. the Judgment C. Nr. 646/2006 of 12 December 2007 in the case of the first Applicant Naxhije Hasani) that the conditions provided by Article 3 of the Agreements have

not been met. Article 3 of the Agreements provides for salary compensation until the establishment of the pension invalidity fund. *"Which means an entitlement to a retirement scheme, would not have been possible for her husband if he were still alive, because he would have still not reached the age of 65 and that the applicant inherits the rights of her husband to continue to receive these payments".*

18. KEK appealed against the judgments of the Municipal Court to the District Court, arguing, inter alia, that the Municipal Court judgment was not fair, because the Agreements were signed with the Applicants because of the invalidity of the Applicants and that they cannot claim continuation of their working relations because of their invalidity. KEK reiterated that the Court was obliged to decide upon the UNMIK Regulation 2003/40 on the promulgation of the Law on Invalidity Pensions according to which the Applicants were entitled to an invalidity pension.

19. The District Court rejected as ungrounded the appeals of KEK.

20. KEK submitted a revision to the Supreme Court, arguing an alleged essential violation of the Law on Contested Procedure and erroneous application of material law. KEK repeated that the Applicants were entitled to the pension provided by the 2003/40 Law and that because of humanitarian reasons it continued to pay monthly compensation after the Law entered into force. KEK further argued that the age of the applicant was not relevant but that his invalidity was.

21. The Supreme Court rejected as unfounded the Applicants' lawsuits and quashed the judgments of the District and Municipal. The Supreme Court concluded that the termination of employment was lawful pursuant to Article 11.1 of UNMIK Regulation 2001/27 on the Basic Labour Law in Kosovo.

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

23. In the Judgment the first applicant, Naxhije Hasani Rev. No. 434/2008 of 23 February 2009), the Supreme Court stated: "*Taking into account the undisputed fact that the respondent party fulfilled the obligation towards the plaintiff, which is paying salary compensation according to the specified period which is until the establishment and functioning of the Invalidity*

and Pension Insurance Fund in Kosovo effective from 1 January 2004, the Court found that the respondent party fulfilled the obligation as per the agreement. Thus the allegations of the plaintiff that the respondent party has the obligation to pay him the temporary salary compensation after the establishment of the Invalidity and Pension Insurance Fund in Kosovo are considered by this Court as unfounded because the contractual parties until the appearance of solving condition- establishment of the mentioned fund have fulfilled their contractual obligations…".

24. Furthermore, the Supreme Court reiterated that *"the right for Temporary Compensation cannot be transferred to other persons since it is a subjective right linked closely with the employer and employee and that KEK fulfilled its obligations by continuing to pay the applicants' 105 Euros for 60 months".*

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

Applicant's allegations

26. The Applicants claim that the termination of the payment is in contradiction to the signed Agreement.

27. The Applicants also claim that it is well known that the Kosovo Pension Invalidity Fund has not been established yet. On the other hand, in the original case no. KI40/09, KEK contested the Applicants' allegations, arguing that it was widely known that the Invalidity Pension Fund had been functioning since 1 January 2004.

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

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

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

31. In sum, the Applicants claim that their rights to property and to fair trial have been violated by the decision of KEK unilaterally annulling their Agreements. The Applicants further claim that they have not been able to remedy such violation before the regular courts.

Proceedings before the Court

32. Between 2011 and June 2013, the Applicants individually, filed the Referrals to the Constitutional Court.

33. The President of the Court appointed Judge Kadri Kryeziu as Judge Rapporteur and appointed a Review Panel of the Court composed of Judges Altay Suroy (Presiding), Enver Hasani and Ivan Čukalović.

34. On 25 June 2013, after having considered the report of Judge Rapporteur, the Review Panel made a recommendation to the Court on the inadmissibility of the Referrals.

Admissibility of the Referral

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

36. The Constitutional Court reiterates that it is not its task under the Constitution to act as a court of appeal, or a court of fourth instance, in respect of the decisions taken by ordinary courts. It is the role of the latter to interpret and apply the pertinent rules of both procedural and substantive law (see, *mutatis mutandis,* García Ruiz v. Spain [GC], no.30544/96, § 28, European Court on Human Rights [ECHR] 1999-I).

37. The Court recalls the admissibility criterion provided by article 34 of the Convention, according to which any application has to be lodged by an applicant who could claim to be the victim of a violation of the Convention. A link should also be established between the applicant and the damage that he or she suffered because of the alleged violation.

38. The Supreme Court in its operative part of the decision stated that *"The right cannot be transferred to other persons since it is a subjective right linked closely with the employer and employee and that this issue relates to a temporary compensation for termination of employment and not legal pension and thus the fact that the Pension-Invalidity fund is not functional does not affect the applicants case as the Agreement was signed between the Applicants' husband (deceased) and thus according to Article 359 of the Law on Obligations, KEK has no further obligations".*

39. Furthermore, Article 51 of the Constitution [Health and Social Protection] which is referred to by some of the above mentioned applicants relating to pensions, merely states that, *"Basic social insurance related to unemployment, disease, disability and old age shall be regulated by law."* It does not mandate that a citizen have a pension or dictate how a person may qualify for a pension.

40. With regards to the reasoning of the Constitutional Court in its previous Judgments related to former employees of KEK, the latter

cannot be applied to the present applicants' for the reason that they are were not signatories of the agreement signed with KEK and as such is of non-transferable nature.

41. Furthermore, the Applicants do not directly specify either any constitutional provision that could have been violated by the decision that they are challenging without being able to prove *"the status of the victim of the public authority's act"* as it is foreseen in article 34 of the ECHR.

42. Having examined both administrative proceedings as a whole, the Constitutional Court does not find that the relevant proceedings were in any way unfair or tainted by arbitrariness (see *mutatis mutandis,* Shub v. Lithuania, ECHR Decision as to the Admissibility of Application no.17064/06 of 30 June 2009).

43. In sum, the Applicants did not show why and how their rights as guaranteed by the Constitution have been violated. A mere statement that the Constitution has been violated cannot be considered as a constitutional complaint. Thus, pursuant to Rule 36.1.c of the Rules of Procedure, the Referral is manifestly ill-founded and therefore it is inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Rules 36 (c) a) and 56 (2) of the Rules of Procedure, on 25 June 2013, 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**
Dr. Kadri Kryeziu	Prof. Dr. Enver Hasani

KI83/13, Dragoljub Stanković, Resolution of 20 January 2014- Constitutional Review of the Notification Fi 21/90 of the preliminary list of employees entitled to receive compensation from the privatization of SOE „Stan/Banesa“ in Prizren, published by the Privatization Agency of Kosovo

Case KI83/13, decision of 20 Jnuary 2014

Key words: individual referral, non exhausted.

The Applicant submitted Referral 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 and Rule 56 of the Rules of Procedure of the Constitutional Court of Kosovo.

On 10 June 2013, the Applicant filed the Referral with the Constitutional Court of the Republic of Kosovo and requested from the Court the constitutional review of Notification of the Privatization Agency of Kosovo.

The Applicant does not specify what Articles of the Constitution were violated, but requested from the Court to exercise his rights to share of proceeds from the SOE „Stan/Banesa“ from Prizren.

On 20 June 2013, the President of the Court, by Decision no. GJR. KI83/13, appointed Judge Kadri Kryeziu as Judge Rapporteur. On the same date, the President of the Court, by Decision no. KSH. KI83/13, appointed the Review Panel composed of Judges: Robert Carolan (Presiding), Almiro Rodrigues and Ivan Čukalović.

Having considered the case, the Court concluded that the admissibility requirements have not been met in this Referral. The Court notes that the Applicant was requested and was given an opportunity to prove that he has exhausted all legal remedies, while the Applicant has not informed the Court on the procedure as per legal remedy. The reasoning of the exhaustion rule is to provide an opportunity to the competent authorities, including courts, to prevent or rectify the alleged violation of the Constitution. This rule is grounded upon the assumption that the Kosovo's legal order shall provide effective legal remedies against violations of constitutional rights. This is an important aspect of the subsidiary nature of the Constitution.

Taking into account all the circumstances of the submitted referral, the Constitutional Court of Kosovo in its session held on 20 January 2014, decided to declare the Referral inadmissible, due to non-exhaustion of legal remedies.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI83/13
Applicant
Dragoljub Stanković
Constitutional Review of the Notification Fi 21/90 of the preliminary list of employees entitled to receive compensation from the privatization of SOE „Stan/Banesa“ in Prizren, published by the Privatization Agency 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 Referral was filed by Mr. Dragoljub Stanković (hereinafter: the Applicant), residing in Štrpce/Brezovica.

Challenged decision

2. The Applicant challenges the Notification Fi 21/90 of the preliminary list of employees entitled to receive a share from the 20% of proceeds from the privatization of the SOE „Stan/Banesa“ in Prizren, published by the Privatization Agency of Kosovo (hereinafter: PAK).

Subject matter

3. The subject matter is constitutional review of the Notification Fi 21/90 of the preliminary list of employees, which the Applicant alleges to have violated his basic human rights, and the right to

work and remuneration, and in his Referral filed with the Constitutional Court (hereinafter: the Court), requests the enjoyment of rights to a share of proceeds from the privatization of SOE „Stan/Banesa“ in Prizren.

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 Court (hereinafter: the Rules of Procedure).

Proceedings before the Court

5. On 10 June 2013, the Applicant filed a Referral with the Court.

6. On 20 June 2013, the President of the Court, by Decision no. GJR. KI83/13, appointed Judge Kadri Kryeziu as Judge Rapporteur. On the same date, the President of the Court, by Decision no. KSH. KI83/13, appointed the Review Panel composed of Judges: Robert Carolan (Presiding), Almiro Rodrigues (member) and Ivan Čukalović (member).

7. On 2 July 2013, the Court requested from the Applicant to fill in the official Referral Form, and to submit documentation on the actions taken by the Applicant and relevant institutions on the preliminary list of employees entitled to receive a share of 20% from the proceeds of privatization of SOE „Stan/Banesa“ in Prizren, published by the PAK.

8. On 15 July 2013, the Applicant filed with the Court the completed referral form, in which he notifies the Court that since 7 May 2012, he has filed a claim with the Special Chamber of the Supreme Court on the Privatization Agency of Kosovo Related Matters (hereinafter: the SCSC), and until the date of submission of this form, he has not received any reply.

9. On 27 August 2013, the Court notified the SCSC of the registration of the Referral.

10. On 29 August 2013, the Court notified the PAK of the registration of the Referral.

11. On 1 October 2013, the SCSC submitted a copy of the decision no. C-II-12-0016-001 of 06 August 2013, against which the Applicant had a right to appeal within the specified legal deadline.

12. On 24 December 2013, the Court notified the Applicant of the reply of the SCSC.

13. On 20 January 2014, 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

14. The Applicant, staring from 1987 was an employee of the SOE „Stan/Banesa" in Prizren, , holding the position of Director of Enterprise, until the year 1999, when due to security reasons, he left his residing place (Prizren).

15. On 24 July 2009, the SOE „Stan/Banesa" in Prizren was privatized. On 28 November 2010, the PAK published the final list of employees entitled to a share of 20% of the proceeds from the privatization of SOE „Stan/Banesa" in Prizren. The final deadline for filing an appeal against the final list of employees with the SCSC was 27 November 2010.

16. On 7 May 2012, the Applicant filed a complaint with the SCSC against the PAK, thereby requesting that his name is included in the list of employees entitled to a share of 20% of privatization proceeds.

17. On 16 April 2013, the SCSC notified the PAK of the complaint of the Applicant.

18. In its reply to the SCSC, the PAK stated that:

> *"The complainant has no rights, due to the fact that the complaint has been filed after the expiry of the legal deadline. The final deadline for filing a complaint to the SCSC was 27 November 2010. The Complainant filed his complaint on 07 May 2012. In relation to this, the Agency proposes that such complaint be rejected as inadmissible."*

19. On 6 August 2013, the Special Chamber of the Supreme Court rendered the decision no. C-II-12-0016-001, against which the

Applicant could have complained within the legal deadline. In its decision, the SCSC found that:

> *"The complaint with the Special Chamber was filed beyond the final deadline of 27 November 2010. There was no justification given for such delay in filing complaint. The Court finds that the evidence filed by the Claimant do not meet the requirements of Article 10.6 (a), and therefore, the complaint is inadmissible, since it is time-barred.*
>
> *[...] LEGAL REMEDY*
> *Pursuant to Article 10, paragraph 6 of the Law on the Special Chamber, a complaint against this decision may be filed within a deadline of 21 (twenty-one) day period. The prescribed time limit shall begin to run at midnight on the day of service of decision to the parties in writing. Within the same deadline, the Complainant is required to file the complaint to other parties."*

Applicant's allegations

20. The Applicant does not specify which Article of the Constitution of Kosovo was violated by this Decision of the Supreme Court, and only claims the following:

> "*The Privatization Agency of Kosovo, by publication of the preliminary list of employees entitled to a share of revenues of the privatization of the SOE "Stan-Banesa" Prizren, in which I was not part, or any of the colleagues from my ethnicity, has violated by fundamental human rights, and the right to work and remuneration."*

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

> *"By this referral, I want to enjoy the right to the revenues created by privatization of the Enterprise "Stan-Banesa" Prizren, which I am entitled to, due to the fact that I have been an employee of this enterprise between 1987-1999."*

Admissibility of the Referral

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

23. 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".*

24. The Court also takes note of the Rule 36 (1) a) of the Rules of Procedure, which provides that:

> *"1. The Court may only deal with Referrals if:*
>
> *b) "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 complained before the Special Chamber of the Supreme Court against the PAK final list of employees entitled to a share of proceeds of the privatization of SOE "Stan/Banesa", but whether he has filed his case with the Appellate Panel of the Special Chamber remains unknown.

26. Furthermore, the Court notes that the Applicant is requested and is given an opportunity to prove that he has exhausted all legal remedies, while the Applicant has not informed the Court on the procedure as per legal remedy of the decision of the SCSC, as noted in paragraph 19 of the present Report.

27. The reasoning of the exhaustion rule is to provide an opportunity to the competent authorities, including courts, to prevent or rectify the alleged violation of the Constitution. This rule is grounded upon the assumption that the Kosovo's legal order shall provide effective legal remedies against violations of constitutional rights. This is an important aspect of the subsidiary nature of the Constitution (see case KI41/09, Applicant AAB-RIINVEST University LLC, Prishtina, Resolution on Inadmissibility of 21 January 2010, and *mutatis mutandis*, see case Selmouni v. France, no. 25803/94, ECHR, decision of 28 July 1999).

28. It follows that the Referral must be declared inadmissible, since all legal remedies have not been exhausted.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution and Rule 36 (1) a) of the Rules of Procedure, in its session held on 20 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; and

III. This Decision is effective immediately.

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

KI34/14, Durrës Shahini, Resolution of 24 March 2014- Constitutional Review of the Judgment of the Supreme Court, Pml. No. 26/2014, of 31 January 2014

Case KI34/14, decision of 24 March 2014

Key words: Individual Referral, request for interim measure, *prima facie* not justified

The subject matter is the constitutional review of the Judgment of the Supreme Court, Rev. No. 105/2010, dated 29 November 2012. At the time when the Referral was filed, the Applicant was on detention on remand. Initially, the Pre Trial Judge ordered that the presence of the Applicant be secured through the measure of house arrest. Following the appeal of the Basic Prosecution, the Basic Court in Prishtina replaced the measure of house arrest with detention on remand. The Applicant appealed the Decision of the Basic Court in Prishtina before the Court of Appeal and the decision of the latter before the Supreme Court. Both instances, the Court of Appeal and the Supreme Court confirmed the Decision of the Basic Court i.e. confirmed the measure of securing the Applicant's presence through detention on remand.

The Applicant then filed a Referral with the Constitutional Court where he also requested the imposition of an interim measure. In his Referral, the Applicant alleged that the challenged Judgment violated his rights guaranteed by Article 29 [Right to Liberty and Security] and Article 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo (hereinafter, the Constitution) as well as Article 5 [Right to Liberty and Security] and Article [Right to a Fair Trial] of the European Convention on Human Rights (hereinafter, ECHR).

The Constitutional Court rejected the Referral as inadmissible because it was not *prima facie* justified and there was no *prima facie* case for imposing an interim measure. In its reasoning, the Constitutional Court held that Article 31 of the Constitution and Article 6 of the ECHR do not apply as argued by the Applicant since the proceeding was still under the investigation phase and no indictment had been filed. In regards to other arguments raised by the Applicant, the Constitutional Court referred to the *"fourth-instance doctrine"* in order to remind the Applicant that the arguments raised by him pertain to *"legality"* rather than *"constitutionality"* and as such are not dealt by the Constitutional Court.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI34/14
Applicant
Durrës Shahini
Constitutional Review of the Judgment of the Supreme Court, Pml. no. 26/2014, of 31 January 2014 and 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. Durrës Shahini (hereinafter: the Applicant), residing in Fushë-Kosovë represented by Mr. Artan Qerkini, a lawyer from the Law Firm "Sejdiu & Qerkini" in Prishtina.

Challenged Decision

2. The Applicant challenges the Judgment, Pml. no. 26/2014, of the Supreme Court of Kosovo of 31 January 2014, which was served on the Applicant on the same day.

Subject Matter

3. The subject matter of the Referral is the request for constitutional review of the Judgment of the Supreme Court, Pml. no. 26/2014, of 31 January 2014. The Applicant alleges that by this Judgment were violated his rights, guaranteed by Article 29 [Right to Liberty and Security] and Article 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) as well as Article 5 [Right to Liberty and Security]

and Article 6 [Right to a fair trial] of the European Convention on Human Rights (hereinafter: ECHR).

4. In addition, the Applicant requests from the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) to impose interim measure, namely to suspend the execution of the Judgment of the Supreme Court (Pml. no. 26/2014 of 31 January 2014).

Legal basis

5. The Referral is based on Article 113.7 of the Constitution, Article 22 and 27 of the Law on Constitutional Court of the Republic of Kosovo, No. 03/L-121 (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: Rules of Procedure).

Proceedings before the Court

6. On 21 February 2014, the Applicant submitted the Referral to the Constitutional Court.

7. On 27 February 2014, the President of the Court, by Decision GJR. KI34/14, appointed Judge Kadri Kryeziu as Judge Rapporteur. On the same date, the President of the Court, by Decision KSH. KI34/14, appointed the Review Panel, composed of Judges: Robert Carolan (Presiding), Almiro Rodrigues and Ivan Čukalović.

8. On 27 February 2014, the Court notified the Applicant of the registration of the Referral and requested from him to submit to the Court: the first decision on the imposition of detention on remand and all other decisions on thereof. On the same date, the Court also informed the Supreme Court of the submission of the Referral.

9. On 6 March 2014, the Applicant submitted to the Court all requested documents.

10. On 24 March 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 and to reject the request for interim measures.

Facts of the Case

11. On 4 June 2013, the Pre-trial Judge issued an Order (PNKR. 207/2013) whereby it ordered the Police of Kosovo to search houses and accompanying premises, and to arrest the Applicant and other suspects on the suspicion of having committed criminal offences: Participation in or organization of an organized criminal group under Article 283, paragraph 1 of the Criminal Code of Kosovo (hereinafter: CCK); Issuing uncovered or false cheques and misuse of bank or credit cards, as per Article 307, paragraph 1 of the CCK; unauthorized production, possession and attempt, as per Article 13, paragraphs 2 and 3 of the Law no. 03/L-166 on Prevention and Fight of Cyber Crime.

12. On 11 June 2013, the Basic Court in Prishtina by Decision, PPRKR. no. 127/13, decided to impose on the Applicant the measure of house arrest.

13. On 19 June 2013, the Court of Appeal by Decision, PN1. no. 870/13 decided to approve the appeal of the Basic Prosecution (PP. no. 462/2013 of 11 June 2013) and modified the Decision of the Basic Court (PPRKR. no. 127/13 of 11 June 2013) by replacing the measure of house arrest with the measure of detention on remand.

14. The Applicant has been in detention on remand since 19 June 2013.

15. On 9 January 2014, the Pre-trial Judge of the Basic Court in Prishtina by Decision, PPRKR. no. 127/13, decided on the extension of detention on remand for two (2) more months. According to this Decision, the detention on remand of the Applicant is counted from 9 January 2014 to 9 March 2014.

16. In its Decision the Basic Court in Prishtina inter alia, concluded:

> *"[...]*
>
> *... the proposal of the Basic Prosecution in Prishtina [...] for extension of the detention on remand of the defendant [...] is grounded, since there are still: circumstances of imminent risk that if the defendant is freed he may flee, hide, or run aiming to avoid criminal liability, thereby influencing and delaying criminal proceedings, since there is reasonable doubt that the defendant has committed the criminal offences punishable by*

harsh sentences, which renders more justifiable the extension of the detention on remand. Such circumstances derive from legal provisions as per Article 187, paragraph 1, sub-paragraphs 1.1, and 1.2.1 of the CPCK [Criminal Procedure Code of Kosovo] *for the extending detention on remand".*

17. On 14 January 2014, the Applicant filed an appeal with the Court of Appeal, requesting to annul the Decision of the Pre-trial Judge (Decision PPRKR. no. 127/13 of 9 January 2014) in order for the Applicant to defend himself in freedom or that the Court of Appeal renders a more lenient measure, which would ensure the presence of the Applicant in the proceedings.

18. On 17 January 2014, the Court of Appeal in Prishtina by Decision, PN1. no. 89/14, rejected the Applicant's appeal as ungrounded and upheld the Decision of the Pre-trial Judge of the Basic Court (Decision PPRKR. no. 127/of 9 January 2014).

19. The Court of Appeal held that:

"[...]

... the allegations of appeal do not stand ground, since according to the case files, [...] and respectively according to the evidence collected so far, there is grounded suspicion that the defendant has been involved in committing criminal offences with which he has been charged, thereby meeting the essential condition for extending his detention on remand [...].

[...]

Likewise, according to the findings of this Court, there are legal grounds to extend the detention on remand [...], since the investigation is ongoing, and therefore, if released, there is grounded fear that the defendant may obstruct the normal course of the criminal procedure, thereby influencing other co-perpetrators.

[...]

The Court also finds that there are legal reasons to extend his detention [...] because of the manner and circumstances in which the criminal offences are suspected to have been committed, and the gravity of the criminal offence [...] are

offences that may be punishable cumulatively with a fine of up to 250 thousand Euros, and imprisonment of at least 7 years, both categorized as offences of high social hazard [...].

[...]

Considering the circumstances mentioned above, this court considers that other measures as provided by Article 173 of the CPCK are insufficient to ensure the presence of the defendant, and to prevent the repetition of such criminal offences, aiming at the successful implementation of the criminal proceedings, and therefore, the complaint of the defence counsel of the defendant is hereby rejected as ungrounded [...]".

20. On 28 January 2014, the Applicant filed a request for protection of legality with the Supreme Court, by requesting the annulment of the Decision of the Court of Appeal (Decision PN1. nr.89/14 of 17 January 2014).

21. On 31 January 2014, the Supreme Court, by Judgment Pml. no. 26/2014 rejected as ungrounded the request for protection of legality.

22. The Supreme Court, in its Judgment, concluded as follows:

"[...]
It must be underlined that the procedural delay by the State Prosecution, as alleged by the defence, cannot be disputed by this extraordinary legal remedy. Since in the concrete case, the criminal matter is still in the stage of investigation, while it is expected that in future stages of the procedure all issues related to the concrete case and the concrete defendant will be clarified. Also in the finding of this Court, there are legal grounds to extend the detention, as correctly found by first and second instance courts, and providing sufficient reasoning for the legal grounds used to extend the detention of the defendant [...]."

Due to circumstances mentioned above, the allegations of the defense in relation to the termination of the detention, or the imposition of an alternative measure, [...], are found ungrounded, because they are insufficient for a normal and unobstructed criminal procedure in its current stage".

23. Based on the case files, at this stage, an Indictment has not yet been issued.

Applicant's allegations

24. The Applicant alleges that Judgment Pml. no .26/2014 of the Supreme Court violated his rights guaranteed by Constitution, namely Article 29 [Right to Liberty and Security] and Article 31 [Right to Fair and Impartial Trial] of the Constitution as well as Article 5 [Right to Liberty and Security] and Article 6 [Right to a fair trial] ECHR.

25. As to the alleged violation of Article 29 of the Constitution and Article 5 ECHR, the Applicant submits that the decision on the extension of the detention on remand was a result of a delay of the proceedings by the Prosecutor, who according to the Applicant, *"... only after 5 months realized that he had no competencies and must transfer the case to the Special Prosecution."* Regarding this issue, the Applicant alleged that *"The Court of Appeal in its Decision did not address at all the allegation of the defense, when it notified in writing of the reasons of the deprivation of liberty beyond the limit provided by law (CPCK)"*. The Applicant further stated that: *"...the Supreme Court's failure to provide this written notification to the Applicant on why the delay of the procedure is not attributed to the prosecutor has violated his right to liberty and security guaranteed by Article 29 of the Constitution.*"

26. As to the Applicant's alleged violation of Article 31 of the Constitution and Article 6 ECHR, the Applicant holds that the Supreme Court has violated his right, guaranteed by Article 31.2 of the Constitution, since *"the Supreme Court was obliged to disapprove the extension of the detention on remand beyond the 8 month time limit, or at least to reason why this extension is not attributable to the prosecutor."*

27. *Apart from the request to annul Judgment Pml no. 26/2014 of the Supreme Court of 31 January 2014, the Applicant requests that the Court imposes an interim measure to* "... suspend implementation of the challenged Judgment of the Supreme Court until the Court rules on this case."

28. *The Applicant concludes by requesting from the Court to:*

"- *Find the Referral of the Applicant admissible;*

- Render a Ruling for interim measure considering the serious violations of the constitutional rights during the criminal procedure and the irreparable damage that would cause extending the Applicant's detention on remand, pursuant to Article 27 of the Law and Rules 54 and 55 of the Rules that suspend the challenged Judgment of the Supreme Court until the Constitutional Court renders its Judgment on this case;

-

- Order the Applicant's immediate release from detention on remand;

-

- Find the violation of the Applicant's individual rights guaranteed by Articles 29 and 31 of the Constitution, and Article 5 and 6 ECHR, as a result of the violations by the Supreme Court of a set of Applicant's rights guaranteed by these instruments and the CPCK; and

-

- Determine any other legal measure that this honorable court finds as legally grounded and reasonable."

Admissibility of the Referral

29. 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, as further specified in the Law and the Rules of Procedure of the Court.

30. 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."*

31. 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."*

32. In the present case, the Court notes that the Judgment of the Supreme Court, PML. No. 26/2014 was rendered on 31 January 2014, and that the Applicant filed his Referral with the Court on 21 February 2014.

33. The Court also takes into account Rule 36 of the Rules of Procedure, which provides that:

> *(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:*
>
> *(a) the Referral is not prima facie justified".*

34. In his Referral, the Applicant alleges that the Supreme Court violated its obligations arising from Article 29 [Right to Liberty and Security] and Article 31 [Right to Fair and Impartial Trial] of the Constitution as well as Article 5 [Right to Liberty and Security] and Article 6 [Right to a Fair Trial] ECHR mainly because it approved the extension on detention on remand beyond the 8 months limit.

35. With regard to the Applicant's allegation for violation of Article 29 [The Right to Liberty and Security], the Constitution establishes:

> *"29. 1. Everyone is guaranteed the right to liberty and security. No one shall be deprived of liberty except in the cases foreseen by law and after a decision of a competent court as follows:*
>
> *[...]*
>
> *(2) for reasonable suspicion of having committed a criminal act, only when deprivation of liberty is reasonably considered necessary to prevent commission of another criminal act, and only for a limited time before trial as provided by law;*
>
> *[...]."*

36. In these circumstances, the Court notes that the, Supreme Court reasoned its Judgment as following:

> "[...]
>
> *Also in the finding of this Court, there are legal grounds to extend the detention, as correctly found by first and second instance courts, and providing sufficient reasoning for the*

legal grounds used to extend the detention of the defendant [...].

Due to circumstances mentioned above, the allegations of the defense in relation to the termination of the detention, or the imposition of an alternative measure, [...], are found ungrounded, because they are insufficient for a normal and unobstructed criminal procedure in its current stage".

37. In this regard, the Court notes that the Supreme Court and the lower instance courts have reasoned their Decisions to extend the detention on remand.

38. The Court also finds that what the Applicant raises questions of legality and not of constitutionality.

39. In this respect, the Court emphasizes that it is not the task of the Constitutional Court to deal with errors of fact or law (legality) allegedly committed by the Supreme Court, unless and in so far as it may have infringed rights and freedoms protected by the Constitution (constitutionality).

40. The Constitutional Court cannot substitute the role of the regular courts. The role of the regular courts is to interpret and apply the pertinent rules of both procedural and substantive law. (See, *mutatis mutandis,* Garcia Ruiz vs. Spain, No. 30544/96, ECtHR, Judgment of 21 January 1999; see also Case KI70/11 of the Applicants Faik Hima, Magbule Hima and Bestar Hima, Resolution on Inadmissibility of 16 December 2011).

41. In this relation, the Court notes that the reasoning given in the Decisions of the lower instances and the Supreme Court to reject the Applicant's request to defend himself in liberty or to substitute the detention on remand with an alternative sanction are clear. Moreover, the Court finds that the proceedings before the regular courts have not been unfair or arbitrary (See, *mutatis mutandis*, Shub vs. Lithuania, no. 17064/06, ECtHR, Decision of 30 June 2009).

42. In fact it is up to the courts to determine whether, given the circumstances of the case, the length of detention has exceeded a reasonable limit. In other words, courts have the discretionary power to decide what is reasonable in specific circumstances (See, *mutatis mutandis,* Wemhoff v. Federal Republic of Germany, 7 E.Ct.H.R. (ser. A) at 23, 1968). In the present case, the reasons of

the prosecution and the courts to justify the Applicant's continued detention refer to the seriousness of the crime, the circumstances of its commission, the Applicant's risk of fleeing and of repeating the offence or committing a similar offence. These reasons appear to be essentially attributable to the complexity of the case, which renders this Court unable to determine that the length of proceedings is unjustified (see *mutatis mutandis,* Boddaert v. Belgium, App. No. 12919/87, adopted on 12 October 1992 and see also case KI20/13, Applicant Rifat Osmani, Resolution on Inadmissibility of 12 March 2013).

43. Referring to the alleged violations regarding Article 31 of the Constitution and Article 6 of ECHR, the Applicant further argues that the Supreme Court has violated the aforementioned rights, because: "*the Supreme Court was obliged to disapprove the extension of the detention on remand beyond the 8 month time limit, or at least to reason why this extension is not attributable to the prosecutor.*"

44. In this connection, the Court refers to the meaning of the criminal charge, developed by the ECHR case law by which it established that "it *is the official notification given to an individual by the competent authority of an allegation that he has committed a criminal offence or some other act which carries the implication of such an allegation and which likewise substantially affects the situation of the suspect*." (See Corgliano v. Italy, App. No. 8309/78, ECtHr, Judgment of 10 December 1982, par. 34).

45. The Court further notes that the investigation procedure is still ongoing and that an indictment has not yet been issued. The Court cannot follow the Applicant's argument in relation to Article 6 and therefore the Court considers that, based on the circumstances of the Referral and stage of the proceedings, Article 6 of the ECHR is not applicable as argued by the Applicant.

46. Based on the above-mentioned reasoning and referring to the current stage of the proceedings, the Court considers that the Applicant's Referral is *prima facie* not justified.

47. Thus, the Court concludes that the Referral is inadmissible.

Request for Interim Measure

48. The Applicant also requests from the Court to impose an interim measure to suspend the challenged Judgment of the Supreme Court and order the Applicant's immediate release from the detention on remand.

49. In this regard, the Applicant alleges that this is necessary *"considering the serious violations of the constitutional rights during the criminal procedure and the irreparable damage that the extension of the Applicant's detention on remand would cause."*

50. In order for the Court to allow an interim measure, in accordance with Rule 55 (4) of the Rules of Procedure, it needs to determine 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;*
>
> *(...)*
>
> *If the party requesting interim measures has not made this necessary showing, the Review Panel shall recommend denying the application".*

51. As concluded above, the Referral is inadmissible and, therefore, there is no *prima facie* case for imposing an interim measure. For these reasons, the request for an interim measure is rejected.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 27 of the Law, and Rules 36 (2) a) and 55 (4) of the Rules of Procedure, on 24 March 2014, unanimously:

DECIDES

I. TO DECLARE the Referral as Inadmissible;

II. TO REJECT the Request for Interim Measures;

III. TO NOTIFY this Decision to the Parties;

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

V. TO DECLARE this Decision effective immediately

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

KI43/13, Selam Shoshaj and Bashkim Krasniqi, Resolution of 17 October 2013 - Constitutional Review of the Judgment of the Supreme Court, Pml. No. 31/2013, of 13 March 2013

Case KI43/13, decision of 17 October 2013

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. At the time when the Referral was filed, the Applicants were detained on remand following the indictment filed by the District Public Prosecution in Prizren under the suspicion that they have committed the criminal offence of co-perpetration in kidnapping. The Basic Court in Prizren ordered the detention on remand for the Applicants. They appealed the Decision of the Basic Court in Prizren before the Court of Appeal and the decision of the latter before the Supreme Court. Both instances, the Court of Appeal and the Supreme Court confirmed the Decision of the Basic Court by holding that the detention on remand, as ordered by the Basic Court in Prizren, was lawful.

The Applicants then filed a Referral with the Constitutional Court where they alleged that the challenged Judgment violated their rights guaranteed by Article 29 [Right to Liberty and Security] and Article 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo (hereinafter, the Constitution) as well as Article 5 [Right to Liberty and Security] and Article 6 [Right to a Fair Trial] of the European Convention on Human Rights (hereinafter, ECHR).

The Constitutional Court declared the Referral inadmissible for being manifestly ill founded. In its reasoning, the Constitutional Court held that the regular courts fully complied with the Applicants' rights protected by the Constitution and the ECHR and that the Applicant have not presented any prima facie evidence which would indicate a violation of their constitutional rights.

RESOLUTION ON INADMISSIBILITY
in
Case no. KI43/13
Applicants
Selam Shoshaj and Bashkim Krasniqi
Constitutional Review of the Judgment of the Supreme Court of Kosovo
Pml. no. 31/2013 dated 13 March 2013

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

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

Applicant

1. The Applicants are Mr. Selam Shoshaj and Mr. Bashkim Krasniqi from Prizren, who before the Constitutional Court are represented by the lawyer Mr. Bashkim Nevzati from Prizren.

Challenged decision

2. The challenged decision is the Judgment of the Supreme Court of Kosovo Pml. No. 31/2013, dated 13 March 2013, by which is rejected as ungrounded the Applicants' request for protection of legality, submitted against the Judgment of the Basic Court in Prizren Kpn. nr. 254/2012, dated 15 February 2013 and the ruling of the Appellate Court, KP. Nr. 122/2013, dated 25 February 2013.

Subject matter

3. The subject matter is the criminal proceedings, in which the Applicants were being held in detention after indictment but

before trial for the criminal offence of kidnapping, pursuant to Article 159, paragraph 2, in conjunction with paragraph 1 and Article 23of the Criminal Code of Kosovo (hereinafter, CCK).

Legal basis

4. Referral is based on Article 113.7 and 21.4 of the Constitution, Article 22 of the Law on the Constitutional Court of the Republic of Kosovo, No. 03/L-121, dated 15 January 2009 (hereinafter, the Law) and Rule 28 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter, the Rules).

Proceedings before Court

5. On 25 March 2013, the Applicants submitted a Referral to the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).

6. By Decision of the President, no. GJR. KI43/13 dated 28 March2013, Judge Robert Carolan was appointed as Judge Rapporteur. On the same day, by Decision of the President, no. KSH. KI43/13, the Review Panel was appointed composed of Judges Snezhana Botusharova (Presiding), Kadri Kryeziu and Arta Rama-Hajrizi.

7. On 17 October 2013, the review Panel considered the Report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

8. On 8 May 2009, the District Public Prosecutor in Prizren, by indictment PP.no.250/2012, accused the Applicants of committing the criminal offence of co-perpetration in kidnapping under Article 159, paragraph 2, in conjunction with paragraph 1 of Article 23 of the Criminal Code of Kosovo.

9. The Applicants and four other defendants were charged with organized kidnapping of G. S. in Prizren on or about 14 September 2011 and holding the victim until his family members produced a ransom of 100,000 Euros. Before the ransom was paid, several telephone calls were made to the victim's family and threats were made to all of them. After the ransom was paid on the morning of 19 September 2011, the victim was released.

10. Three of the defendants, B. P., B. D., and F. R. were charged with aiding the Applicants in completing the organized kidnapping serving as a lookout while the kidnapping took place, hiding evidence and giving moral support to the Applicants.

11. Two of the defendants, B. P. and E. X., were also charged with the crime of unauthorized possession of weapons.

12. By Ruling of the Basic Court in Prizren, P. no. 124/2012, dated 15 February 2013, the Applicants were held in detention on remand for two months. The Basic Court found that there was grounded suspicion that the Applicants kidnapped the victim and held him until the ransom for his release was paid several days later. The Court concluded that this was a serious crime and that the Applicants could be imprisoned if they would later be found guilty. The Basic Court also found that the perpetrators of this crime threatened the safety of the victim and his family as well as other citizens. Because of the bold manner in which this crime was committed the Basic Court concluded that there was a grave chance that the Applicants might commit this crime again if they were not in detention. It also found that because of the possibility of a long prison sentence being imposed if the Applicants were convicted of this offense, that there was a grave risk that the Applicants would hide or flee if they were released from detention.

13. The Appellate Court of Kosovo, in a ruling dated 25 February 2013, Kp. Nr, 122/2013, rejected the Applicants' appeal and found that there was grounded suspicion that the Applicants committed the offense and that the Basic Court gave sufficient reasons to hold the Applicants in detention and that there was a valid fear that the Applicants might flee because of the long sentence that might be imposed.

14. The Supreme Court of Kosovo, in a judgment issued on 13 March 2013, PML. Nr. 31/2013, denied the Applicants' application for protection of legality against the ruling of the Basic Court of Prizren, P. nr. 124/2012, dated 15 February 2013, and the ruling of the Appellate Court of Kosovo, KP. Nr. 122/2013, dated 25 February 2013. The Supreme Court specifically found that those courts did not violate the presumption of innocence that the Applicants have as defendants in those proceedings. The Supreme Court also found that those courts merely found that on the basis of the court proceedings and the preliminary evidence presented that there was "grounded suspicion" not " proof beyond all

reasonable doubt," that the Applicants were involved in the criminal offense for which they were currently on trial. The Supreme Court specifically found that it remained to be determined at the end of the trial whether there was proof beyond a reasonable doubt that the Applicants were guilty of the crime as charged. The Supreme Court also found that Article 189 of the Criminal Procedure Code required the lower courts to decide on the request for detention on remand within 48 hours of the filing of the appeal. The Court found that there was no evidence that the lower courts acted without reviewing all of the evidence on the issue of whether the Applicants should be held in detention pending the trial proceedings.

Applicants' allegations

15. The Applicants allege that the regular courts violated Articles 5 [Right to liberty and security] and 6 [Right to a fair trial] of the European Convention on Human Rights and Articles 31 [Right to Fair and Impartial Trial] and 29 [Right to Liberty and Security] of the Constitution of the Republic of Kosovo (hereinafter, the Constitution) by failing to presume that they are innocent of the charges filed against them at this stage of the criminal proceedings while making decisions on their pre-trial detention and for failing to make detailed deliberations in their decisions.

16. The Applicants accuse the regular courts of simply engaging in the practice of "copy and paste" with respect to how they reached their decisions on their detention and alleged failure to explain why their situation with respect to pre-trial detention is different than the other co-defendants in this case.

Admissibility of the Referral

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

18. In this respect, the Court refers to Article 113.7 of the Constitution which establishes:

> *"[...] 7. Individuals are authorized to refer violations by public authorities of their individual rights and freedoms guaranteed by the Constitution, but only after exhaustion of all legal remedies provided by law. [...]"*

19. The Court also refers to Articles 47 and 48 of the Law.

Article 47(2) of the Law provides that:

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

20. 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."*

21. In addition, Rule 36 (1)(a), (b) and (c), and (2)(a) and (d) of the Rules provides that:

> *"(1). The Court may only deal with Referrals if:*
> *a) all effective remedies that are available under the law against the Judgment or decision challenged have been exhausted, or*
>
> *b) the Referral is filed within four months from the date on which the decision on the last effective remedy was served on the Applicant, or*
>
> *c) the Referral is not manifestly ill-founded.*
>
> *(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*
> *[...]*
>
> *(d) when the Applicant does not sufficiently substantiate his claim."*

22. The Court considers that the Applicants have not fulfilled the admissibility requirements for the following reasons.

23. According to the Constitution, the Constitutional Court is not a court of appeal, when considering the decisions taken by regular

courts. It is the role of regular courts to interpret and apply the pertinent rules of both procedural and substantive law *(see, mutatis mutandis, García Ruiz v. Spain,* [GC], no. 30544/96, para. 28, European Court on Human Rights [ECHR] 1999-I).

24. Furthermore, Article 29 of the Constitution provides in its relevant part:

> *"1. Everyone is guaranteed the right to liberty and security. No one shall be deprived of liberty except in the cases foreseen by law and after a decision of a competent court as follows:*
>
> *[...]*
>
> *(2) for reasonable suspicion of having committed a criminal act, only when deprivation of liberty is reasonably considered necessary to prevent commission of another criminal act, and only for a limited time before trial as provided by law;*
> *[...]."*

25. Also Article 5 of the European Convention on Human Rights (hereinafter, ECHR) provides in its relevant part:

> *"1. Everyone has the right to liberty and security of person.*
>
> *No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:*
>
> *[...]*
>
> *the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority of reasonable suspicion of having committed and offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so."*

26. In light of these provisions, the Court observes that, in this case, three regular courts of Kosovo found that there was reasonable suspicion that the Applicants may have been involved in the criminal charges that were filed against them and found that under

the circumstances and evidence before them that deprivation of their liberty was necessary to prevent the commission of another criminal act. These same courts did not find that other co-defendants of the Applicants required pre-trial detention because their circumstances and suspected participation in the suspected crime were less serious than those of the Applicants and less likely to cause them to commit another crime and/or flee.

27. Moreover, Article 31 of the Constitution provides in its relevant part:

> *"Everyone charged with a criminal offense is presumed innocent until proven guilty according to law [...],"*

while Article 6 ECHR provides in its relevant part in similar words:

> *"Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law."*

28. In the case under consideration, three regular courts of Kosovo, including the Supreme Court of Kosovo, simply followed the rules of criminal procedure and made their decision with respect to their continued pre-trial detention on the basis of reasonable suspicion that the Applicants may have committed the crime as charged against them. These courts never presumed that the Applicants were guilty. Indeed, the Supreme Court clearly stated that the Applicants were presumed innocent and that the final verdict in their case might be "not guilty."

29. Moreover, the Applicants have not submitted any prima facie evidence, which would indicate a violation of their constitutional rights (See, Vanek against Republic of Slovakia, Decision of ECHR on the admissibility of request, no. 53363/99 dated 31 May 2005).

30. Indeed, the regular courts made specific findings that:

a. there was grounded suspicion that the Applicants may have committed the offense with which they have been charged;
b. there was reasonable suspicion that, if not detained, the Applicants would flee or commit another crime; and
c. these findings were made knowing that the Applicants were still presumed innocent of the charges filed against them.

31. Acting in this manner, the regular courts, therefore, fully complied with the Applicants' rights under the Constitution and the European Convention on Human Rights.

32. In these circumstances, the Court concludes that the Referral does not meet the admissibility criteria, since it failed to provide and substantiate by evidence that the challenged judgment, allegedly, violated their rights and freedoms.

33. It follows that, the Referral is manifestly ill-founded pursuant to Rule 36(2) b) which provides that:

> *"The Court shall reject a Referral as being manifestly ill-founded when it is satisfied that: [...] the presented facts do not in any way justify the allegation of a violation of the constitutional rights."*

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Articles 47 and 48 of the Law and Rule 36 (1) c) and Rule 56 (2) of the Rules, on 17 October 2013, unanimously,

DECIDES

I. TO DECLARE the Referral Inadmissible;

II. TO NOTIFY the Party 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	**President of the Constitutional Court**
Robert Carolan	Prof. Dr. Enver Hasani

KI134/13, Shaban Puka, Resolution of 11 March 2014 - Constitutional Review of the Judgment SCEL-10-00013, of the Special Chamber of the Supreme Court, of 26 December 2012 and Judgment AC-I-13-0004 of the Appellate Panel of the Special Chamber of the Supreme Court, of 22 August 2013

Case KI134/13, decision of 11 March 2014

Key words: individual referral, 20% share from privatization, manifestly ill-founded.

The Applicant submitted Referral based on Article 113.7 of the Constitution of Kosovo, challenging Judgment SCEL-10-00013 of the Special Chamber of the Supreme Court, which allegedly violates his constitutionally guaranteed human rights. However, the Applicant did not specify what constitutional provisions have been violated.

On 23 July 2007, the Socially Owned Enterprise "Agricultural Cooperative-Ferizaj" (hereinafter SOE- Ferizaj) was privatized on 1, 2 and 3 September 2010, the Privatisation Agency of Kosovo (hereinafter: PAK) published a final list of eligible employees entitled to a 20 % share of the proceeds, as a result of the privatization.

On 5 July 2011, the Applicant filed a complaint with the Special Chamber to be included in the final list of eligible employees. The deadline to submit the complaint was 27 September 2010, while the applicant filed the complaint on 5 July 2011.

Considering the Applicant's allegations regarding constitutional review of the Judgment SCEL-10-00013 of the Special Chamber of the Supreme Court of 26 December 2012 and Judgment AC-I-13-0004 of the Appellate Panel of the Special Chamber of 22 August 2013, the Constitutional Court notes that the Applicant has failed to comply with the deadlines that are foreseen by the legal provisions of Regulation No. 2003/13 on the transformation of the right of use to socially owned immovable property, which are applicable in his case. The Applicant was given the opportunity, but he failed to provide reasonable justification for his delays.

Regarding other Applicant's allegations, the Constitutional Court noted that the presented facts by the Applicant have not in any way justified

the allegation of violation of his constitutional rights and he has not sufficiently substantiated his claim. Therefore, the Court concluded that that the presented facts by the Applicant have not in any way justified the allegation of violation of his constitutional rights, thus his referral is manifestly ill-founded.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI134/13
Applicant
Shaban Puka
Constitutional Review of the Judgment SCEL-10-00013, of the Special Chamber of the Supreme Court, of 26 December 2012 and Judgment
AC-I-13-0004 of the Appellate Panel of the Special Chamber of the Supreme Court, of 22 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
Kadri Kryeziu, Judge and
Arta Rama-Hajrizi, Judge

Applicant

1. The Referral is submitted by Mr. Shaban Puka (hereinafter: the "Applicant"), residing in the village Pleshina, Municipality of Ferizaj.

Challenged decision

2. The Applicant challenges the Judgment SCEL-10-00013, of the Special Chamber of the Supreme Court, of 26 December 2012, affirmed by the Judgment AC-I-13-0004 of the Appellate Panel of the Special Chamber of 22 August 2013.

Subject matter

3. The Applicant requests the constitutional review of the Judgment SCEL-10-00013 of the Special Chamber of the Supreme Court,

which allegedly violates his human rights as guaranteed by the Constitution. However the Applicant did not specify which constitutional provisions have allegedly been violated.

Legal basis

4. The Referral is based on Article 113.7 of the Constitution, Articles 20 and 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. On 2 November 2013, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the "Court").

6. On 29 December 2013, the President of the Constitutional Court by Decision GJR KI134/13 appointed Judge Robert Carolan as Judge Rapporteur. On the same day, by Decision KSH134/13 the President appointed the Review Panel composed of Snezhana Botusharova (Presiding), Kadri Kryeziu and Arta Rama-Hajrizi.

7. On 11 October 2013, the Applicant was notified of the registration of the Referral.

8. On 4 November 2013, the Applicant was asked to supply additional documents to the Court, which were mentioned in the referral, although not enclosed. The Applicant has not answered this request.

9. On the same date, the Court requested additional information from the Special Chamber of the Supreme Court related to the Applicant's referral.

10. On 03 December 2013, the Court received the requested information from the Special Chamber of the Supreme Court.

11. On 13 March 2014, after having reviewed the report of the 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 facts

12. On 23 July 2007, Socially Owned Enterprise "Agricultural Cooperative – Ferizaj" (hereinafter SOE– Ferizaj) was privatized.

13. On 1, 2 and 3 September 2010, the Privatisation Agency of Kosovo (hereinafter: PAK) published a final list of eligible employees entitled to a 20 % share of the proceeds, as a result of the privatization.

14. On 5 July 2011, the Applicant filed a complaint with the Special Chamber to be included in the final list of eligible employees.

15. In its written remark, PAK requested from the Special Chamber to reject the complaint as inadmissible because the complaint was submitted more than 20 days after the publication of the list of eligible employees. The deadline to submit the complaint was 27 September 2010, while the applicant filed the complaint on 5 July 2011.

16. On 14 September 2011, the Special Chamber sent the written remark of PAK to the Applicant, and requested the Applicant to explain why there was a delay in submitting the complaint.

17. On 26 December 2012, the Special Chamber rendered Judgment SCEL-10-00013, in which *inter alia it* stated that:

> "*The complaint of Shaban Puka (the Complainant C0005) is inadmissible; because it is submitted after the deadline for submission of complaints. The last date for submission of the appeal with the Special Chamber of the Supreme Court related to the issues of Privatisation Agency of Kosovo was 27 September 2010, while the complaint of the complainant was submitted on 5 July 2011. The deadline for return to the previous state which is foreseen by the Law on Contested Procedure was also missed by the time when the complaint was submitted. The Complainant (C0005) during the session and in his statement has stated that the reason for his delay in submitting the complaint is due to ill health , since during the time of publication of the final list of the eligible employees, he was in Prevalla for recovery, as instructed by the doctors.*"
>
> [...]

> *"The Specialized panel cannot consider as a sufficient justification the statement of the Complainant, the last date of publication of the list was 4 September 2010, while the complaint was submitted much later , on 5 July 2011, more than (7) months later."*

18. In the letter of 4 November 2013, the Court requested from the Special Chamber the following:

> *"In his request, Mr. Puka appeal filed against the decision SCEL-10-00013, but did not provide information whether the Appellate Panel of the Special Chamber of the Supreme Court has decided on his complaint.*
> *In order for the Constitutional Court to decide on Mr. Puka's referral, please provide the necessary information and documents regarding the eventual steps taken by the Appellate Panel of the Special Chamber".*

19. In the reply to the Court's request for additional information the Special Chamber of the Supreme Court provided that:

> *"In this case 5 Appellants appealed against the Decision of the Specialized Panel SCEL-10-0013, dated 26 December 2012. Among the Appellants was also Shaban Puka, from the village Pleshinë, MA Feruzaj. With Judgment of the Appellate Panel, AC-I-13-0004, dated 22 August 2013, three appeals were accepted as grounded, whereas two were ungrounded, as it is the case also with Mr. Puka.*
>
> *In the first instance the complaint of Mr. Puka was dismissed as untimely, whereas in the second instance, the Appellant with his appeal failed to provide evidence as to the reason of not filing the complaint within the prescribed legal time limit.*
> *The final time limit for filing a complaint was 27 September 2010, whereas his complaint was filed on 5 July 2011.*
> *Thus, the Appellate Panel deliberated and it was confirmed that the Decision was served to Mr. Puka."*

The Law

> REGULATION NO. 2003/13 ON THE TRANSFORMATION OF THE RIGHT OF USE TO SOCIALLYOWNED IMMOVABLE PROPERTY

> *"10.6 Upon application by an aggrieved individual or aggrieved individuals, a complaint regarding the list of eligible employees as determined by the Agency and the distribution of funds from the escrow account provided for in subsection 10.5 shall be subject to review by the Special Chamber, pursuant to section 4.1 (g) of Regulation 2002/13".*
>
> *(a) The complaint must be filed with the Special Chamber within 20 days after the final publication in the media pursuant to subsection 10.3 of the list of eligible employees by the Agency. The Special Chamber shall consider any complaints on a priority basis and decide on such complaints within 40 days of the date of their submission".*

Applicant's allegations

20. The Applicant does not invoke any constitutional violations in particular, but he claims: *"I want my right to 20% from the privatization, which my colleagues are enjoying to be recognized."*

Preliminary Assessment on the Admissibility of the Referral

21. The Court notes that to be able to adjudicate upon the Applicant complaint, 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.
22. In this regard, the Court refers to the Article 113.7 of the Constitution, which provides that:

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

23. The Court notes that the Applicant has neither described the facts of the case nor has he substantiated his complaints. Instead he has only argued that he wants to be included in the final list of eligible employees, in order to obtain the 20% share that he is entitled to from the proceeds of the privatization of SOE - Ferizaj.

24. In this regard, the Court takes into account Rule 36 of the Rules of Procedure, which provides:

"(1) The Court may review referrals only if: (c) The referral is not manifestly ill-founded."

25. The Constitutional Court notes that the Applicant has failed to comply with the deadlines that are foreseen by the legal provisions of Regulation No. 2003/13 on the transformation of the right of use to socially owned immovable property, which are applicable in his case. The Applicant was given the opportunity, but he failed to provide reasonable justification for his delays.

26. The Court, therefore, considers that there is nothing in the Referral which indicates that the case lacked impartiality or that proceedings were otherwise unfair (see, *mutatis mutandis*, Shub v. Lithuania, ECHR Decision on Admissibility of Application No. 17064/06 of 30 June 2009).

27. In conclusion, the Applicant has neither built a case on a violation of any of his rights guaranteed by the Constitution nor has he submitted any *prima facie* evidence of such a violation (see Vanek v. Slovak Republic, ECHR Decision as to the Admissibility of Application no. 53363/99 of 31 May 2005).

28. It follows that the Referral is manifestly ill-founded pursuant to Rule 36 1. (c) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to the Article 113.7 of the Constitution, Articles 20 and 47 of the Law and Rule 36 (1), c) of the Rules of Procedure, on 11 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. TO DECLARE this Decision effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Robert Carolan	Prof. Dr. Enver Hasani

KI190/13, Ensemble "Shqiponjat e Dukagjinit", Resolution of 14 March 2014 - Constitutional Review of the Supporting document of the President of the Municipality of Gjakova, of 8 November 2011

Case KI190/13, decision of 14 March 2014

Key words: Individual Referral, non-exhaustion of legal remedies.

The Applicant alleges that the DCYS decision of the Municipality of Gjakova violated Articles 23, 26, 27,48, 50 and 55 of the Constitution of Kosovo.

The Applicant requested that, "the Constitutional Court of Kosovo as the highest constitutional arbiter for protection of human rights and freedoms brings justice in the country and ... moral and material compensation if we are entitled to".

In this respect, the Court concludes that the Applicant has not provided any evidence that it has exhausted all of it's legal remedies, before addressing the Constitutional Court with this Referral.

The Constitutional Court, pursuant to Article 113. 7 of the Constitution, Article 47 of the Law and Rule 36 and Rule 56 (2) of the Rules of Procedure, on 14 March 2014, unanimously declares the Referral inadmissible and that the Applicant did not meet the basic formal admissibility requirement for exhaustion of all legal remedies.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI190/13
Applicant
Ensemble "Shqiponjat e Dukagjinit", Gjakova
Request for the constitutional review of the Supporting document of the Mayor of the Municipality of Gjakova, of 8 November 2011

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 the Ensemble "Shqiponjat e Dukagjinit" from Gjakova, which is represented by the artistic coordinator, Mr. Muhamet Morina from Gjakova.

Challenged decision

2. The Applicant did not clearly specify what decision it challenges, but in the referral form, in the part specified for the authority of the court that took the decision, it wrote the "Supporting document of the Mayor of the Municipality of Gjakova, Pal Lekaj, of 8 November 2011," without specifying the date of its receipt.

Subject matter

3. The subject matter is the constitutional review of the Supporting document of the Mayor of the Municipality of Gjakova, Pal Lekaj, addressed to the Directorate for Culture, Youth and Sport (hereinafter referred to as "DCYS") with a copy to the Applicant,

which requested the resolution of the contested matter of providing the location for work for the Ensemble "Shqiponjat e Dukagjinit" from Gjakova.

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, and Rule 56 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo.

Proceedings before the Court

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

6. On 2 December 2013, by Decision No. GJR. KI190/13, the President of the Court appointed the Judge Robert Carolan as Judge Rapporteur and the Review Panel, composed of Judges: Snezhana Botusharova (Presiding), Kadri Kryeziu and Arta Rama-Hajrizi.

7. On 11 December 2013, the Constitutional Court formally requested that the Applicant, fill in the standard referral form, according to the instructions in the form. On the same day the Municipality of Gjakova was also notified of the registration of this Referral.

8. On 23 December 2013, the Applicant submitted a partly completed standard referral form to the Court and some additional documents.

9. 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

10. According to the Applicant, the Ensemble "Shqiponjat e Dukagjinit" is a non-governmental organization (NGO) from Gjakova, which cultivates "the original Albanian folclore" and it carried out its activity within the Palace of Culture "Asim Vokshi" in Gjakova.

11. On 18 April 2011, the Applicant was informed by the DCYS Director to remove their equipment from the work space, because the premises would be renovated. It seems that this suggestion was made verbally, because there is no attached written decision to the Referral.

12. According to the Applicant, the members of the Ensemble were no longer allowed to carry out their activity in the facility; furthermore, they were continuously prevented by the DCYS in performing their cultural activity.

13. On 20 May 2011 and on 8 November 2011, the Applicant requested the Mayor of the Municipality, Pal Lekaj, "*to provide institutional assistance for conducting the activity of the Ensemble "Shqiponjat e Dukagjinit."*

14. On 19 October 2012, the Applicant addressed the Ombudsperson with a request against the Municipality of Gjakova - DCYS "*due to non-providing the necessary space for conducting their cultural activities."*

15. On 28 August 2012, the Ombudsperson denied the Applicant's request , with the justification that after the investigating this case, the Ombudsperson was notified by the respective authorities of the Municipality of Gjakova that the Applicant's request had already been fulfilled .

16. On 5 November 2013 the Applicant submitted the Referral to the Constitutional Court, and requested that the Constitutional Court award the Applicant "moral and material compensation" because of their removal from the working environment, where they used to carry out their cultural activity.

Applicant's allegations

17. The Applicant alleges that the DCYS decision of the Municipality of Gjakova violated Articles 23, 26, 27, 48, 50 and 55 of the Constitution of Kosovo.

18. The Applicant requested that, *"the Constitutional Court of Kosovo as the highest constitutional arbiter for protection of human rights and freedoms brings justice in the country and... moral and material compensation if we are entitled to".*

Admissibility of the Referral

19. The Court observes that, in order to be able to adjudicate the Applicant's complaint, it is necessary to first examine whether the party has fulfilled the admissibility requirements of the Constitution, the Law on the Constitutional Court and the Rules of Procedure of the Court.

20. 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".*

21. In this respect, the Court concludes that the Applicant has not provided any evidence that it has exhausted all of it's legal remedies, before addressing the Constitutional Court with this Referral.

22. Taking into account the Law on State Administration of the Republic of Kosovo (Law 03/L189), Article 2.1.4, where the local state administrative bodies are defined as " local state administration bodies", while in Article 4.1.6 of the same law, it is provided that the administrative duties are performed by administration bodies in "administrative procedure", it is quite clear that the Applicant has available remedies for complaints provided by the Law on Administrative Procedure.

23. The mere fact that the Applicant submitted a complaint to the Office of the Ombudsperson cannot be a basis to conclude that the Applicant has exhausted all effective legal remedies in this case. Similarly, the Court recalls that the European Court of Human Rights (ECtHR), as a general rule holds that a mere submission to the Ombudsperson alone cannot be interpreted as the exhaustion of all effective legal remedies as required by Article 35 of the European Convention on Human Rights (see Leander v. Sweden, Judgment of 26 March 1987, Marc Montion v. France, Decision of 14 May 1987, etc.). Therefore, by taking into account Article 53 of the Constitution regarding the manner of interpreting human rights guaranteed by the Constitution, the Court finds that there is no reason to take a different approach on this case.

24. One of primary purposes of the exhaustion of legal remedies is to afford to domestic courts or administrative bodies the effective decision making competencies, to initially have a possibility to decide on the issues of possible violations of human rights and the compliance of the domestic law with the Constitution (see ECtHR Decision, A, B and C v. Ireland [GM], § 142).

26. 25. The Court wishes to emphasize that the establishment, registration, internal management, activity, and other competences of the NGOs are regulated by Law on Freedom of association in non-governmental organizations Law No.04/L –057 approved by Assembly of Kosovo, on 29.08.2011.

27. Considering the fact that the Applicant did not meet the basic formal admissibility requirement for exhaustion of all legal remedies, the Court, pursuant to Rule 36 (1) a), finds that the Referral is not suitable for further consideration at this time, and

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113 7 of the Constitution, Article 47 of the Law on Court and Rule 36 and Rule 56 (2) of the Rules of Procedure, on 14 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

KI218/13, Afrim Zeqiri, Resolution of 14 March 2014 - Constitutional Review of Decision Mlc. Rev. no. 57/2013, of the Supreme Court of Kosovo, of 30 July 2013

Case KI218/13, decision of 14 March 2014

Key words: individual referral, material damage, detention, non-exhaustion of legal remedies.

By Judgment C. no. 65/2004, of the Municipal Court in Prishtina, of 12 October 2009, the claim of Applicant was partially approved and it was ordered as follows:

II. The respondent Kosovo Judicial Council in Prishtina IS OBLIGED due to unlawful detention from 29.05.2000 until 11.02.2002 (617 days) to compensate to the claimant the material damage at the amount of €3.688,10 (three thousand and six hundred and eighty eight Euros and ten 10 cents) and non-material damage at the amount of €100.000 (one hundred Euros) with delayed legal interest rate of 3,5%, which is received by Kosovo banks with deposited money from 1 year without certain destination from the day of rendering this decision until the final payment together with procedural costs at the amount of €1.365 (one thousand and three hundred and sixty five Euros) - all these within 15 days from the day of rendering this judgment and under the threat of forced execution.

By Ruling of the Supreme Court of Kosovo, Mlc. Rev. no. 57/2013, of 30 July 2013, the Supreme Court approved the request for protection of legality, filed by the State Prosecutor of the Republic of Kosovo, and the revision of the respondent, thereby annulling the Judgment Ac. no. 524/2010, of the District Court in Prishtina, of 18 December 2012, and Judgment C. no. 65/2009, of the Municipal Court in Prishtina, of 12 October 2009, and remanding the case to the first instance court for retrial.

Deciding on the referral of the Applicant Afrim Zeqiri, the Constitutional Court notes that by Decision Mlc. Rev. no. 57/2013, of Supreme Court of Kosovo, of 30 July 2013, *"the case is remanded to the first instance court for retrial"* so that the competent court could decide on the subject matter of the 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 Constitutional Court concluded that the Applicant has not exhausted all legal remedies provided by the Law for him to be able to file a referral with the Constitutional Court, and therefore, the Referral must be declared 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. KI218/13
Applicant
Afrim Zeqiri
Constitutional Review of the Decision of the Supreme Court of Kosovo, Mlc.Rev. no. 57/2013, of 30 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 Referral was filed by Mr. Afrim Zeqiri (hereinafter: the Applicant), village of Cernica, Municipality of Gjilan, represented before the Constitutional Court of Kosovo by lawyer Mr. Bajram Morina from Gjakova.

Challenged decision

2. The Applicant challenges the decision of the Supreme Court of Kosovo, Mlc. Rev. no. 57/2013, of 30 July 2013.

Subject matter

3. The subject matter is the constitutional review of the decision of the Supreme Court of Kosovo, Mlc. Rev. no. 57/2013, of 30 July 2013, which according to allegations of the Applicant, violated Articles 7 [Values], 23 [Human Dignity], 24 [Equality Before the Law], 27 [Prohibition of Torture, Cruel, Inhuman or Degrading Treatment], 31 [Right to Fair and Impartial Trial], 54 [Judicial

Protection of Rights], and 102 [General Principles of the Judicial System] of the Constitution of the Republic of Kosovo, and Article 6 of the European Convention for Protection of Human Rights and Fundamental Freedoms, and item 1 of Protocol I to this Convention (hereinafter: ECHR)

Legal basis

4. The Referral is based on Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), Article 47.1 of the Law 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. On 3 December 2013, the Applicant filed his Referral with the Constitutional Court of Kosovo (hereinafter: the Court).

6.On 8 January 2014, the President of the Court, by decision no. GJR. KI218/13, appointed Judge Robert Carolan as Judge Rapporteur. On the same date, the President of the Court, by decision no. KSH. KI218/13, appointed the Review Panel composed of Judges: Snezhana Botusharova (Presiding), Kadri Kryeziu and Arta Rama-Hajrizi as members.

7. On 14 March 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

8. By Judgment of the Municipal Court in Prishtina, C.no. 65/2004, of 12 October 2009, the claim of Applicant was partially approved and it was ordered as follows:

> *"I. The statement of claim of claimant Afrim Zeqiri from village Cerncia, Gjilan municipality IS APPROVED PARTLY AS GROUNDED.*

II. The respondent Kosovo Judicial Council in Prishtina IS OBLIGATED due to unlawful decision from 29.05.2000 until 11.02.2002 (617 days) to compensate to the claimant the material damage at the amount of €3.688.10 (three thousand and six hundred and eighty eight Euros and ten 10 cents) and non-material damage at the amount of €100,000 (one hundred and thousand Euros) with delayed legal interest rate of 3,5%, which is received by Kosovo banks with deposited money from 1 year without certain destination from the day of rendering this decision until the final payment together with procedural costs at the amount of €1,365.00 (one thousand and three hundred and sixty five Euros) – all these within 15 days from the day of rendering this judgment and under the threat of forced execution.

III. The statement of claim of claimant on the adjudicated amounts IS REJECTED AS UNGROUNDED as in the enacting clause of this judgment as well as his request for medical expenses at the amount of €20,000".

9. By Judgment of the District Court in Prishtina, Ac. no. 524/2010, of 18 December 2012, the appeals of the plaintiff and the respondent were rejected as unfounded and the Judgment of the Municipal Court in Prishtina C. no. 65/2004 of 12 December 2009 was upheld.

10. Against the Judgment of the District Court in Prishtina, Ac. no. 524/2010, of 18 December 2012 and Judgment of the Municipal Court in Prishtina C. no. 65/2004 of 12 December 2009 extraordinary legal remedies were filed – a request for protection of legality by the State Prosecutor of the Republic of Kosovo due to erroneous application of the substantive law, and a revision by the respondent due to essential violations of the Law on Contested Procedure and erroneous application of the substantive law, with the proposal that the impugned Judgments be quashed and the legal matter be remanded to the first instance court for retrial.

11. By Ruling of the Supreme Court of Kosovo, Mlc. Rev. No. 57/2013, of 30 July 2013, the Supreme Court approved the request for protection of legality, filed by the State Prosecutor of the Republic of Kosovo, and the revision of the respondent, thereby annulling the Judgment of the District Court in Prishtina, Ac. no. 524/2010, of 18 December 2012, and Judgment of the Municipal Court in

Prishtina, C. no. 65/2009, of 12 October 2009, and remanding the case to the first instance court for retrial.

Applicant's allegations

12. The Applicant „*informs the Constitutional Court of Kosovo that the abovementioned Ruling of Supreme Court, as public authority, respectively as one of the state bodies in the case of reconsideration was partial and favored the other body of state – Kosovo Judicial Council in relation to Applicant, even though based on many evidence was aware that it was about unlawful detention, due to serious violation of dignity and human rights, as well as other rights guaranteed by the Constitution, which violations we are mentioning as following, and that: Articles 7, 23, 24, 27, 31, 54 and 102 of the Constitution of the Republic of Kosovo, and Article 6 of the European Convention for Protection of Human Rights and Fundamental Freedoms, and item 1 of Protocol 1 to this Convention (hereinafter: ECHR).*

13. The Applicant further alleges that: "*In the conducted court procedures was favored the state of Kosovo, respectively the Judicial Council, as Kosovo state body, in relation to Kosovo citizen – Afrim Zeqiri, since the Judicial Council, in order to avoid by all means to its material responsibility has impacted directly by using its monopolistic and subordinating position, based on the fact that Judicial Council is the body that impacts directly on selecting the judges, including here the judges of the Supreme Court of Kosovo, who decided same as in the contested Ruling, by which is determined that Afrim Zeqiri was not treated as equal party in relation to Kosovo Judicial Council in the procedure that was conducted in the Supreme Court of Kosovo".*

14. The Applicant claims that "*In the present case, in the procedure conducted in the Supreme Court of Kosovo, the Applicant, Afrim Zeqiri, in relation to Kosovo Judicial Council.*

- *Is discriminated and it was not treated as equal party before the law,*
- *Was not provided equal protection, since by contested Ruling is favored the Kosovo Judicial Council, respectively the state of Kosovo, to the detriment of its citizen.*
- *Was denied the right to fair and impartial public hearing in the proceeding of rendering the contested Ruling".*

15. The Applicant requests from the Constitutional Court *"Abrogation– Annulment of the Ruling of Supreme Court of Kosovo MLc.Re.No.57/2013 of 30.07.2013, by which decision was admitted the request for protection of legality of State Prosecutor of Kosovo and Revision of Kosovo Judicial Council, and the case was remanded to the first instance court for retrial, and LEAVING INTO FORCE the Judgment of District Court of Prishtina, Ac.no.524/2010 of 18.12.2012 and Judgment of Municipal Court of Prishtina, C.No.65/2009 of 12.10.2009, by which to the Applicant – Afrim Zeqiri from village Cernica, Gjilan municipality, was approved the claim for compensation of material and non-material damage at the amount specified in the enacting clause of this judgment as grounded".*

Admissibility of the Referral

16. The Court notes that in order to be able to adjudicate the referral of the Applicant, it needs beforehand to examine whether the Applicant has met the admissibility requirements laid down in the Constitution, and further specified in the Law and in 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 47 of the Law, which provides that:

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

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

> *"The Court may only deal with Referrals if:*

(a) all effective remedies that are available under the law against the Judgment or decision challenged have been exhausted…".

20. Having these in mind, and based on the documentation filed with the Constitutional Court by the Applicant, the Court notes by Ruling of the Supreme Court of Kosovo Mlc. Rev. no. 57/2013, of 30 July 2013, "*the case is remanded to the first instance court for retrial*" so that the competent court could decide on the subject matter of the dispute.

21. The Court wishes to reiterate that the rule for the exhaustion of legal remedies exists to provide the relevant authorities, including courts, with a possibility to prevent or rectify alleged violations of the Constitution. The rule is based upon the assumption that the legal order of Kosovo will provide effective legal remedies for violation of constitutional rights (see, *mutatis mutandis* ECtHR, Selmouni v. France, no. 25803/94, ruling of 28 July 1999).

22. This Court has applied the same reasoning when rendering the Decision of 27 January 2010 on inadmissibility, based on the fact that not all legal remedies were exhausted, in the case AAB-RIINVEST University LLC Prishtina v. Government of the Republic of Kosovo, case No. KI41/09, and Decision of 23 March 2010, in the case Mimoza Kusari-Lila v. Central Election Commission, case no. KI73/09.

23. Therefore, the Court finds that the Applicant has not exhausted all legal remedies provided by law, in order for him to be able to file a Referral with the Constitutional Court, and therefore, it must reject the Referral as 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 Rule 36 (1) a) of the Rules of Procedure, in the session held on 14 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**
Robert Carolan	Prof. Dr. Enver Hasani

KI143/13, Nebih Sejdiu, Decision of 7 February 2014 - Constitutional Review of unspecified decision by unspecified public authority

Case KI143/13, decision of 7 February 2014

Key words: individual referral, privatisation, striking out the referral.

The Applicant submitted Referral based on Article 113.7 of the Constitution of Kosovo, by not challenging any ruling of any public authority, although he claimed that his rights guaranteed by law and Constitution have been violated. The subject matter is an alleged enjoyment of rights to 20% of the proceeds of privatization of SOE "Ramiz Sadiku" (hereinafter, SOE "Ramiz Sadiku").

On 9 September 2013, the Applicant filed a Referral with the court using the "Referral form for the submission of a referral". As to the description of the facts, he only wrote: "*Payment of 20% from the selling of K.N.I. Ramiz Sadiku". In relation to the justification of the Referral and alleged breaches of the Constitution, he only wrote: "Violation of human rights envisaged by the law on privatization and Constitution"*. Finally, the Applicant filled in the statement of the relief sought, writing only*: "Payment of 20% from the privatization amount of K.N.I. Ramiz Sadiku"*.

Deciding on the referral of the Applicant Nebih Sejdiu, the Constitutional Court notes that the Applicant has failed to provide and file any information and documentation proving what rights and freedoms were violated and by which public authority they were allegedly violated; what was the process of exhaustion of legal remedies and what were the main allegations and on what grounds they are substantiated. The Applicant failed to specify which rights and freedoms have been violated and which public authority act he is contesting. In fact, he does not disclose any appearance either of a violation of the rights guaranteed by the Constitution or of the act of public authority subject to review.

Therefore, the Court concludes that there is no case or controversy to be examined in that "Referral" and, consequently, there not being any justification to proceed further, pursuant to Rule 32 (4) of the Rules of Procedure, it must be dismissed.

DECISION TO STRIKE OUT THE REFERRAL
in
Case no. KI143/13
Applicant
Nebih Sejdiu
Constitutional review of an unidentified ruling of an unidentified 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
Kadri Kryeziu, Judge and
Arta Rama-Hajrizi, Judge.

Applicant

1. The Referral was filed by Nebih Sejdiu from Podujevo (hereinafter, Applicant).

Challenged decision

2. The Applicant does not challenge any ruling of any public authority, although claiming that his rights guaranteed by law and Constitution have been violated.

Subject matter

3. The subject matter is an alleged enjoyment of rights to 20% of the proceeds of privatization of SOE “Ramiz Sadiku” (hereinafter, SOE “Ramiz Sadiku”)

Legal basis

4. The Referral is based upon Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter, the Constitution), Articles 20, 22.7, 48 and 49 of the Law No. 03/L-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 Court

5. On 09 September 2013, the Applicant filed a Referral with the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).

6. On 24 September 2013, the President, by Decision no. GJR.KI. 143/13 appointed Judge Almiro Rodrigues as Judge Rapporteur. On the same day, the President by Decision no. KSH.143/13 appointed the Review Panel composed of judges: Altay Suroy (Presiding), Kadri Kryeziu and Arta Rama-Hajrizi.

7. On 21 October 2013, the Court informed the Applicant of the registration of Referral and, pursuant to Rule 36 (4) of the Rules of Procedure, requested him to clarify and complete his Referral, namely *„to submit to the Court all documents related to your case, including the decision that you are challenging"*. On 6 November, that letter was returned, with the notice that the Applicant was not living in the address given in the Referral.

8. On 3 December 2013, a second letter was sent to the Applicant, insisting on complementing and clarifying his referral, as previously requested, with the following warning: "*If you fail to provide the requested information and documents, (...) the Court will understand that you are not anymore interested in further proceeding with your Referral*".

9. On 07. 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

10. On 9 September 2013, the Applicant filed a Referral with the court using the "Referral form for the submission of a referral". As to the description of the facts, he only wrote: *"Payment of 20%. From the selling of K.N.I. Ramiz Sadiku"*. In relation to the justification of the Referral and alleged breaches of the

Constitution, he only wrote: *"Violation of human rights envisaged by the law on privatization and Constitution"*. Finally, the Applicant filled in the statement of the relief sought, writing only: *"Payment of 20% from the privatization amount of K.N.I. Ramiz Sadiku"*.

11. The Applicant enclosed a copy of a work booklet with the following data: *"Serial number SK. 00 148458; Registration number 6456 and Issuing place and date Podujeve 14.03.1977"*.

12. On 21 October 2013 and 3 December 2013, the Court requested the Applicant to complete and clarify the Referral. In the second date, the Applicant was warned that if he would fail to provide the requested information and documents, *„the Court will understand that you are not anymore interested in further proceeding with your Referral"*.

Applicant's allegations

13. The Applicant claims that there was a *"violation of human rights envisaged by the law on privatization and Constitution"*. However, he does not indicate what rights were violated or what public authority has allegedly committed such a violation.

14. The Applicant requests the Court the *"Payment of 20% from the privatization amount of K.N.I. Ramiz Sadiku"*.

Preliminary assessment of admissibility of the Referral

15. The Court first examines whether the applicant has met all requirements as provided by the Constitution, and further specified by the Law and the Rules of Procedure of the Court.

16. In this regard, the Court refers to the Article 113.7 [Jurisdiction and Authorized Parties] of the Constitution, which establishes*:*

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

17. The Court also refers to Article 48 of the Law which provides:

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

18. The Court also takes into account 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."

19. In addition, the Court takes into consideration Rule 32 (4), which foresees:

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

20. The Court notes that the Applicant has failed to provide and file any information and documentation proving what rights and freedoms were violated and by which public authority they were allegedly violated; what was the process of exhaustion of legal remedies and what were the main allegations and on what grounds they are substantiated

21. The Court further notes that this so called "Referral" appears in the Referral format adopted by the Court for complaining against violation of protected constitutional rights by the public authorities. However, it does not indicate the pertinent information and relevant evidence in order to the Court to assess even the admissibility requirements.

22. Thus, having in mind the legal nature and scope of the Constitutional Court, the "Referral" would not fall under the preliminary consideration of the Court; nevertheless, the Court will take it for the sake of explanation purposes.

23. The admissibility requirements are foreseen in the Constitution and are further developed in the Law and the Rules of Procedure, as abovementioned.

24. However, the Applicant failed to specify which rights and freedoms have been violated and which public authority act he is contesting. In fact, he does not disclose any appearance either of a violation of the rights guaranteed by the Constitution or of the act of public authority subject to review.

25. Moreover, the Applicant has neither substantiated a case, where he considers himself a victim of a violation of the Constitution (See Scordino v. Italy (no. 1) [GC], § 179.), nor he has attached the necessary supporting information and documents.

26. In fact, the proceedings before the Constitutional Court are adversarial in nature. Therefore, it is up to the Applicant to substantiate the factual arguments (by providing the Court with the necessary factual evidence) and also the legal arguments (explaining why and how, in his view, the Constitution 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.

27. 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, at least to comply with all requirements on admissibility of a referral.

28. Furthermore, the Applicant is under the obligation to exhaust all legal remedies provided by law, as stipulated by Article 113 (7). The purpose of the exhaustion rule is allowing the opportunity to a public authority, including the regular courts, of preventing or settling alleged violations of the Constitution. The exhaustion rule is operatively intertwined with the subsidiary character of the constitutional justice procedural frame work. (See Selmouni v. France [GC], § 74; Kudła v. Poland [GC], § 152; Andrášik and Others v. Slovakia).

29. The principle of subsidiarity requires that the Applicants exhaust all procedural possibilities in the regular proceedings, either administrative or judicial, in order to prevent the violation of the constitution or, if any, to remedy such violation of a fundamental right.

30. Thus, the Applicant is liable to have his case declared inadmissible by the Constitutional Court, when failing to avail himself of the regular proceedings or failing to report a violation of the Constitution in the regular proceedings. That failure shall be understood as a waiver of the right to object the violation and complain. (See Resolution, in Constitutional Court Case No. KI07/09, Demë Kurbogaj and Besnik Kurbogaj, Review of Supreme Court Judgment Pkl.nr. 61/07 of 24 November 2008, paragraph 18).

31. The Applicant, in the instant case, has not showed having exhausted all the remedies provided by the regular legal system.

32. Therefore, the Court, taking into account all the above, should conclude that the so called referral should be preliminarily rejected as inadmissible.

33. The Court recalls that, upon information on the registration of his Referral, the Applicant was obliged to communicate any change of his address.

34. In addition, a second letter was sent to the Applicant, warning him that, if no information and documents provided, the Court would understand that he was not anymore interested in further proceeding with his Referral. The Court further notes that the Applicant has not answered that second letter

35. In sum, the Court considers that the abovementioned “Referral” does not reach the minimum threshold to be considered a Referral, by which the supposed matter shoud be referred. Moreover, the Court further considers that it is legitimate to assume that the Applicant is not anymore interested in further proceeding with his Referral.

36. In addition, the way the “Referral” has been filed could be seen, in a strict approach, as an abuse of the right to complain. The Constitutional Court is bound by Article 53 [Interpretation of Human Rights Provisions] of the Constitution which establishes that *“Human rights and fundamental freedoms guaranteed by*

this Constitution shall be interpreted consistent with the court decisions of the European Court of Human Rights".

37. In fact, the European Court of Human Rights established that *"any conduct of an applicant that is manifestly contrary to the purpose of the right of individual application as provided for in the Convention and impedes the proper functioning of the Court or the proper conduct of the proceedings before it constitutes an abuse of the right of application".* (See Mirolubovs and Others v. Latvia*, §§ 62 and 65).

38. However, the Court considers that, in that case, it is not advisable to adopt such a strict approach; meanwhile, it is important for the Applicant to be aware of, as it looks like the Applicant misapprehended the role of the Constitutional Court and the nature of the constitutional justice legal working frame as established by the Constitution, the Law and the Rules of Procedure.

39. In sum, the Court concludes that there is no case or controversy to be examined in that "Referral" and, consequently, there not being any justification to proceed further, pursuant to Rule 32 (4) of the Rules, it must be dismissed.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113 (7) of the Constitution, Article 20 of the Law and Rule 32 (4) of the Rules of Procedure, on 7 February 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. This Decision is effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Almiro Rodrigues	Prof. Dr. Enver Hasani

KI206/13, Tanasko Đorđević, Miloratka Jelić, Srboljub Đorđević, Serafina Đorđević, Jagoda Janković and Milorad Đorđević, Resolution of 13 March 2014 Costitutional Review of the Judgment Rev. Mlc. no. 377/2009 of the Supreme Court of Kosovo, of 8 May 2012

Case KI206/13, decision of 13 March 2014

Key words: individual referral, inadmissibility referral.

The Applicant submitted Referral based on Article 113.7 of the Constitution of Kosovo, challenging Judgment Rev. Mlc. no. 377/2009 of the Supreme Court of Kosovo, of 8 May 2012, which allegedly violates their right to protection of property as guaranteed by Article 46 [Protection of Property] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution).

On 15 November 2013, the Applicants filed additional documents to their Referral KI79/12, stating that they "*managed to provide some other evidence, (...) which have to do with the revision, as extraordinary remedy." The Applicants state that "the present case could not be reviewed by extraordinary legal remedy and neither such requirements were met, but the review was done by general method-refuse the return of property without taking into consideration violations of the constitutional and legal rights." Finally, the Applicants conclude that, "the evidence attached clearly shows that in cases it was acted in accordance with the provisions, the similar cases were rejected".*

In the present case, the Applicants have filed with the Court additional documents to the Referral KI79/12. However, the Applicants have done so after the preliminary report having been submitted to the Review Panel by the Judge Rapporteur. Therefore, in accordance with Rule 31 (1) of the Rules of Procedure, the Court registered the Applicants' referral of 15 November as a new Referral KI206/13.

Considering the Applicant's referral regarding the constitutional review of the Judgment Rev. Mlc. No. 377/2009 of the Supreme Court of Kosovo, of 8 May 2012, the Court concludes that the filed additional documents have no impact on the Court's previous decision in the case KI79/12. In this regard, the Court refers to Rule 36 (3) e) of the Rules of Procedure, which foresees that:

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

RESOLUTION ON INADMISSIBILITY
in
Case No. KI206/13
Applicants
Tanasko Đorđević,
Miloratka Jelić,
Srboljub Đorđević,
Serafina Đorđević,
Jagoda Janković and
Milorad Đorđević
Constitutional Review of the Judgment Rev. Mlc. No. 377/2009 of the Supreme Court of Kosovo, of 8 May 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
Arta Rama-Hajrizi, Judge

Applicant

1. The Referral was submitted by Tanasko Đorđević, Miloratka Jelić, Srboljub Đorđević, Serafina Đorđević, Jagoda Janković and Milorad Đorđević, all from Prizren (hereinafter, the Applicants), represented by Lawyer Bashkim Nevzati from Prizren.

Challenged decision

2. The Applicants challenge the Judgment Rev. Mlc. No. 377/2009 of the Supreme Court of Kosovo, of 8 May 2012, which was served upon them on 12 July 2012.

Subject matter

3. The Applicants claim that the challenged judgment of the Supreme Court violates their right to protection of property as guaranteed

by Article 46 [Protection of Property] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution).

Legal basis

4. The legal basis for filing the Referral is Article 113.7 of the Constitution, Article 22 of the Law No. 03/L-121 on the Constitutional Court of Kosovo (hereinafter: the Law) and Rule 29 of the Rules of Procedure of the Constitutional Court (hereinafter: the Rules of Procedure).

Proceedings before the Court

5. On 24 August 2012, the Applicants filed a referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the Court), which was registered under number KI79/12.

6. On 15 November 2013, the Review Panel considered the Report of the Judge Rapporteur and, pursuant to Rule 31 (1) of the Rules of Procedure, made a recommendation to the Court on the Inadmissibility of the Referral KI79/12.

7. On the same date of 15 November 2013, the Applicants filed additional documents to the Referral KI79/12 already subject to deliberation of the Court.

8. Thus, on 15 November 2013, the filed additional documents were registered as a new Referral under number KI206/13.

9. On 03 December 2013, the President appointed Judge Almiro Rodrigues as Judge Rapporteur, and a Review Panel, composed of judges: Altay Suroy (Presiding), Kadri Kryeziu and Arta Rama-Hajrizi.

10. On 24 January 2014, the Court notified the Applicants and the Supreme Court of the registration of the new Referral.

11. On 13 March 2014, after having considered the Report of the Judge Rapporteur, the Review Panel composed of judges: Altay Suroy (Presiding), Kadri Kryeziu and Arta Rama-Hajrizi, made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

12. On 15 November 2013, the Applicants filed additional documents to their Referral KI79/12, stating that they *"managed to provide some other evidence, (...) which have to do with the revision, as extraordinary remedy."* The Applicants state that *"the present case could not be reviewed by extraordinary legal remedy and neither such requirements were met, but the review was done by general method-refuse the return of property without taking into consideration violations of the constitutional and legal rights."* Finally, the Applicants conclude that, *"the evidence attached clearly shows that in cases it was acted in accordance with the provisions, the similar cases were rejected".*

13. In fact, as some other new evidence, the Applicants have submitted three (3) Judgments of the Supreme Court [Rev 19/2006, Rev 189/2010, Rev 243/2011], which are not directly related to the individual cases KI79/12 and KI206/13, and where none of the Applicants is a party to such Supreme Court proceedings.

Applicant's allegations

14. The Applicants allege in the additional documents of 15 November 2013 that *"the review was done by general method-refuse the return of property without taking into consideration violations of the constitutional and legal rights".*

15. In this Referral KI206/13, the Applicants did not mention any other violation of constitutionally guaranteed rights. Hence, the Court considers that the Applicants continue to uphold their allegations as clarified in case KI79/12, namely that the challenged judgment of the Supreme Court violates their rights to protection of property, as guaranteed by Article 46 of the Constitution.

Admissibility of the Referral

16. The Court examines the admissibility requirements considering that this Referral KI206/13 is a continuation of the Referral KI79/12 and thus it will take into account the specifics of the Referral KI206/13.

17. In this regard, the Court refers to Rule 31 (1) of the Rules of Procedure, which foresees that:

> *"At any time before the Judge Rapporteur has submitted the report, a party that has filed a referral or a reply, or the Court acting ex officio, may submit to the Secretariat a correction of clerical or numerical errors contained in the materials filed."*

18. In the present case, the Applicants have filed with the Court additional documents to the Referral KI79/12. However, the Applicants have done so after the preliminary report having been submitted to the Review Panel by the Judge Rapporteur. Therefore, in accordance with Rule 31 (1) of the Rules of Procedure, the Court registered the Applicants' referral of 15 November as a new Referral KI206/13.

19. Nevertheless, the Court notes that the filed additional documents are not directly related to the individual cases of the Applicants, nor are the Applicants a party to any of these newly filed Supreme Court Judgments.

20. Moreover, the Court considers that such additional documents neither constitute a new allegation nor provide sufficient and relevant grounds for a new Decision.

21. Therefore, the Court concludes that the filed additional documents have no impact on the Court's previous decision in the case KI79/12.

22. In this regard, the Court refers to Rule 36 (3) e) of the Rules of Procedure, which foresees that:

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

23. In fact, the Court recalls that it has dealt with the mentioned case KI79/12, where a Resolution on Inadmissibility of the referral was published on 6 December 2013. The Court reasoned that the Applicants have not presented any *prima facie* evidence to support their allegations of a violation of their constitutionally guaranteed rights. Therefore, the Referral KI79/12 was found inadmissible, pursuant to Rule 36 (2) a) and b) of the Rules of Procedure.

24. Consequently, the Court finds that, pursuant to Rule 36 (3) e) of the Rules of Procedure, the Referral KI206/13 is inadmissible.

FOR THESE REASONS

The Constitutional Court pursuant to Article 113 .7 of the Constitution, Article 20 of the Law and Rule 36 (3) (e) of the Rules of the Procedure, in its session held on 13 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; and

IV. This Decision is effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Almiro Rodrigues	Prof. Dr. Enver Hasani

KI196/13, Alisait Qerimi and four others, Resolution of 7 February 2014 - Constitutional Review of the Judgment Rev. no. 235/2011, of the Supreme Court of Kosovo, of 12 July 2013

Case KI196/13, decision of 7 February 2014

Key words: Individual Referral, Right to Work and Exercise Profession, manifestly ill-founded.

The Applicants allege that the Judgment Rev. no. 235/2011, of the Supreme Court of Kosovo, of 12 July 2013, has violated their rights protected by the Constitution, Article 24 (Equality before Law), Article 31 (Right to Fair and Impartial Trial), Article 54 (Judicial Protection of Rights) and Article 49 (Right to Work and Exercise of Profession) of the Constitution, Article 101 of the Universal Declaration of Human Rights, and Article 6 of the European Convention on Human Rights.

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 have had a fair trial.

The Court considers that the facts presented by the Applicants have in no way justified the allegation of a violation of the constitutional rights, and that the Applicants have not sufficiently substantiated their allegation.

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 20 of the Law and Rule 36 (2) b) and (d) of the Rules of Procedure, on 7 February 2014, unanimously declares the Referral inadmissible.

RESOLUTION ON INADMISSIBILITY
in
Case no. KI196/13
Applicant
Alisait Qerimi and four others
Constitutional Review of the Judgment of the Supreme Court of Kosovo, Rev. no. 235/2011, of 12 July 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
Arta Rama-Hajrizi, Judge

Applicant

1. The Applicants are: Mr. Alisait Qerimi, Mr. Abdylaziz Ahmeti, Mr. Nexhat Osmani, Mr. Fehmi Shala and Mr. Nuhi Robelli from the Municipality of Gjilan, duly represented by Mr. Alisait Qerimi (hereinafter: Applicants).

Challenged decision

2. The Applicants challenge the Judgment of the Supreme Court of Kosovo, Rev. no. 235/2011, of 12 July 2013, served on the Applicants on 5 August 2013.

Subject matter

3. The subject matter of the Referral is the request for constitutional review of the Judgment of the Supreme Court of Kosovo, Rev. no. 235/2011, of 12 July 2013, which upheld judgments of lower instances, thereby rejecting as ungrounded the request of applicants for reinstatement to their working places, with all rights deriving from their working relationship.

Legal basis

4. The Referral is based on the 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 Court.

Proceedings before the Court

5. On 12 November 2013, the Applicants filed the Referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 2 December 2013, the President of the Court, by decision no. GJR. KI196/13, appointed Judge Arta Rama-Hajrizi as Judge Rapporteur. On the same date, the President of the Court, by decision no. KSH. KI196/13, appointed the Review Panel composed of Judges: Altay Suroy (Presiding), Snezhana Botusharova and Kadri Kryeziu.

7. On 11 December 2013, the Court notified the Applicants and the Supreme Court on the registration of the case.

8. On 19 December 2013, the representative of the Applicants submitted to the Court an authorization, by which he shall represent all other applicants.

9. On 17 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

10. On 2 February 2011, the Municipal Court in Gjilan, deciding upon the claim suit of Applicants against the "NLB-Prishtina" Bank, Branch in Gjilan, by which the Applicants requested to be reinstated to their working places with the "NLB-Prishtina" Bank, branch in Gjilan, with all rights deriving from their working relationships, rendered the Judgment C. no. 714/09, thereby rejecting the claim suit as ungrounded.

11. On 14 June 2011, the District Court in Gjilan, deciding upon complaint of the Applicants, rendered the Judgment AC. no. 82/11,

thereby rejecting the complaint as ungrounded, and upheld the Judgment of the Municipal Court. In its Judgment, the District Court finds:

> *"... this court evaluated the conclusion and legal stance of the first instance court and found that the same is correct and based on law and it is based on submitted evidence and that there are justifiable reasons, which this court approves.*
>
> *This court considers that the factual situation is determined correctly and completely by the court of first instance and that correctly is applied the substantive law..."*.

12. On 12 July 2013, the Supreme Court of Kosovo, deciding upon revision filed by the Applicants, decided that the revision is ungrounded. In its reasoning of the ruling, the Supreme Court notes :

> "*... the Supreme Court of Kosovo found that lower instance courts by determining correctly and completely the factual situation have applied correctly the contested procedure provisions and substantive law whereby they found that the statement of claim of claimant is ungrounded...*".

13. On 10 September 2013, the Applicants addressed the Public Prosecution of Kosovo with a "motion to file a request for protection of legality".

14. On 23 September 2013, the State Prosecutor, through his notice KMLC. No. 98/13 informed the Applicants that *"legal time limits have expired to submit the request for protection of legality"*.

Applicant's allegations

15. The Applicants allege that the Judgment of the Supreme Court of Kosovo, Rev. no.235/2011, of 12 July 2013, has violated their rights protected by the Constitution, Article 24 (Equality before Law), Article 31 (Right to Fair and Impartial Trial), Article 54 (Judicial Protection of Rights) and Article 49 (Right to Work and Exercise of Profession) of the Constitution, Article 101 of the Universal Declaration of Human Rights, and Article 6 of the European Convention on Human Rights.

16. The Applicants conclude by requesting from the Constitutional Court to:

"We request to annul judgments of all court instances, such as that of Municipal Court in Gjilan C.no.714/09 of 02.02.2011, that of District Court in Gjilan AC.no.82/11 of 14.06.2011 and that of Supreme Court of Kosovo Rev.no.235/2011 of 12.07.2013".

Admissibility of the Referral

17. In order to be able to adjudicate the Applicants' Referral, the Court has 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.

18. In this regard, Article 113.7 of the Constitution provides:

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

19. 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*".

20. In this concrete case, the Court notes that the Applicants have addressed the Municipal Court in Gjilan, the District Court in Gjilan, and ultimately the Supreme Court of Kosovo, for the protection of their rights. The Court also notes that the Applicants have received the Judgment of the Supreme Court Rev. no. 235/2011, of 12 July 2013, on 5 August 2013, while they filed their referral with the Court on 12 November 2013.

21. Therefore, the Court considers that the Applicants are an authorized party, and that they have exhausted all legal remedies available under the applicable law, and that the referral was submitted within the four-month time limit.

22. However, 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:

(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".

23. The Applicants allege that the Judgment of the Supreme Court of Kosovo, Rev. no. 235/2011, of 12 July 2013, which upheld the Judgment of the Municipal Court in Gjilan, C. no. 714/09, of 2 February 2011, and the Judgment of the District Court in Gjilan, AC. no. 82/11, of 14 June 2011, has violated their rights protected by the Constitution, namely Article 24 (Equality before Law), Article 31 (Right to Fair and Impartial Trial), Article 54 (Judicial Protection of Rights) and Article 49 (Right to Work and Exercise of Profession) of the Constitution, Article 101 of the Universal Declaration of Human Rights, and Article 6 of the European Convention on Human Rights.

24. In this regard, the Constitutional Court wishes to reiterate that according to the Constitution, it is not its duty to act as a fourth instance court in respect of the decisions taken by the regular courts. It is the role of regular courts to interpret and apply the pertinent rules of both procedural and material law (see, *mutatis mutandis,* Garcia Ruiz v. Spain, no. 30544/96, ECtHR, 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*).*

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 Applicants have had a fair trial (see, *inter alia*, case Edwards v. United Kingdom, Application no. 13071/87, Report of the European Commission on Human Rights of 10 July 1991*).*

26. Based on the case files, the Court notes that the reasoning provided by the Judgment of the Supreme Court is clear, and after reviewing the entire procedure, the Court also finds that the regular court proceedings have been in no way unfair or arbitrary (see, *mutatis*

mutandis, Shub v. Lithuania, no. 17064/06, ECtHR, decision of 30 June 2009).

27. Furthermore, the Supreme Court, in its Judgment, confirmed that *"the Supreme Court of Kosovo found that lower instance courts by determining correctly and completely the factual situation have applied correctly the contested procedure provisions and substantive law whereby they found that the statement of claim of claimant is ungrounded […]".*

28. Based on the above, the Court considers that the facts presented by the Applicants have in no way justified the allegation of a violation of the constitutional rights, and that the Applicants have not sufficiently substantiated their allegation.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 20 of the Law and Rule 36 (2) b) and (d) of the Rules of Procedure, on 7 February 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 immediately effective

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

KI201/13, Sofa Gjonbalaj, Resolution of 2 April 2014 - Constitutional Review of the Judgment Rev. No. 299/2011 of the Supreme Court, of 17 April 2013

Case KI201/13, decision of 2 April 2014

Key words: Individual Referral, right to work and exercise profession, inadmissible, out of time.

The subject matter is the constitutional review of the Judgment of the Supreme, which rejected the Applicant's request for revision against the Judgment of the District Court in Prishtina as ungrounded.

The decisions of the lower court concerned the Applicant's claim to annul the Decision on the termination of the employment contract.

In her Referral, the Applicant alleged violation of Article 49 [Right to Work and Exercise Profession] of the Constitution.

The Constitutional Court noted that the Referral was not submitted within the legal deadline stipulated by Article 49 of the Law on Constitutional Court and declared the Referral as inadmissible for being out of time.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI201/13
Applicant
Sofa Gjonbalaj
Constitutional Review of the Judgment Rev. No. 299/2011
of the Supreme Court, of 17 April 2013

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

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

The Applicant

1. The Referral is submitted by Ms. Sofa Gjonbalaj, with residence in Prishtina (hereinafter: the Applicant).

Challenged decision

2. The challenged Decision is the Judgment Rev. No. 299/2011 of the Supreme Court of 17 April 2013, which the Applicant declares to have received on 30 May 2013.

Subject matter

3. The subject matter is the request for constitutional review of the Judgment Rev. No. 299/2011 of the Supreme Court of 17 April 2013, which rejected the Applicant's request for revision against the Judgment of the District Court in Prishtina, Ac.no.45/2010, of 24 February 2011 as ungrounded.

4. The lower court instances rejected the Applicant's claim to annul the Decision No. 115 dated 1 April 2008, of the Agency for Business Registration within the Ministry of Trade and Industry, regarding the termination of the employment contract.

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 13 November 2013, the Applicant filed the Referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

7. On 3 December 2013, by Decision GJR. KI201/13, the President appointed Judge Ivan Čukalović as Judge Rapporteur. On the same date, by Decision KSH. KI201/13, the President appointed the Review Panel composed of Judges: Altay Suroy (presiding), Snezhana Botusharova and Arta Rama-Hajrizi.

8. On 11 December 2013, the Court informed the Applicant of the registration of the Referral. On the same date, the Court notified the Supreme Court and the Agency for Business Registration within the Ministry of Trade and Industry of the Referral.

9. On 2 April 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.

The Facts of the Case

10. From 2003 until 2008, based on a contract which was extended every year, the Applicant was employed in the capacity of First Registrar in the Agency for Business Registration within the Ministry for Trade and Industry (hereinafter: the employer).

11. On 12 February 2008, the Applicant was served with an employment contract for a definite period from 1 January 2008 till 31 March 2008.

12. Consequently, on 1 April 2008, based on Decision No. 115 of the Acting Chief Executive of the Agency, the employment relationship of the Applicant was terminated (hereinafter: the Decision on termination of employment relationship).

13. On 25 April 2008, following an appeal filed by the Applicant against the Decision on termination of the employment relationship, the Appeals Commission of the Ministry of Trade and Industry (hereinafter: the Appeals Commission) rejected the appeal and upheld the Decision on termination of the employment relationship.

14. On 16 June 2008, following an appeal filed by the Applicant against the Decision of the Appeals Commission, the Independent Oversight Board of Kosovo (hereinafter: the IOBK) rejected the appeal as ungrounded and upheld the Decision on termination of employment relationship.

15. The IOBK, in its Decision of 16 June 2008, held that the Decision on termination of employment relationship was rendered in compliance with the legislation in force.

16. On 2 September 2009, the Applicant filed a claim with the Municipal Court in Prishtina, requesting the annulment of the Decision on termination of the employment relationship and the reinstatement to her previous working place.

17. On 19 January 2009, the Municipal Court in Prishtina, with its Judgment C1. No. 328/08, rejected the claim of the Applicant.

18. Following an appeal filed by the Applicant, on 24 February 2011, the District Court in Prishtina, with its Judgment Ac. No. 45/2010, rejected the Applicant's appeal as ungrounded and upheld the Judgment of the Municipal Court in Prishtina (C1. No. 328/08 of 19 January 2009).

19. Against the aforementioned Judgment of the District Court in Prishtina, the Applicant filed a request for revision with the Supreme Court alleging violations of the provisions of the contested procedure and the erroneous application of substantive law.

20. On 17 April 2013, the Supreme Court, with its Judgment Rev. No. 299/2011, decided to reject the revision filed by the Applicant, as ungrounded.

21. The Supreme Court in its Judgment held that:

> *"[…]*
> *the claimant had established a definite period employment relation with the respondent, the contract may be extended only pursuant to the mutual agreement, whereas it is terminated when one of the contracting parties is not willing to extend the contract, thus the claimant's employment relation was terminated upon the expiration of the time limit that established it."*

22. On 19 July 2013, the Applicant submitted a request for protection of legality to the State Prosecutor of Kosovo against the Judgment of the Municipal Court in Prishtina.

23. On 9 August 2013, the State Prosecutor in its Notification No. KMLC No. 78/13 found that:

> *[…]*
>
> *"Therefore in this particular case against the Judgment of the first instance of Municipal Court in Prishtina and against the Judgment of the second instance of District Court in Prishtina the request for the protection of the legality cannot be submitted because all the envisaged legal time limits have expired, whereas against the Judgment of the Supreme Court pursuant to the provision of Article 245.3 of the LCP the request for the protection of the legality is not admissible."*

Applicants' allegation

24. The Applicant alleges a violation of Article 49 [Right to Work and Exercise Profession] of the Constitution.

25. The Applicant concludes requesting:

> "1. I seek from this court that after it reviews the presented documents to find that it acted in violation of Article 49 of the Constitution of Kosovo denying me the guaranteed right to work and at the same time the right to life.

2. To declare unlawful and unconstitutional all the acts of all the instances and courts in this contest and acknowledge my right to work with all the compensations from the employment relation starting from 01.04.2008 until 26.02.2013 when I got retired.
I hope that at least at this court I will realize my human right, the right to work and life."

Admissibility of the Referral

26. 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.

27. 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."*

28. In the instant case, the Court notes that the Applicant has sought recourse to protect her rights before the Municipal and District Courts, and finally, following a request for revision, before the Supreme Court of Kosovo. The Applicant has also submitted a Request for Protection of Legality to the State Prosecutor.

29. Thus, the Court considers that the Applicant is an authorized party and has exhausted all legal remedies afforded to her by the applicable law.

30. In addition, Article 49 of the Law provides that *"The referral should be submitted within a period of four (4) months. The deadline shall be counted from the day upon which the claimant has been served with a court decision. 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."*

31. In order to verify whether the Applicant has submitted the Referral within the prescribed four month deadline, the Court refers to the date of receipt of the final Decision by the Applicant and the date of submitting the Referral to the Constitutional Court.

32. The "final decision" for the purposes of Article 49 of the Law will normally be the final decision rejecting the Applicant's claim (See Paul and Audrey Edwards v. UK, No. 46477/99, ECtHR, Decision of 14 March 2002). The time limit starts to run from the final decision resulting from the exhaustion of remedies which are adequate and effective to provide redress in respect of the matter complained of. (See Norkin v. Russia, App. 21056/ 11, ECtHR, Decision of 5 February 2013 and see also Moya Alvarez v. Spain, No. 44677/98, ECtHR, Decision of 23 November 1999).

33. Regarding the request for Protection of Legality submitted to the State Prosecutor, the Court notes that the State Prosecutor referring to the legal provisions in force notified the Applicant that: *"[…] against the Judgment of the first instance of Municipal Court in Prishtina and against the Judgment of the second instance of District Court in Prishtina the request for the protection of the legality cannot be submitted because all the envisaged legal time limits have expired, whereas against the Judgment of the Supreme Court pursuant to the provision of Article 245.3 of the LCP the request for the protection of the legality is not admissible."*

34. Article 245, paragraph 3 of the Law on Contested Procedure establishes that:

> *"The request for protection of legality is not allowed against the decision that was taken during revision or request of protection of legality by the court with competencies to decide for judicial means."*

35. For the foregoing reasons, the Court considers that the final decision in the instant case is the Judgment of the Supreme Court and the time-limit begins to run from the date of receipt of the aforementioned Judgment by the Applicant (See Bayram and Yildirim v. Turkey, App. No. 38587/97, ECtHR, Decision of 29 January 2002). Thus, from the submissions it appears that the Applicant declares that the Judgment of the Supreme Court was served on her on 30 May 2013, whereas the Applicant submitted the Referral to the Court on 13 November 2013.

36. Based on the foregoing, it results that the Referral has not been submitted within the legal deadline stipulated by Article 49 of the Law.

37. Therefore, the Referral must be rejected as inadmissible, because it is out of time.

FOR THESE REASONS

The Constitutional Court, to Article 49 of the Law and Rule 36 (1), b) of the Rules of Procedure, on 2 April 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**
Ivan Čukalović	Prof. Dr. Enver Hasani

KI205/13, Feti Islami, Resolution of 13 March 2014 - Constitutional Review of Decision Rev. no. 85/2012, of the Supreme Court of Kosovo, of 3 June 2013

Case KI205/13, decision of 13 March 2014

Key words: individual referral, expropriation, manifestly ill-founded.

The Applicant submitted the Referral pursuant to Article 113.7 of the Constitution of Kosovo, challenging the Decision Rev. no. 85/2012, of the Supreme Court of Kosovo, of 3 June 2013, by which was solved the property-legal dispute, created by the statement of claim of the Applicant that the Municipality of Peja confirms their right of use, the first claimant Feti Islami, and the second claimant N. I., on 5/20 ideal shares, while the other claimants: B. S., M. I., Z. I., S. I. and M. D., each to 2/20 ideal shares to a construction parcel in the city for the expropriated property.

The Applicant alleged that the *"Municipal Court in Peja, by its Decision C.no.195/05 of 22.09.2011, District Court in Peja, by its Decision Ac.no.197/2011 of 10.01.2012, and Supreme Court of Kosovo, by its Decision Rev.no.85/2012 of 03.06.2013 have constituted violations of LCP legal provisions mentioned in the following of this Constitutional referral, by being partial, unfair and arbitrary, by which were violated and denied the rights of this referral to Applicants, which are guaranteed to them by the Constitution of the Republic of Kosovo (hereinafter: the Constitution, by the following Articles: 21, 22, 23, 24, 31, 32,41, 46, 48 and 54 of the Constitution of the Republic of Kosovo, as well as Article 6 of European Convention for Protection of Human Rights and Freedoms and item 1 of Protocol 1of this Convention (hereinafter: ECHR)"*

Deciding on the Referral of the Applicant Feti Islami, upon review of entire proceedings from the case file the Constitutional Court concluded that the Decision Rev. no. 85/2012, by which was REJECTED as ungrounded the revision of claimants, in its reasoning explain in details the reasons for application of relevant rules of the procedural and substantive law, and the manner of calculation of the procedural deadlines and responds to these Applicants' allegations.

From the above, the Constitutional Court has not found that relevant procedures before the regular courts were in any way unfair or arbitrary. Therefore, the Court concluded that the Referral is manifestly ill-founded, because 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. KI205/13
Applicant
Feti Islami
Constitutional Review of the Decision of the Supreme Court of Kosovo,
Rev. no. 85/2012, of 03 June 2013

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

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

Applicant

1. The Referral was filed by Mr. Feti Islami (hereinafter: the Applicant), from the Municipality of Peja.

Challenged decision

2. The Applicant challenges the decision of the Supreme Court of Kosovo, Rev. No. 85/2012, of 03 June 2013, served upon him on 26 August 2013.

Subject matter

3. The subject matter is constitutional review of the decision of the Supreme Court of Kosovo, Rev.No.85/2012, of 03 June 2013, which according to the Applicant violates Articles 21 [General Principles], 22 [Direct Applicability of International Agreements and Instruments], 23 [Human Dignity], 24 [Equality Before the Law], 31 [Right to Fair and Impartial Trial], 32 [Right to Legal Remedies],41 [Right of Access to Public Documents], 46

[Protection of Property], 48 [Freedom of Art and Science] and 54 [Judicial Protection of Rights] of the Constitution of the Republic of Kosovo, and Article 6 of the European Convention on Protection of Human Rights and Fundamental Freedoms, and item 1 of Protocol to this Convention (hereinafter: ECHR).

Legal basis

4. The Referral is based upon 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 15 November 2013, the Applicant filed a 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.KI205/13 appointed Judge Altay Suroy as Judge Rapporteur. On the same date, the President of the Court, by Decision no. KSH.KI205/13 appointed the Review Panel, composed of judges: Robert Carolan (Presiding), Ivan Čukalović and Enver Hasani.

7. On 17 January 2014, the Constitutional Court forwarded a copy of the Referral to the Supreme Court of Kosovo, and notified the Applicant that the procedure of constitutional review has been initiated upon the case no. KI205/13.

8. On 13 March 2014, after having considered the Report of the Judge Rapporteur, the Review Panel composed of judges: Robert Carolan (Presiding), Ivan Čukalović and Enver Hasani, made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

9. On 26 May 2006, by the Judgment of the Municipal Court in Peja, C. no. 195/05, the claim suit of the claimant was rejected in entirety as ungrounded, by which the first claimant Feti Islami, and the second claimant N. I., had requested to confirm the right of

use on 5/20 ideal shares, while the other claimants: B. Sh., M. I., Z. I., S. I. and M. D., each to 2/20 ideal shares to a construction parcel in the city.

10. The Judgment of the Municipal Court in Peja, C.no.195/05, of 26 May 2006, was upheld by the Judgment of the District Court, Ac. no. 306/06, of 22 May 2008, and also by the Judgment of the Supreme Court of Kosovo in Prishtina, Rev.no.395/2008, of 02 June 2009, by which the revision of claimants, filed against the Judgment of the District Court in Peja, was rejected as ungrounded.

11. On 08 June 2010, the authorized representative of the claimants filed a proposal for repetition of procedure concluded upon the judgments mentioned, in the meaning of Articles 234 and 235 of the LCP, thereby proposing that repetition of procedure be allowed, so that the judgments of the Municipal Court in Peja, and the District Court in Peja be quashed, so that the case is remanded for retrial to the first instance court, but to another trial panel.

12. On 18 October 2010, the Supreme Court of Kosovo, by act KCRJ. no. 1/2010 returned the case files to the Municipal Court in Peja, in compliance with the Article 236 of the LCP, which provides that *"the proposal for repetition of procedure is presented always to the Court that rendered the first instance decision, but in terms of the proposal for repetition of procedure, the second instance court should rule, respectively a single judge, who did not take part in rendering prior decisions against which the repetition of procedure is requested".*

13. On 22 September 2011, the Municipal Court in Peja, by decision C. no. 195/05, REJECTED as out of time the proposal for repetition of procedure finalized by Judgment of the Supreme Court of Kosovo in Prishtina, Rev.no.395/2008, of 02 June 2009, filed by the authorized representative of the claimants Zydi and Feti Islami, lawyer Shahin Bajgora, on 08 June 2010.

14. Against this decision, the authorized representative of the claimants duly filed an appeal due to substantial violations of the contested procedure provisions, erroneous and incomplete determination of factual situation, and erroneous application of substantive law by a proposal that the challenged ruling to be quashed and the proposal for repetition of procedure to be allowed.

15. On 10 January 2012, the District Court in Peja, by Ruling Ac. no. 497/2011, REJECTED as ungrounded the complaint of the claimant, and UPHELD the decision of the District Court in Peja, C. no. 195/05, of 22.09.2011.

16. On 10 February 2012, the claimants filed a revision against the Ruling of the District Court in Peja, Ac. no. 497/2011, of 10 January 2012, due to substantial violation of contested procedure provisions and erroneous application of substantive law, thereby proposing that the Supreme Court quash the decisions of lower instance courts, and remand the case to the first instance court for trial.

17. On 03 June 2013, the Supreme Court of Kosovo, by decision Rev. no. 85/2012, REJECTED as ungrounded the revision of the claimants, filed against the Ruling of the District Court in Peja, Ac. no. 497/2011, of 10 January 2012, with the following reasoning;

> *"The court of first instance, based on the determined factual situation found that the Judgment of the Municipal Court in Peja, C.No. 195/2005 of 26.05.2006 was served on the authorized representative of claimants Ferid Xhikolli, on 02.08.2006, whereas Shahin Bajgora, on 10.06.2008, Judgment of Supreme Court of Kosovo in Prishtina Rev.no. 295/2008 of 02.06.2009 was served on Ferid Xhikolli on 15.07.2009, whereas on Shahin Bajgora on 16.07.2009. The proposal for repetition of the procedure, the practicing lawyer Shahin Bajgora, filed on 8.6.2010. Being based that the claimants' authorized representative, the practicing lawyer Shahin Bajgora has filed proposal after the time limit, provided by Article 234 para.1 item g), rejected the latter as out of time".*
>
> *"According to the assessment of the Supreme Court, the conclusion of the lower instance court is based on law and fair. Pursuant to Article 232, item g) of LCP, specifically, is provided that the procedure finalized by judgment or by final ruling of the court, can be repeated according to the proposal of the party, if the party becomes aware of new facts or finds new evidence, or gains the opportunity to use them, based on which would be rendered final more favorable, decision for the party, if the facts and other evidence that were used in the previous procedure. The proposal for repetition of procedure, pursuant to Article 234.1 is filed within 30 days and that if in the case*

from Article 232 item g) from the day the party could file new facts or evidence, therefore setting from the fact that the claimants filed their proposal for repetition of procedure after the time limit provided by Article 234.1, item g), therefore the court of first instance has rightly decided, when it rejected as out of time the proposal for repetition of the procedure, pursuant to Article 237.1 of the LCP".

Applicant's allegations

18. The Applicant alleges that the "*Municipal Court in Peja, by its Ruling C.no.195/05 of 22.09.2011, District Court in Peja, by its Ruling Ac.no.197/2011 of 10.01.2012, and Supreme Court of Kosovo, by its Ruling Rev.no.85/2012 of 03.06.2013 have constituted violations of LCP legal provisions mentioned in the following of this Constitutional referral, by being partial, unfair and arbitrary, by which were violated and denied the rights of this referral to Applicants, which are guaranteed to them by the Constitution of the Republic of Kosovo (hereinafter: the Constitution, by the following Articles: 21, 22, 23, 24, 31, 32,41, 46, 48 and 54 of the Constitution of the Republic of Kosovo, as well as Article 6 of European Convention for Protection of Human Rights and Freedoms and item 1 of Protocol 1 of this Convention (hereinafter: ECHR)"*

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

"To repeal rulings of the regular courts:

1. *Ruling of Municipal Court in Peja C.no. 195/05 of 22.09.2011*
2. *Ruling of District Court in Peja Ac.no. 497/2011 of 10.01.2012*
3. *Ruling of Supreme Court of Kosovo Rev.no. 85/2012 of 03.06.2013 AS UNLAWFUL*
4. *To be approved the proposal of Applicants of this constitutional referral as grounded".*

20. The Applicant simultaneously alleges violations of a larger number of legal provisions of the Law on Contested Procedure, which

according to the applicant's allegations occurred in procedures ruling on the right of use on the expropriated construction parcel in the city, which in substance are related to interpretation of the legal norms on the request for repetition of procedure, and by their improper interpretation by the regular courts and by rejection of the proposal for repetition of procedure as out of time, according to applicant's allegations, have violated *„the right to fair and impartial trial, guaranteed by Article 31 of the Constitution "*.

Admissibility of the Referral

21. In order to be able to adjudicate the Applicant's Referral, the Court must first 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.

22. Article 48 of the Law on the Constitutional Court of the Republic of Kosovo provides:

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

23. Furthermore, the Court must also take into consideration the 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"*.

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

25. The Applicant has not filed any *prima facie* evidence supporting his allegation of violation of his constitutional rights (see, Vanek v. Republic of Slovakia, ECtHR Resolution on admissibility of application, no. 53363/99 of 31 May 2005). The Applicant does not state the manner in which Articles 21, 22, 23, 24, 31, 32, 41, 46, 48 and 54 of the Constitution, and Article 6 of the European Convention on Protection of Human Rights and Fundamental Freedoms, and item 1 of the Protocol 1 to the Convention (hereinafter: ECHR) support his allegations, as provided by Article 113.7 of the Constitution, and Article 48 of the Law.

26. The Applicant alleges that his rights were violated by erroneous determination of facts and application of law by regular courts, without clarifying the manner in which such decisions violated his constitutional rights.

27. The Court further notes that the mere fact that the applicant is discontented with the outcomes of the case cannot raise an arguable claim of violation of Article 31 of the Constitution (see *mutatis mutandis*, Judgment of the ECtHR, Application no. 5503/02, Mezotur Tiszazugi Tarsulat v. Hungary, Judgment of 26 July 2005).

28. In this case, the Applicant was provided numerous possibilities to make his case, and challenge the interpretation of the law which he considers to be improper, before the Municipal Court in Peja, the District Court in Peja, and the Supreme Court. Upon review of entire proceedings, the Constitutional Court has not found that relevant procedures were in any way unfair or arbitrary (see, *mutatis mutandis*, Shub v. Lithuania, Resolution of the ECtHR on admissibility of Application, no. 17064/06 of 30 June 2009).

29. Finally, admissibility criteria were not met in this Referral. The Applicant has not presented and supported, by evidence, the allegation that the challenged decisions violated his constitutional rights and freedoms.

30. Based on the above, the Referral is manifestly ill-founded, and must be rejected as inadmissible, in compliance 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 the Procedure, in its session held on 13 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; and

IV. TO DECLARE this Decision immediately effective.

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

KI207/13, Rexhep Kabashi, Jusuf Mejzini and Meleqe Bexheti, Resolution of 24 April 2014 - Request for "interpretation of the provision of Article 109, para. 5 and Article 105, para.1 of the Constitution of the Republic of Kosovo, regarding the retirement age of the prosecutors, respectively of judges

Case KI207/13, decision of 24 April 2014

Key words: Individual Referral, non-authorized party.

The applicant filed a Referral pursuant to Article 113.7 of the Constitution seeking an interpretation from the Court in respect to Articles 109.5 [State Prosecutor] and 105.1 [Mandate and Reappointment] of the Constitution, which pertain the retirement age for prosecutors and judges because allegedly it is not clear which law regulates the retirement age for judges and prosecutors.

On the issue of the admissibility of the Referral, the Court held that the Referral was inadmissible since the matter was not referred to the Court in a legal manner by an authorized party pursuant to Article 113.1 of the Constitution.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI207/13
Applicant
Rexhep Kabashi, Jusuf Mejzini and Meleqe Bexheti
Request for *"interpretation of the provision of Article 109, para. 5 and Article 105, para.1 of the Constitution of the Republic of Kosovo, regarding the retirement age of the prosecutors and of judges".*

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

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

Applicant

1. The Applicants are Mr. Rexhep Kabashi (Prosecutor in the Office of the Chief State Prosecutor), Mr. Jusuf Mejzini (Prosecutor in the Office of the State Chief Porsecutor), and Ms. Meleqe Bexheti (Judge of the Supreme Court of Kosovo).

Challenged decision

2. The Applicants do not challenge any decision but are requesting from the Constitutional Court of the Republic of Kosovo (hereinafter: the "Court") an *"interpretation of the provision of Article 109, para. 5 and Article 105, para.1 of the Constitution of the Republic of Kosovo, regarding the retirement age of the prosecutors, respectively of judges".*

Subject matter

3. The subject matter is the request for interpretation of two articles of the Constitution of Republic of Kosovo (hereinafter: the "Constitution"), namely Article 109.5 [State Prosecutor] and Article 105.1 [Mandate and Reappointment], which the Applicants allege *"it is not clearly stated by which law is regulated the retirement age for judges and prosecutors."*

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 Court

5. On 18 November 2013, the Applicants submitted the Referral to the Court.

6. On 19 November 2013, the President of the Constitutional Court by Decision, No.GJR.KI 207/13, appointed Judge Arta Rama-Hajrizi as Judge Rapporteur. On the same date, the President of the Court by Decision, No.KSH.KI 207/13, appointed the Review Panel composed of Judges Robert Carolan (Presiding), Almiro Rodrigues, and Enver Hasani.

7. On 20 November 2013, the Court notified the Applicants, the Kosovo Judicial Council and the Kosovo Prosecutorial Council of the registration of the Referral.

8. On 2 December 2013, the President of the Court by Decision, No.KSH.KI 207/13, replaced Presiding Judge of the Review Panel, Judge Robert Carolan, with Judge Ivan Čukalović. The composition of the Review Panel is as follows: Judges Almiro Rodrigues (Presiding), Ivan Čukalović and Enver Hasani.

9. On 3 December 2013, the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

Summary of the facts

10. On 18 November 2013, the Applicants submitted a Referral with the Court, requesting the Court as the only authority to interpret two provisions of the Constitution.

> Article 109.5, which provides *"The mandate for prosecutors shall be three years. The reappointment mandate is permanent until the retirement age determined by law or unless removed in accordance with law."*
>
> Article 105.1, which provides *"The initial mandate for judges shall be three years. The reappointment mandate is permanent until the retirement age as determined by law or unless removed in accordance with law."*

11. The Court notes that there have not been any judicial proceedings in this matter.

Applicant's allegations

12. The Applicants have brought their Referral to this Court under Article 112.1 of the Constitution, which provides:

> *"The Constitutional Court is the final authority for the interpretation of the Constitution and the compliance of laws with the Constitution."*

13. The Applicants allege that Articles 109.5 [State Prosecutor] and 105.1 [Mandate and Reappointment] of the Constitution, which pertain the retirement age for prosecutors and judges, does not *"clearly state by which law is regulated the retirement age for judges and prosecutors."*

14. The Applicants also allege that the *"Law on the State Prosecutor (Law no. 03/L-225) of 30.09.2010 and the Law on Courts (Law no. 03/L-199) have not provided any provisions for retirement age of prosecutors, respectively judges."*

15. The Applicants also draws the Court's attention to the fact that the Law on Prosecutorial Council of Kosovo *"have, provided the criteria of recruitment, appointment and reappointment of prosecutors"* but does not address what the age of retirement should be. In addition, the Applicants draws the Court's attention to *"the Law on Judicial Council of Kosovo (Law no. 03/L-223) of 30.09.2010, [which] has provided the procedures and disciplinary*

measures for judges" but does not, allegedly, provide the age of retirement.

16. The Applicants also mention provisions from the *"Law on the Civil Service of the Republic of Kosovo (Law no. 03/L-149), which by the provision of Article 90, para. 1 item 2.1 provided the termination of the employment relationship of civil servants by reaching the retirement age, while the provision of Article 91, para. 1, provided the retirement age at 65 years, respectively the Law on Labour (Law no. 03/L-212) of 01.11.2010, by provisions of Article 67, para. 1, sub para. 1.4 provided that the employment relationship is terminated when an employee reaches the pension age of 65 years."*

17. The Applicants allege that *"prosecutors and judges do not belong either to the* category *of civil servants or to the category of employees, but they are special officials, whereas the rights and obligations are regulated by special laws, such as the Law on State Prosecutor, the Law on Courts, respectively the Law on Kosovo Prosecutorial Council and the Law on Kosovo Judicial Council."*

18. The Applicants further allege and claim that since the laws upon which their rights and obligations are mandated have failed to provide a specific retirement age, the Court needs to *"provide correct interpretation of the constitutional provisions, respectively of the provision of Article 109, para. 5, when it has to do with the State Prosecutor and provision of Article 105, para. 1 the retirement age of the prosecutor, respectively the judge and which law should be applied in the present case."*

Admissibility of the Referral

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

20. In the case at hand, the Applicants are seeking an interpretation of two constitutional provisions, namely Articles 109.5 and 105.1 of the Constitution because the Court is the final authority for the interpretation of the Constitution and the compliance of laws with the Constitution.

21. In this respect, the Court notes that under Article 112.1 of the Constitution, *"[t]he* Constitutional *Court is the final authority for the interpretation of the Constitution and the compliance of laws with the Constitution*." However, this is a general provision and the Court has the authority to interpret the Constitution if the Referral is filed by an authorized party.

22. 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."*

23. The Court notes that the Applicants submitted their Referral under 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."*

24. The Applicants do not challenge any final decisions by the public authorities and they do not have established whether any rights of the Constitution have been violated. Instead they are seeking an interpretation from the Court in respect to Articles 109.5 [State Prosecutor] and 105.1 [Mandate and Reappointment] of the Constitution, which pertain the retirement age for prosecutors and judges because allegedly it is not clear which law regulates the retirement age for judges and prosecutors.

25. In this respect, the Court notes that Article 113.5 of the Constitution before the promulgation of a law grants ten (10) or more deputies of the Assembly of Kosovo, within eight (8) days from the date of adoption, the right to contest the constitutionality of any law or decision adopted by the Assembly as regards its substance and the procedure followed.

26. Furthermore, after a law has been promulgated, Article 113.2 (1) authorizes the Assembly of Kosovo, the President of the Republic of Kosovo, the Government, and the Ombudsperson to refer question of compatibility of laws with the Constitution.

27. Finally, also Article 113.8 of the Constitution provides that *"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."

28. Thus, the Court concludes that the request of the Applicants do not fall within the scope of the jurisdiction of neither of the abovementioned Articles of the Constitution. Therefore, the Applicants are not authorized parties under the Constitution to refer this question to the Court.

29. Consequently, the Applicants' 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 24 April 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**
Arta Rama-Hajrizi	Prof. Dr. Enver Hasani

KI226/13, Ali Lushaku, Resolution of 25 March 2014 - Constitutional Review of the Judgment GSK-KPA-A-012/13 of the Supreme Court, Kosovo Property Agency (KPA) Appeals Panel, of 17 April 2013

Case KI226/13, decision of 25 March 2014

Key words: Individual Referral, protection of property, manifestly ill-founded.

The subject matter is the request for constitutional review of the Judgment of the Kosovo Property Agency Appeals Panel, which allegedly violated the Applicant's right to protection of property.

The Applicant did not explain how and why the Judgment of the Kosovo Property Agency Appeals Panel violated his right guaranteed by Article 46 of the Constitution

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 right invoked by the Applicant and the Applicant has not sufficiently substantiated his allegation.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI226/13
Applicant
Ali Lushaku
Constitutional Review of the Judgment GSK-KPA-A-012/13 of the Supreme Court, Kosovo Property Agency (KPA) Appeals Panel,
of 17 April 2013

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

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

The Applicant

1. The Referral is submitted by Mr. Ali Lushaku, with residence in Prishtina (hereinafter: the Applicant).

Challenged decision

2. The challenged Decision is the Judgment GSK-KPA-A-012/13 of the Supreme Court, Kosovo Property Agency (KPA) Appeals Panel, of 17 April 2013 (hereinafter: the Judgment of the KPA Appeals Panel), served on the Applicant on 5 September 2013.

Subject matter

3. The subject matter is the request for constitutional review of the Judgment of the KPA Appeals Panel, which allegedly violated the Applicant's right to protection of property.

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 Court

5. On 16 December 2013, the Applicant filed the Referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 15 January 2014, the President, by Decision no. GJR. KI226/13, appointed Judge Altay Suroy as Judge Rapporteur and the Review Panel composed of Judges: Robert Carolan (presiding), Ivan Čukalović and Enver Hasani.

7. On 30 January 2014, the Court informed the Applicant of the registration of the Referral. On the same date, the Court notified the Supreme Court of the registration of the Referral and requested it to provide a copy of the receipt of service, which shows when the Judgment of the KPA Appeals Panel was served on the Applicant.

8. On 5 February 2014, the Supreme Court submitted to the Court the receipt service, which shows that the Judgment of the KPA Appeals Panel was served on the Applicant on 5 September 2013.

9. On 25 March 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.

The Facts of the Case

10. On 1 January 2007, the Applicant submitted a claim to the Kosovo Property Agency (hereinafter: KPA), requesting the recognition of his right of ownership over a business premises, located in Prishtina.

11. On 6 June 2012, the Kosovo Property Claims Commission of the KPA (hereinafter: KPCC), by Decision KPCC-D/C/160, approved the request as grounded.

12. In its Decision, the KPCC held that the Applicant had purchased the property concerned from the Yugoslav Army in January 1999. According to the KPCC, the sales contract was positively verified and consequently the right of property and the right of use were confirmed to the Applicant.

13. On 30 November 2012, the NGO "Mother Theresa" in Prishtina (hereinafter: the NGO), which was using the property concerned, filed an appeal with the Supreme Court, Kosovo Property Agency (KPA) Appeals Panel (hereinafter: the KPA Appeals Panel). The NGO argued that the Applicant has not submitted any valid evidence of the alleged ownership over the property, because the sales contract submitted by the Applicant was not verified by the competent court and not registered in the cadastral registers or any related housing property services.

14. On 17 April 2013, the KPA Appeals Panel in its Judgment GSK-KPA-A-012/13 decided to approve the appeal of the NGO as grounded and to amend the Decision KPCC-D/C/160 of the KPCC dated 6 June 2012, whereby the claim of the Applicant was refused.

15. In its Judgment, the KPA Appeals Panel considered that the Decision of the KPCC of 6 June 2012 was rendered in violation of the substantive law. The KPA Appeals Panel reasoned its Judgment as follows:

> *[…]*
>
> *"The KPCC based its request by taking into account that the property was acquired by the contract for property transfer concluded on 21 January 1999 according to the Regulation of Law on Housing Provision for the Yugoslav People's Army, GZ, SFRY, No.84/90. The purpose of this Law was to provide the legal ground for fulfillment of housing needs for the members of the Yugoslav People's Army. In 1999 this Law was no longer applicable. It ceased functioning in 1993. This Law is abrogated by the Law on Property of the Federal Republic of Yugoslavia, GZRFJ 41/1993. The later regulated the acquisition, use and disposal of property that belonged to the Federal Republic, by including the property used by Federal Agencies, such as those that were responsible for defense.*

Article 18 of the Law in question stipulated that the Federal Minister of Defense in the agreement with the Federal government decides on the acquisition or disposal of residential buildings, apartments, garages and commercial buildings in residential buildings used by the responsible federal agencies for Defense and the Yugoslav Army.
In this case there is no evidence that the contested property was in use by Yugoslav Army."
[...]

Applicants' Allegation

16. The Applicant alleges a violation of Article 46, paras. 1 and 3, [Protection of Property] of the Constitution.

17. The Applicant argues that: [...] *"The Court concludes erroneously that there is no evidence that the contested property was in use by the former APJ* [Yugoslav People's Army]. *Neither does the finding of the Court stand that the seller is not a competent body to conclude the contract. Likewise Article 4 of the Law on the Transfer of Immovable Property (GZ. SRS no.43/1981) was erroneously applied because the co-validation of the contract or entering into force is made in cases when the seller was the owner and, as such, the contractual obligations are fulfilled. The sale-purchase agreements and evidence of ownership of seller and buyer are verified, which is reflected in the attached extract."*

Admissibility of the Referral

18. 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.

19. 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."

20. 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".*

21. In the instant case, the Court notes that the Applicant has made use of all legal remedies available under the law. The Court also notes that the Applicant was served with the Judgment of the KPA Appeals Panel on 5 September 2013 and filed his Referral with the Court on 16 December 2013.

22. Thus, the Court considers that the Applicant is an authorized party and has exhausted all legal remedies afforded to him by the applicable law and the Referral was submitted within the four months time limit.

23. However, the Court also must take into account Rule 36 of the Rules of Procedure, which provides:

> *"(1) The Court may review referrals only if: (c) The referral is not manifestly ill- founded."*
>
> *"(2) The Court shall reject a Referral as being manifestly ill-founded when it is satisfied that:*
>
> *[...], or*
>
> *(b) when the presented facts do not in any way justify the allegation of a violation of the constitutional rights, or*
>
> *[...], or*
>
> *(d) when the Applicant does not sufficiently substantiate his claim".*

24. The Applicant alleges that the Judgment of the KPA Appels Panel violates his right under Article 46 [Protection of Property] of the Constitution by claiming that: *[...] "The Court concludes erroneously that there is no evidence that the contested property was in use by the former APJ* [Yugoslav People's Army]. *Neither does the finding of the Court stand that the seller is not a competent body to conclude the contract. Likewise Article 4 of the Law on the Transfer of Immovable Property (GZ. SRS no. 43/1981) was erroneously applied because the co-validation of the contract or entering into force is made in cases when the seller*

was the owner and, as such, the contractual obligations are fulfilled. The sale-purchase agreements and evidence of ownership of seller and buyer are verified, which is reflected in the attached extract."

25. However, the Applicant does not explain how and why the Judgment of the KPA Appeals Panel violated his right guaranteed by Article 46 of the Constitution.

26. The Constitutional Court cannot substitute the role of the regular courts. The role of the regular courts is to interpret and apply the pertinent rules of both procedural and substantive law. (See, *mutatis mutandis,* Garcia Ruiz vs. Spain, No. 30544/96, ECtHR, Judgment of 21 January 1999; see also case KI70/11 of the Applicants Faik Hima, Magbule Hima and Bestar Hima, 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.

27. In this regard, the Court can only consider whether the evidence has been presented in a correct manner and the proceedings in general, viewed in their entirety, have been conducted in such a way that the Applicant had a fair trial (See *inter alia* Case Edwards v. United Kingdom, Application No 13071/87, Report of the European Commission on Human Rights adopted on 10 July 1991).

28. Based on the case file, the Court notes that the reasoning given in the Judgment of the KPA Appeals Panel is clear, and after having reviewed all the proceedings, the Court has also found that the proceedings before the KPA Appeals Panel have not been unfair or arbitrary (See, *mutatis mutandis*, Shub vs. Lithuania, no. 17064/06, ECtHR, Decision of 30 June 2009).

29. 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 right invoked by the Applicant and the Applicant has not sufficiently substantiated his allegation.

FOR THESE REASONS

The Constitutional Court, pursuant to Rule 36 (2), b) and d) 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. TO DECLARE this Decision effective immediately.

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

KI233/13, Erton Beka, Resolution of 13 March 2014 - Constitutional Review of the Decision Pn. no. 745/2013 of the Court of Appeal of Kosovo, of 19 December 2013

Case KI233/13, decision of 13 March 2014

Key words: individual referral, criminal procedure, manifestly ill-founded.

The Applicant filed Referral pursuant to Article 113.7 of the Constitution of Kosovo, whereby requesting the constitutional review of the Decision Pn. no. 745/2013 of the Court of Appeal of Kosovo of 19 December 2013

The subject matter is the constitutional review of the Judgment, which allegedly violates principles of the criminal procedure to the Applicant: police authorization, criminal report, prosecutor's decision, confirmation of indictment, evidentiary proceedings as well as substantial violations of the Criminal Procedure Law.

The Applicant submitted a request to the Court of Appeal whereby requesting that the final judgment, by which he was sentenced to 3 (three) months imprisonment is replaced with a punishment of fine, referring to Article 47 of the Criminal Code of Kosovo (CCK).

The Court of Appeal rejected the Applicant's request as ungrounded and upheld the first instance judgment of the Basic Court.

Considering the Applicant's allegations regarding constitutional review of Decision Pn. no. 745/2013 of the Court of Appeal of Kosovo, of 19 December 2013, the Constitutional Court considers that the facts presented by the Applicant have not in any way justified the allegation of violation of the constitutional right and the Applicant has not sufficiently substantiated his claim. Accordingly, the Court concluded that the facts presented by the Applicant do not in any way justify his allegation of violation of his constitutional rights, therefore, his Referral is manifestly ill-founded.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI233/13
Applicant
Erton Beka
Constitutional review of the Decision Pn. no. 745/2013 of the Court of Appeal of Kosovo of 19 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
Kadri Kryeziu, Judge and
Arta Rama-Hajrizi, Judge

Applicant

1. The Referral is submitted by Mr. Erton Beka from Vushtrri (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges the Decision Pn. no. 745/2013, of the Court of Appeal of Kosovo of 19 December 2013.

Subject matter

3. The subject matter is the constitutional review of the Judgment, which allegedly violates principles of the criminal procedure to the Applicant, and that is: police authorization, criminal report, prosecutor's decision, confirmation of indictment, evidentiary proceedings as well as substantial violations of the Criminal Procedure Law.

4. The Applicant does not refer to a violation of a particular 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 Court

6. On 30 December 2013, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

7. On 15 January 2014, the President by Decision no. GJR. KI233/13 appointed Judge Altay Suroy as Judge Rapporteur. On the same day, the President by Decision no. KSH. KI233/13, appointed the Review Panel composed of Judges: Robert Carolan (Presiding), Ivan Čukalović and Enver Hasani.

8. On 27 January 2014, the Court notified the Applicant and the Court of Appeal on registration of the Referral.

9. On 13 March 2014, after having reviewed 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 15 July 2010, the Municipal Court in Vushtrri rendered the Judgment [P. no. 19/2010], by which the Applicant was found guilty for criminal offence of Incitement under Article 24 of the Criminal Code of Kosovo (hereinafter: the CCK), to commit criminal offence under Article 161 paragraph 2 in conjunction with paragraph 4 of CCK, and sentenced him to imprisonment in duration of 3 (three) months.

11. The Applicant filed an appeal within legal time limit against the Judgment [P. no. 19/2010], of the Municipal Court in Vushtrri.

12. In the appeal, the Applicant requested that the Judgment is annulled and the matter is remanded for retrial, with a justification

that, during the proceedings, the essential violation of the criminal procedure provisions and incomplete determination of factual situation was committed.

13. On 7 May 2013, the Court of Appeal in Prishtina by Judgment [PA1. no. 1543/12], rejected the Applicant's appeal as ungrounded and upheld in entirety the Judgment [P. no. 19/2010] of the Municipal Court in Vushtrri of 5 July 2010.

14. In its reasoning, the Court of Appeal stated:

„the appealed judgment does not contain substantial violations of the contested procedure provisions, or other procedural violations, which this court notices ex-officio. The enacting clause of the appealed judgment is clear, does not contain contradictions with itself or its reasoning. In the reasoning of the appealed judgment were given right factual and legal reasons, which are approved by this Court too. The first instance court assessed and analyzed all evidence, administered during the court hearing, by presenting its conclusions, which this Court approves as fair and lawful [...] therefore based on this, the Court of Appeal found that the appealed allegations are not grounded".

15. On an unknown date, the Applicant submitted a request to the Basic Court in Mitrovica – branch in Vushtrri, whereby requesting that the final judgment, by which he was sentenced to 3 (three) months imprisonment is replaced with a *punishment of* fine, referring to Article 47 of the Criminal Code of Kosovo (CCK).

16. On 8 November 2013, the Basic Court in Mitrovica-branch in Vushtrri reviewed the Applicant's request and by Decision P. no. 19/2010, rejecting the Applicant's request with the reasoning:

„The Court of Appeal by Judgment no. 1543/12 upheld the Judgment of the Municipal Court in Vushtrri P. no. 19/2010. The provision of Article 47 of CCK, on which is referred the respondent, provides that if the court imposes a sentence of up to six months imprisonment, the court may at the same time decide to replace the punishment imprisonment with fine upon the consent of the convicted person, [...] and the abovementioned provision cannot be applied after the judgment becomes final [...]. "

17. On an unknown date, the Applicant filed an appeal to the Court of Appeal against the Ruling [P no. 19/2010] of the Basic Court in Mitrovica - the branch in Vushtrri.

18. On 19 December 2013, the Court of Appeal of Kosovo rendered the Ruling [Pn. no. 745/2013], by which the Applicant's appeal was rejected as ungrounded, while it upheld the Ruling [P no. 19/2010], of the Basic Court in Mitrovica-branch in Vushtrri in entirety.

19. In the reasoning of its decision, the Court of Appeal stated*:*

„Article 46 of the CCK, which makes possible the replacement of imprisonment with punishment of fine, when the imposed imprisonment is up to 6 (six) months, can be applied only in cases when the punishment was imposed by first instance or second instance court, when it is decided or not regarding the appeal, therefore in this case, at the time of the execution of judgment, cannot be applied the principle of more favorable Article, as it is provided by Article 47 of CCK".

Relevant law provisions

Criminal Code of Kosovo

Article 47

Replacement of imprisonment with punishment of fine of Criminal Code of Kosovo

"The court may, with the consent of the convicted person, replace the punishment of up to six (6) months imprisonment with the punishment of fine".

Applicant's allegations

20. The Applicant alleges that: *"The Constitutional Court should render final decision on whether there is sufficient evidence for my punishment, to analyze why other witnesses were not summoned to hearing".*

21. The Applicant addresses the Court with the request:*"I want that the Constitutional Court replaces my punishment with the punishment of fine or a conditional release".*

22. The Applicant does not refer to a violation of a particular constitutional provision.

Admissibility of the Referral

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

24. Regarding the Applicant's Referral, the Court refers to the Article 113.7 of the Constitution, which provides:

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

25. The Court notes that the Applicant has not stated in his Referral what specific rights, guaranteed by the Constitution, have been violated by decisions of the regular courts although Article 48 of the Law provides:

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

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

"The Court may only deal with Referrals if:

"c) the Referral is not manifestly ill-founded".

27. In the case at issue, the Applicant alleges that the Decision [Pn. no. 745/2013], of the Court of Appeal of Kosovo violates Criminal Procedure Code of Kosovo.

28. However, the Applicant does not indicate in what manner and how the Court of Appeal has violated his rights, which are regulated by the Criminal Procedure Code, nor has submitted evidence to substantiate the alleged violations of the rights guaranteed by the Constitution.

29. Moreover, the Court finds that the Judgment [Pn. no. 745/2013] of the Court of Appeal provided broad and comprehensive reasoning of the facts of the case and its legal findings are well-reasoned and clear, when it responded to the allegations presented by the Applicant. Thus, the Court finds that the proceedings before regular courts were fair and reasoned (See, *mutatis mutandis,* Shub v. Lithuania, no. 17064/06, ECtHR, decision of 30 June 2009).

30. In this respect, the 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).

31. 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 and impartial trial (See among others authorities, Edwards v. United Kingdom, App. No 13071/87, Report of the Eur. Commission on Human Rights of 10 July 1991).

32. The fact that the Applicant is dissatisfied with the outcome of the case cannot raise an arguable claim of a breach of the constitutionally guaranteed rights (See case, Mezotur-Tiszazugi Tarsulat v. Hungary, No. 5503/02, ECtHR Judgment of 26 July 2005)·

33. In the concrete case, the Court cannot find arguments and evidence that the challenged decision [Pn. No. 745/2013] of the Court of Appeal of Kosovo of 19 December 2013, was rendered in manifestly unfair and arbitrary manner.

34. Consequently, the Court declares the Referral inadmissible as manifestly ill-founded pursuant to Rule 36 (1) c) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to the Article 113.7 of the Constitution, Article 47 of the Law and Rule 36 (1), c) of the Rules of Procedure, on 13 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
Altay Suroy

President of the Constitutional Court
Prof. Dr. Enver Hasani

KI37/14, Privatization Agency of Kosovo, Resolution of 25 March 2014 - Constitutional Review of the Judgment AC-II-12-0078, of the Special Chamber of the Supreme Court of Kosovo, of 23 January 2014 and the request for granting interim measure

Case KI37/14, decision of 25 March 2014

Key words: Individual Referral, Interim Measure, manifestly ill-founded.

The subject matter is the constitutional review of the Judgment AC-II-12-0078, of the Special Chamber, by which the Applicant's appeal was rejected and the Judgment C. no. 185/2009, of the Municipal Court in Klina, was upheld as well as the assessment of the request for interim measure, presented in the Referral.

The Applicant also alleges that when rendering the challenged Judgment the material law was erroneously applied and that the Judgment contains substantial violations of the contested procedure provisions.

The Applicant further stated that the regular courts did not apply the appropriate law when rendering decisions regarding the dispute.

The Court did not find violation of this constitutional provision, because in fact, both, the Municipal Court in Klina and the Special Chamber, have adjudicated the case based on the law. The fact whether the material law was correctly or erroneously applied is the legal matter, and does not present ground for constitutional violation in itself.

The facts presented by the Applicant do not in any way justify the allegation for violation of a constitutional right.

Pursuant to Article 113.7 of the Constitution, Article 20 of the Constitutional Law and Rule 56 of the Rules of Procedure, the Constitutional Court, in its session held on 25 March 2014, unanimously declared the Referral inadmissible as manifestly ill-founded and rejects the request for interim measure.

RESOLUTION ON INADMISSIBILITY
in
Case no. KI37/14
Applicant
Privatization Agency of Kosovo
Request for constitutional review of the Judgment of the Special Chamber of the Supreme Court of Kosovo, AC-II-12-0078, of 23 January 2014 and the request for granting interim measure

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

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

Applicant

1. The Applicant is the Privatization Agency of Kosovo, the Regional Office in Peja, which is represented by Mr. Gëzim Gjoshi, the Legal Officer in the Privatization Agency of Kosovo (hereinafter: the PAK).

Challenged decision

2. The challenged decision is the Judgment of the Special Chamber of the Supreme Court of Kosovo (hereinafter: the Special Chamber), AC-II-12-0078, of 23 January 2014, which was served on the Applicant on 30 January 2014.

Subject matter

3. The subject matter is the constitutional review of the Judgment of the Special Chamber, AC-II-12-0078, by which the Applicant's appeal was rejected and the Judgment of the Municipal Court in

Klina, C. no. 185/2009 was upheld as well as the assessment of the request for interim measure, presented in the Referral.

Legal basis

4. Article 113.7 in conjunction with Article 21.4 of the Constitution of the Republic of Kosovo (hereinafter: the Court), Article 22 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 Court

5. On 3 March 2014, the Applicant submitted the Referral to the Constitutional Court (hereinafter: the Court).

6. On 10 March 2014, the President of the Court by Decision, appointed Judge Altay Suroy as Judge Rapporteur and the Review Panel, composed of Judges: Ivan Čukalović, Enver Hasani and Robert Carolan.

7. On 11 March 2014, the Constitutional Court notified the Applicant and the Supreme Court of the registration of Referral.

8. On 25 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

9. On 2 October 2008, the claimants: F. M., N. B., D. M., GJ. R., C. T., all from the Municipality of Klina, filed a claim with the Special Chamber against the respondents: 1. Agricultural Combine "Ujmiri", with the work office in the village Ujmir, Municipality of Klina (hereinafter: AC "Ujmiri") and 2. PAK, by requesting compensation of unpaid personal income for the work in AC "Ujmiri".

10. On 27 August 2009, the Special Chamber rendered the Decision SCC-008-0264. It referred the matter, regarding this claim, to the Municipal Court in Klina for deciding.

11. On 15 June 2011, the Municipal Court in Klina, deciding upon the claim of claimants, according to the competence delegated by the Special Chamber, rendered the Judgment C. no. 185/2009, thereby partly approving as grounded the claim of the claimants: F. M., N. B., D. M., GJ. R., C. T., and obliged the respondents AC and PAK in Peja to pay material compensation of personal income in the monetary amount as per the enacting clause of the Judgment.

12. In its reasoning, the Municipal Court in Klina, assessed as evidence the employment contracts of the claimants and heard the authorized representative of PAK and regarding this, it stated: *"From such determination of factual situation, the Court concludes that the claim of claimant should be approved partly as grounded and fair and based on law, whereby the court based on evidence and reading of employment contracts and representative of the second respondent KB "Ujmiri" from Ujmiri, Fadil Kryeziu came into conclusion that the claim and statement of claim is grounded and approved the same in entirety as it is stated in the initial claim."*

13. Against this Judgment, the PAK, in capacity of the respondent, filed an appeal with the Special Chamber of the Supreme Court.

14. On 23 January 2014, deciding upon the PAK's appeal, the Special Chamber rendered the Judgment AC-II-12-0078, by which rejected the PAK's appeal as ungrounded and upheld the Judgment C. no. 185/2009, of the Municipal Court in Klina, of 1 June 2011.

15. In the reasoning of the Judgment, the Appellate Panel of the Special Chamber responded to each allegation, filed in the appeal and stated among the other "*So, the contracts were concluded between the Employer the SOE "Ujmiri", on one side, and the claimants on the other, regardless of who the director was. Even the director was the employee in this SOE, and he is entitled to personal income for the work he has done or he is doing. PAK even failed to challenge by any evidence that the claimants were not employed in this SOE, for the period stated by the claimants themselves, while the claimants presented the employment contracts, concluded at the beginning of each year".*

16. The Appellate Panel of the Special Chamber further reasoned in the Judgment "*Regarding PAK allegation for the statute of limitation of the claimants' claim (3 years), for the first time this matter became time-barred in the appeal proceedings, although it was not specified which claims became statute-barred, since*

many of them became one or two years after the termination of the employment relationship. Therefore, PAK is obliged to recognize them the right to payment of income to these workers, in accordance with this judgment".

17. Finally, unsatisfied with the Judgment of the Special Chamber, PAK submitted the Referral to the Constitutional Court.

Applicant's allegations

18. The Applicant alleges that by the Judgment of the Special Chamber, was committed:

"i) Violation of constitutionality and legality determined by Chapter VII, 102, paragraph 3 of the Constitution of the Republic of Kosovo, by which is provided that the courts adjudicate based on Constitution and law;

ii) Violation of Article 31 of the Constitution of the Republic of Kosovo, by which was provided the right to fair and impartial trial;

iii) Violation of European Convention of Human Rights, (ECHR), Article 6, by which is provided fair and impartial trial; and

iv) Violation of general legal principles".

19. The Applicant also alleges that when rendering the challenged Judgment the material law was erroneously applied and that the Judgment contains substantial violations of the contested procedure provisions.

20. The Applicant further stated that the regular courts did not apply the appropriate law when rendering decisions regarding the dispute.

Admissibility of the Referral

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

22. In this respect, the Court refers to the Constitution, where is provided:

Article 113.7

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

And Article 21.4

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

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."

23. In this respect, the Court concludes that the Applicant's Referral was submitted to the Court by a legal entity, within deadline of 4-months provided by the Law and after the exhaustion of legal remedies, therefore, it is suitable to be considered in the Court.

Assessment of substantial aspects of the Referral

24. The Court notes that the Applicant challenges the Judgment of the Special Chamber of the Supreme Court, AC-II-12-0078, of 23 January 2014, with allegation that this Judgment violated its rights guaranteed by the Constitution.

25. Responding to the allegations, referred by the Applicant for the constitutional violation, the Court concludes that:

As to Article 102.3 of the Constitution

26. Article 102, paragraph 3, of the Constitution, provides:

"Courts shall adjudicate based on the Constitution and the law."

27. The Applicant alleged that the violation of this constitutional provision was committed, because the regular courts did not apply the appropriate legal provision, when rendered the decision and that, according to the Applicant, *"did not adjudicate based on the law"*.

28. From the facts presented in the Referral, the Court did not find violation of this constitutional provision, because in fact, both, the Municipal Court in Klina and the Special Chamber, have adjudicated the case based on the law. The fact whether the material law was correctly or erroneously applied is the legal matter, and does not present ground for constitutional violation in itself.

As to Article 31 of the Constitution and Article 6 of ECHR

29. The Applicant did not clearly specify in the Referral that Article 31 of the Constitution and Article 6 of ECHR, were violated, but that in the part of the Referral, under the title -B. Substantial violation of the contested procedure provisions, in item 12 had stated: "*The Judgment in question does not contain violation of legal and constitutional provisions nor it has violated international standards for fair, impartial and independent trial, it is in full contradiction with provisions of Article 31.2 of the Constitution of the Republic of Kosovo and Article 6 of European Convention for Human Rights (hereinafter "ECHR)"*.

30. On this occasion, the Court recalls that the Constitution of Kosovo and ECHR 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 6.1 of ECHR provides

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".

[...]

31. In respect to the above, the Court notes that the simple description of the provisions of the Constitution and the ECHR 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 ECHR regarding a fair and impartial trial.

32. In this respect, the Court recalls that the ECtHR, through its developed case law, in conjunction with Article 6 of the ECHR, has established some of the basic elements contained in Article 6 of the Convention related to fair trial, and among others they are:

Right to access to the Court;

Right to equality in process (*equality of arms);*

Right to public hearing;

Right to public announcement of the decision;

Right to the court established by law;

Right to independence and impartiality during the trial;

Right to trial at reasonable time;

Right to effective execution of the decision;

33. Having considered the Applicant's Referral and the facts presented in it, the Court did not find that any of the guarantees stated above have been violated; moreover, from the decisions of the regular courts it is clearly seen that each of them separately and all of them together have been fulfilled in entirety.

34. 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 contracts were valid or not, because this is a jurisdiction of the regular courts. 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).

35. From the above, it must be recalled that one of the fundamental principles of the constitutional adjudication, is that of subsidiarity. In the particular context of the Court, this means that the duty to ensure respect for the rights provided by the Constitution, is primarily attributed to national judicial authorities, not directly and immediately to the Constitutional Court (see Scordino v. Italy, no. 1, [GC], § 140), therefore, in this respect, the Court notes that the issue addressed by the Applicant, was given effective response by the Supreme Court, by justifying with arguments the rendered decision.

36. 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 ECtHR 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).

37. 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.

Request for interim measure

38. Given the fact that the Referral is declared inadmissible as manifestly ill-founded in entirety the Court does not find any ground to grant the interim measure and as such it is rejected.

FOR THESE REASONS

Pursuant to Article 113.7 of the Constitution, Article 20 of the Law and Rule 56 of the Rules of Procedure, the Constitutional Court, in its session held on 25 March 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 and 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

KI136/13, Rashit Alidema, Resolution of 19 November 2013 - Constitutional Review of the Decision, Rev.no. 131/2013, of the Supreme Court of the Republic of Kosovo, of 25 March 2013

Case KI136/13, decision of 19 November 2013

Keywords: individual referral, manifestly ill-founded,

The applicant, Rashit Alidema, filed a Referral pursuant to Article 113.7 of the Constitution of Kosovo challenging the Decision, Rev.no. 131/2013, of the Supreme Court of the Republic of Kosovo, dated 25 March 2013Judgment, as being taken in violation of Articles 3 [Equality Before the Law], 54 [Judicial Protection of Rights], 102 [General Principles of the Judicial System], and 112 [General Principles] of the Constitution because it "is wrongful and is based on illegal constitutional grounds, since in the reasoning of the ruling is rejected as inadmissible, because the revision of the claimant is inadmissible. This conclusion of the Supreme Court is wrongful and not real".

On the issue of the admissibility of the Referral, the Court held, that the Referral was inadmissible because the Applicant failed to submit evidence that the relevant proceedings were in any way unfair or tainted by arbitrariness. Hence, the Court held that the Referral was manifestly ill-founded pursuant to Rule 36 (1.c) of the Rules of Procedure.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI136/13
Applicant
Rashit Alidema
Constitutional review of the Decision Rev. no. 131/2013 of the Supreme Court of the Republic of Kosovo, dated 25 March 2013

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

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

Applicant

1. The Referral was submitted by Mr. Rashit Alidema (hereinafter, the Applicant), residing in Pristina.

Challenged decision

2. The Applicant challenges the Decision Rev. No. 131/2013 of the Supreme Court of Kosovo, dated of 25 March 2013, which was served on him on 16 July 2013.

Subject matter

3. The subject matter is the constitutional review of the challenged Decision which allegedly *"is wrongful and is based on illegal constitutional grounds, since in the reasoning of the ruling is rejected as inadmissible, because the revision of the claimant is inadmissible. This conclusion of the Supreme Court is wrongful and not real."*

4. In this respect, the Applicant claims that Articles 3 [Equality Before the Law], 54 [Judicial Protection of Rights], 102 [General Principles of the Judicial System], and 112 [General Principles] of the Constitution were violated.

Legal basis

5. The Referral is based on Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter, the Constitution), Article 22 and 47 of the Law, No. 03/L-121, on the Constitutional Court of the Republic of Kosovo of 15 January 2009 (hereinafter, the Law).

Proceedings before the Court

6. On 3 September 2013, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).

7. On 24 September 2013, the President of the Constitutional Court appointed Judge Almiro Rodrigues as Judge Rapporteur and the Review Panel composed of Judges Altay Suroy (Presiding), Kadri Kryeziu and Arta Rama-Hajrizi.

8. On 8 October 2013, the Supreme Court was informed of the Referral.

9. On 19 November 2013, the Review Panel considered the Report of the Judge Rapporteur and made a recommendation to the Court on the Inadmissibility of the Referral.

Summary of facts

10. On 19 January 2010, a third party was issued a construction permit to construct a residential building in Pristina, which is very close to the property of the Applicant.

11. During the course of construction by the third party, the Applicant's property was damaged. Following the damage occurred to his property, the Applicant filed a request with the Municipality of Pristina in order to find that the third party has exceeded the permit given.

12. On 22 May 2012, the Municipality of Pristina informed the Applicant that on 24 April 2012 the inspectors of the Municipality

of Pristina had concluded that the third party has exceeded the permit and that on 25 April 2012, it had issued a decision to demolish those parts that exceeds the permit. These parts were demolished on 30 April 2012.

13. On 24 August 2012, the Municipal Court in Pristina (C. no. 1671/2012) rejected the Applicant's request for a determination of security measure (interim measures) and the request to prevent the continued construction of the third parties building.

14. On 31 October 2012, the District Court in Pristina (Ac. no. 1130/2012) rejected as ungrounded the appeal the Applicant filed against the Municipal Court's decision.

15. On 25 March 2013, the Supreme Court (Decision Rev. no. 131/2013) held that the Applicant's request for revision of the Ruling of the District Court in Pristina (Decision Ac. no. 1130/2012, dated 31 October 2012) was inadmissible and upheld the ruling of the Municipal Court in Pristina (C. no. 1067/12, dated 24 August 2012). In its decision, the Supreme Court noted that *"pursuant to Article 215 of the Law on Contested Procedure [hereinafter, the LCP], found that: [t]he revision of claimant is inadmissible."* However, the court further noted that *"according to Article 228.1 of [the] LCP, the parties can file a revision against final rulings by which is terminated the proceeding of the court of second instance […]."*

16. On 27 August 2013, the Applicant filed a request for intervention with the Ministry of Environment and Spatial Planning (hereinafter, the MESP), because the third party again had exceeded the permit for construction.

17. On 3 September 2013, the Applicant filed a Referral with the Court seeking a constitutional review of the Supreme Court's decision.

18. On 27 September 2013, the MESP approved the Applicant's complaint of 27 August 2013. In the MESP's decision, the Directorate of Inspectorate of Pristina Municipality ordered the immediate demolition of the third parties property (residential building, Pristina). In its reasoning, the MESP found that *"Investor A. E. did not respect the urban-technical conditions permitted by the Directorate of Urbanism – Prishtina Municipality; [a]dditionally, the basement usurps the property of Mr. Rashit Alidema; [e]xceedances of the Construction Permit by the investor A. E. on the residential building Mr. Rashit Alidema have caused*

cracks, material damages which make impossible living in the house." In response to these findings, the MESP determined that the Inspection Directorate – Prishtina Municipality violated Articles 33 and 34 of the Law on Construction No.04/L-110.

Applicant's allegations

19. The Applicant alleges that *"[t]he Law on Construction of the Republic of Kosovo is violated seriously, particularly the Articles 40, 55, 56 and 57.* Construction *permit is issued in illegal way, the Ulpiana neighborhood has a detailed urban plan and as such cannot be issued construction permit, but only renovation permit. Ruling of Supreme Court of Kosovo Rev.no.131/2013 dated 25.03.2013 is wrongful and is based on illegal constitutional grounds, since in the reasoning of ruling is rejected as inadmissible, because the revision of claimant is inadmissible. This conclusion of Supreme Court is wrongful and not real. The party, respectively the proposer evidences the truth that within legal time-limit have been processed the proceedings in first and second instance and for which possesses all evidence, which are attached to the case. The fact that the property of claimant was put into risk and damaged by irresponsible and illegal acts of the respondent A. E. was not taken into consideration. During construction of the building, due to lack of care and illegal action came up to the splitting of walls of my property under the permanent risk of ruining of house. … [O]ne part of foundation in the width of 50-60 cm had laid in my property by damaging the fences of yard and by putting into risk the ruining of the house. The legal provisions and Articles 3, 54, 102 and 112, provisions stipulated by the Constitution of the Republic of Kosovo were also violated."*

Assessment of admissibility

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

21. In this respect, 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.*
> *(…)*

> *7. Individuals are authorized to refer violations by public authorities of their individual rights and freedoms guaranteed by the Constitution, but only after exhaustion of all legal remedies provided by law.*

22. The Court also refers to Article 48 [Accuracy of the Referral] of the Law which provides:

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

23. In addition, the Court takes into consideration Rule 36.1.c of the Rules of Procedure which foresees:

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

24. The Court recalls that the Applicant claims that the "*conclusion of the Supreme Court is wrongful and not real",* when it concluded that *"the revision of the claimant is inadmissible".*

25. The Court emphasizes that it is not the task of the Constitutional Court to deal with errors of fact or law (legality) allegedly committed by the regular court, unless and in so far as they may have infringed rights and freedoms protected by the Constitution (constitutionality). Thus, the Constitutional Court is not to act as a court of fourth instance, when considering the decisions taken by the regular courts. It is the role of the regular courts to interpret and apply the pertinent rules of both procedural and substantive law (See case KI14/13, Applicant Municipality of Podujeva, Resolution on Inadmissibility of 12 March 2013).

26. The Court notes that the Applicant is challenging the Decision Rev. no. 131/2013 of the Supreme Court, on a determination of security measure (interim measures). Although a decision was rendered by the MESP in favor of the Applicant, this assessment of admissibility shall only be applicable to the Supreme Court decision on the security measure (interim measure) and shall have no bearing on the merits of the case, namely on the Ministry's decision.

27. The Court also notes that, at the time the Referral was submitted with the Court, the MESP decision had not been rendered. In fact, the MESP decision, which is in the Applicant's favor, was issued on 27 September 2013; the Referral was filed on 3 September 2013.

28. In respect, to the Decision of the Supreme Court, the Applicant did not substantiate a claim on constitutional grounds and did not provide evidence that its rights and freedoms have been violated by that public authority. Therefore, the Court cannot conclude that the relevant proceedings before the Supreme Court was in any way unfair or tainted by arbitrariness (See case KI14/13, Applicant Municipality of Podujeva, Resolution on Inadmissibility of 12 March 2013).

29. Therefore, the Court considers that the Applicant did not show why and how the conclusion of the Supreme Court that *"the revision of the claimant is inadmissible"* has infringed his rights and freedoms protected by the Constitution.

30. As such, although the MESP decision is in the Applicant's favor, the Applicant's Referral is nevertheless inadmissible as manifestly ill-founded with regards to the challenged decision of the Supreme Court only on the security measure (interim measure).

31. However, the fact that the Referral is inadmissible as manifestly shall not prevent the Applicant from following avenues available to him as a result of the MESP decision.

32. In sum, pursuant to Rule 36.1.c of the Rules of Procedure, it follows that the Referral is inadmissible because it is manifestly ill-founded.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113 of the Constitution, Article 48 of the Law and Rule 36.1.c and 56.2 of the Rules of Procedure, on 19 November 2013, unanimously

DECIDES

I. TO REJECT the Referral as Inadmissible;

II. TO NOTIFY the Parties of this Decision;

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

IV. TO DECLARE this Decision immediately effective.

Judge Rapporteur	**President of the Constitutional Court**
Almiro Rodrigues	Prof. Dr. Enver Hasani

KI78/13, Roland Bartetzko, Resolution of 20 January 2014 - Constitutional Review of the Decision of the Panel for Conditional Release MD/CRP-NO. 474/12 dated 29 December 2012 and Administrative Instruction 2009/1 of the Ministry of Justice

Case KI78/13, decision of 20 January 2014

Key words: individual referral, unauthorized party, Panel for Conditional Release, manifestly ill-founded referral.

The Applicant challenges the Decision MD/CRP-NO. 474/12 of the Conditional Release Panel of the Ministry of Justice of the Republic of Kosovo, dated of 29 December 2012. In addition, the Applicant requests Constitutional Review of Administrative Instruction 2009/1 of the Ministry of Justice.

The Referral is based on Article 113.7, whereby the Applicant does not mention any violated legal norms guaranteed by the Constitution, but he only requests that due to the importance and public interest the Constitutional Court ex-officio review the constitutionality of Articles 16 and 34 of the Administrative Instruction 2009/1 of the Ministry of Justice.

In this respect, the Court notes that the Applicant did not substantiate a claim on constitutional grounds and did not provide evidence that his fundamental rights and freedoms have been violated by the Conditional Release Panel. Thus, pursuant to Rule 36 (1), c) of the Rules of Procedure, the Referral is manifestly ill-founded and, therefore, inadmissible.

Furthermore, the Court reasons its decisions stating that in the present case, the Applicant also requests "Constitutional Review of the Administrative Instruction 2009/1 of the Ministry of Justice of the Republic of Kosovo". The Constitution clearly defines in Article 113, who may request an abstract review of the constitutionality of regulations of the government.

The Court notes that in this case the Applicant lacks "*standing*" or authority in the Court, because the Applicant did not meet the procedural requirements of Article 113.1 of the Constitution. Moreover, Kosovo's constitutional-legal system does not allow on the theory of "*actio popularis*" any individual, who wants to protect the public interest and constitutional order, the possibility to address the Constitutional Court regarding such violation, even when he/she does not have the status of the victim.

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

RESOLUTION ON INADMISSIBILITY
in
Case No.
Case No. KI78/13
Applicant
Roland Bartetzko
Constitutional Review of the Decision of the Panel for Conditional Release MD/CRP-NO. 474/12 dated 29 December 2012 and Administrative Instruction 2009/1 of the Ministry of Justice

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 Roland Bartetzko, a German national (hereinafter: the "Applicant"). He is serving a sentence in Dubrava Prison near Istog, Kosovo.

Challenged decision

2. The Applicant challenges the Decision, MD/CRP-NO. 474/12, of the Conditional Release Panel of the Ministry of Justice of the Republic of Kosovo (hereinafter, Conditional Release Panel), dated of 29 December 2012, which was served on him on 4 March 2013.

Subject matter

3. The subject matter is the constitutional review of the challenged Decision which allegedly is unconstitutional because it has been submitted without the Applicant's consent.

4. In addition, the Applicant requests Constitutional Review of Administrative Instruction 2009/1 of the Ministry of Justice.

Legal basis

5. The Referral is 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 of 15 January 2009 (hereinafter: the "Law") and Rule 56 (2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the "Rules of Procedure").

Proceedings before the Court

6. On 3 July 2013, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).

7. On 20 July 2013, the President of the Constitutional Court, with Decision No.GJR.KI-78/13, appointed Judge Robert Carolan as Judge Rapporteur. On the same date, the President of the Constitutional Court, with Decision No.KSH.KI-78/13, appointed the Review Panel composed of Judges Snezhana Botusharova (Presiding), Kadri Kryeziu and Arta Rama - Hajrizi.

8. On 11 September 2013, the Conditional Release Panel was notified of the Referral.

9. On 20 Januarary 2014, after having considered the report of the Judge Rapporteur, the Review Panel of this Court made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

10. On 12 November 2002, the Supreme Court of Kosovo (S.C. Ap.Nr. 181-2002). Found that the Applicant was guilty of a criminal act of terrorism under Article 125 in relation to Article 139 paragraph 2 of the Criminal Code of Yugoslavia. The Supreme Court also amended his sentence to 20 years imprisonment, including time spent in detention from 20 April 2001.

11. On 25 November 2011, the Applicant was notified that as of 20 April 2011 he is eligible for review for possible "conditional release" from prison.

12. On 25 November 2011, the Applicant submitted his request for "conditional release".

13. On 28 December 2011, the Conditional Release Panel (Decision PLK.no.224/11) rejected the request for conditional release submitted by the Applicant. Furthermore the decision stated, *"The new request will be reviewed in one (1) year's time".*

14. The applicant did not submit a new request for "conditional release".

15. On 29 December 2012, the Conditional Release Panel (Decision MD/PLK.NO. 474/12) ex-officio rejected the request for conditional release. Furthermore the decision stated, "*the new request will be reviewed in nine (9) month's time".*

16. On 8 March 2013, the Applicant requested an explanation from the Condititonal Release Panel regarding the procedure of review for conditional release in his case.

17. On 15 March 2013, the Conditional Release Panel (ref.no 34) replied to the Applicant stating the following: *"pursuant to the law in power the panel has complete authority to set the review dates for requests. In the Panel's Ruling dated 28 December 2011, the reviewing of the new request, for the same had been set to take place one (1) year after the rendering of the Ruling (enclosed the Ruling). Pursuant to this Ruling, the correctional institution had been instructed to submit the personal file of Mr. Bartetzko and a renewed report pursuant to the procedural rules (Orders: PLK 2009/1 that govern the panel's work for conditional release Articles 15 and 32, paragraphs 1,3 and 4)".*

18. Furthermore the conditional release Panel in its reply stated *"the conditional release procedure and the request are always grounded on the correctional reports and under this definition the convict's previous statement (dated 25.11.2011), thus it is not mandatory that in every period of reviewing new requests with same claims are compiled, because pursuant to the law the reviewing is performed is automatically performed and certainly*

you are aware that in this case we have a reviewing and not reapplication".

Applicant's allegations

19. The Applicant claims that the request for "conditional release" is unconstitutional and must be annulled as it was submitted without his consent. The applicant states that sometime in October 2012 while he was undergoing treatment at the University Clinic Center of Kosovo, a social officer from Dubrava asked the Applicant to sign a document which stated *"we notify that you are now eligible to be review for conditional release"* and that the social officer stated that if and when the Applicant wishes he can submit his request with the respective officer in Dubrava Prison.

20. The applicant argues that he did not want to submit his request at that time and it was only on 4 March 2013 that a correctional officer served the Applicant with the decision MD/PLK.NO.474/12 dated 29 December 2012 which was faxed to Dubrava Prison on 9 February 2013.

21. Furthermore, the Applicant requests that *"due to the importance and public interest the Constitutional Court ex-officio review the consitutionality of Articles 16 and 34 of the Administrative Instruction 2009/1 of the Ministry of Justice."*

Admissibility of the Referral

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

23. In this respect, the Court refers to Rule 36(1), c) of the Rules of Procedure which foresees that *"The Court may only deal with Referrals if (...) the Referral is not manifestly ill-founded."*

24. In that respect, the Constitutional Court would like to recall that, under the Constitution, it is not the task of the Constitutional Court to deal with errors of fact or law (legality) allegedly committed by the Conditional Release Panel, unless and in so far as they may have infringed rights and freedoms protected by the Constitution (constitutionality). Thus, the Court is not to act as a court of fourth

instance, when considering the decisions taken by the public authorities.

25. In this respect, the Court notes that the Applicant did not substantiate a claim on constitutional grounds and did not provide evidence that his fundamental rights and freedoms have been violated by the Conditional Release Panel. The Court notes that Decision PLK.no.224/11 dated 28 December 2011 of the Conditional Release Panel explicitly mentioned that the Applicant's case will be reviewed in one-years time as it was done on 29 December 2012 . 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).*

26. In the present case, the Applicant also requests "*Constitutional Review of the Administrative Instruction 2009/1 of the Ministry of Justice of the Republic of Kosovo"* . The Constitution clearly defines in Article 113, who may request abstract review of the constitutionality of regulations of the government.

27. Such request is an abstract challenge to the abovementioned instruction and the Law. If this is the intention of the Applicant as an individual, he cannot be considered an authorized party to request such review by the Court.

28. Articles 113.2, 113.6 and 113.8 of the Constitution explicitly provide which are the authorized parties to address the Court about the issue of the abstract review of the constitutionality of administrative instructions.

29. The Court notes that in this case the Applicant lacks "standing" or authority in the Court, because the Applicant did not meet the procedural requirements of Article 113.1 of the Constitution. Moreover, Kosovo's constitutional-legal system does not allow on the theory of *"actio popularis*" any individual, who wants to protect the public interest and constitutional order, the possibility to address the Constitutional Court regarding such violation, even when he/she does not have the status of the victim.

30. In sum, the Applicant has not shown how any of his rights, as guaranteed by the Constitution, have been violated. A mere statement that the Constitution has been violated cannot be

considered as a constitutional complaint. Thus, pursuant to Rule 36 (1), c) of the Rules of Procedure, the Referral is manifestly ill-founded and, therefore, inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Rules 36 (1) c) and 55 (5) of the Rules of Procedure, on 20 January 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**
Robert Carolan	Prof. Dr. Enver Hasani

KI145/13, Privatization Agency of Kosovo, Resolution of 24 March 2014 - Constitutional Review of the Decision No. AC-II-12-0120 of the Appellate Panel of the Special Chamber of the Supreme Court of the Republic of Kosovo, of 20 June 2013

Case KI145/13, decision of 24 March 2014

Key words: individual referral, legal persons, referral for Interim measures, manifestly ill-founded.

The Applicant submitted Referral based on Article 113.7 in conjunction with Article 21.4 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), Article 27 of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo and Rule 54, 55 and 56 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

On 10 June 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 Appellate Panel of the Special Chamber.

The Applicant alleges that the court authorities, namely the Appellate Panel of the Special Chamber violated the rights under Article 102.3 and Article 31 of the Constitution of Kosovo as well as the rights under Article 6 of European Convention of Human Rights.

Having considered the case, the Court noted that the duty of the Court, with regards to the alleged violations of the constitutional rights, is to analyze and assess whether the proceedings in general, viewed in their entirety, have been fair and consistent with the protection explicitly provided by the Constitution. Hence, the Constitutional Court is not a court of the fourth instance, in respect of the decisions taken by the lower instance courts. It is the role of the latter to interpret and apply the pertinent rules of both procedural and substantive law (see, *mutatis mutandis, Garcia Ruiz v. Spain* [GC], no. 30544/96, § 28, European Court on Human Rights [ECHR] 1999-I).

Taking into account that the Referral has been declared inadmissible, the Applicant, pursuant to Rule 54 (1) of the Rules of Procedure, is not entitled to request interim measures.

Taking into account all the circumstances of the submitted referral, the Constitutional Court of Kosovo in its session held on 20 March 2014, decided to declare the Referral inadmissible, as manifestly ill-founded and to reject the request for interim measures.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI145/13
Applicant
Privatization Agency of Kosovo
Constitutional review of the Decision of the Appellate Panel of the Special Chamber of the Supreme Court of the Republic of Kosovo
No. AC-II-12-0120 of 20 June 2013
The Applicant also requests imposition of the interim measure

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

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

Applicant

1. The Applicant is the Privatization Agency of Kosovo (hereinafter: the PAK), represented by Mr. Gani Ademi.

Challenged decision

2. The Applicant challenges the Decision of the Appellate Panel of the Special Chamber of the Supreme Court (hereinafter: the SCSC) on Privatization Agency of Kosovo Related Matters of the Republic of Kosovo (hereinafter: the PAK) no. AC-II-12-0120, of 20 June 2013, which was served on the Applicant on 24 June 2013.

Subject matter

3. The subject matter is the request for constitutional review of the Decision of the Appellate Panel of the SCSC no. AC-II-12-0120, of 20 June 2013.

4. The Applicant alleges that the Decision of the SCSC Appellate Panel on Privatization Agency of Kosovo Related Matters has violated its rights, guaranteed by the Constitution, namely Articles 31 [Right to Fair and Impartial Trial], 102 paragraph 3 [General Principles of the Judicial System] of the Constitution as well as Article 6 of the European Convention on Human Rights and Fundamental Freedoms (hereinafter: the ECHR).

5. The Applicant seeks from the Constitutional Court of Kosovo to grant interim measures of *"the ban of the execution of Judgment AC-II-12-0120 of 20.06.2013 of the Special Chamber of the Supreme Court of Kosovo, until the court decides on the merits, according to the Referral submitted by the Privatisation Agency of Kosovo, pursuant to Article 55, item 4 of the Rules of Procedure of the Constitutional Court of Kosovo."*

Legal basis

6. The Referral is based on Article 113.7 in conjunction with Article 21. 4 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), Article 27 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 of the Rules of Procedure.

Proceedings before the Court

7. On 10 September 2013, the Applicant submitted the Referral to the Court.

8. On 24 September 2013, the President by Decision no. GJR. KI145/13 appointed Judge Ivan Čukalović as Judge Rapporteur. On the same day, the President, by Decision no. KSH. KI145/13 appointed members of the Review Panel composed of Judges: Altay Suroy (Presiding), Snezhana Botusharova and Arta Rama-Hajrizi.

9. On 6 November 2013, the Court notified the Applicant and the SCSC on PAK Related Matters of the registration of the Referral under no. KI145/13.

10. On 24 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.

11. At the same time, the Review Panel proposed to the full Court to reject the request of the Applicant for interim measures, reasoning that the Applicant did not provide any convincing evidence that would justify the imposition of the interim measures, necessary to avoid irreparable damage or any evidence that such a measure would have been to the public interest.

Summary of facts

12. Sokol M. Bibaj (hereinafter: S. B.) inherited the cadastral plot no. 1976, of 1.19,00 ha registered in the possession list no. 144 CZ Lladrovc, from his predecessors. Until 1963, the abovementioned plot has been registered in the cadastral books in the ownership of S. B., when the Municipal Assembly of Malisheva, respectively the Administrative Committee, by Decision no. 1721 of 25 December 1963, declared S. B. as arbitrary usurper of the abovementioned parcel and based on that Decision deleted S.B from public cadastral books of the contested property.

13. On an unspecified date, the agricultural enterprise „MIRUSHA“, from Malisheva, was registered in the cadastral books as the owner of the challenged parcel.

14. On 15 August 1969, by Decision no. 9835, the Administrative Committee of the Municipal Assembly of Suhareka (the legal successor the Municipal Assembly of Malisheva), deciding upon the appeal of S. B. filed against the Ruling no. 1721 of 25 December 1963, annulled the Ruling no. 1721, by which S. B. was declared as an arbitrary usurper of the abovementioned immovable property, and thereby recognized the property right to S. B. over the contested property.

15. On 28 March 2001, S. B. respectively his legal representative filed a claim with the Municipal Court in Malisheva for confirmation of the ownership against the first respondent, the Municipality of Malisheva and the second respondent, the agricultural enterprise „MIRUSHA“ from Malisheva, requesting the confirmation of the ownership over the cadastral plot no. 1976 of 1.19,00 ha, registered in the possession list no. 144 CZ Lladrovc. The Applicant, respectively the PAK alleges that it is the owner of the challenged

property, according to the cadastral books of the agricultural enterprise "MIRUSHA" from Malisheva. The Applicant in this claim is announced as a legal representative of the agricultural enterprise „MIRUSHA" from Malisheva.

16. On 20 April 2001, by Ruling C. no. 28/01, the Municipal Assembly in Malisheva was declared as incompetent.

17. On 25 November 2005, the SCSC on PAK related matters, deciding upon the claim of S. B., rendered a ruling no. SCC-05-0010, by which the claim is forwarded to the Municipal Court in Malisheva.

18. On 13 April 2006, by Judgment C. no. 20/2006, the Municipal Court in Malisheva, approved the statement of claim of S. B. as grounded and determined that S. B. is the owner of the cadastral plot no. 134 and 797 in total surface area of 1.19,00 ha, registered in the possession list no. 62 CZ Lladrovc, while obliges the Directorate for Cadastre, Geodesy and Property of the MA Malisheva to register the abovementioned plot in the cadastral books under the name of S. B.

19. On 13 June 2006, the Applicant and the Municipality of Malisheva filed an appeal against the Judgment C. no. 20/2006 of the Municipal Court in Malisheva.

20. On 1 September 2006, by Ruling C. no. 20/2006, the Municipal Court in Malisheva, modified the Judgment C. no. 20/2006, of 13 April 2006, in a manner that it modified the paragraph 2 of the enacting clause so that instead of cadastral plot no. 134 and 797 indicated the plot no. 1976, and instead of the possession list no. 62 indicated no. 144.

21. On 16 May 2007, by Ruling SCA-06-006, the SCSC trial panel, deciding upon the Applicant's appeal and of the Municipality of Malisheva, approved the appeal, quashed the Judgment C. no. 20/2006 of 13 April 2006 of the Municipal Court in Malisheva and remanded the matter to the first instance court for retrial.

22. On 4 December 2009, the Municipal Court in Malisheva rendered the Judgment C. no. 149/2007, by which was approved the S.B statement of claim as grounded and confirmed that S.B is the owner of the cadastral plot no. 1976 registered in the possession list no. 144 CZ Lladrovc. By this Judgment, the Directorate for Cadastre, Geodesy and Property of the MA of Malisheva was obliged to register the abovementioned parcel in the cadastral

books under the name of S. B. This Judgment was served on the Applicant on 30 December 2009.

23. On 1 March 2010, the Applicant filed an appeal with the SCSC against the Judgment of the Municipal Court in Malisheva C. no. 149/2007 of 4 December 2009.

24. On 20 June 2013, by Ruling AC-II.-12-0120, the Appellate Panel of the SCSC, rejected the Applicant's appeal against the Judgment of the Municipal Court in Malisheva C. no. 149/2007 as out of time, by reasoning that:

> *"The challenged judgement was served on the respondent on 30 December 2009, while an appeal against this judgment was filed on 1 March 2010, which means, 61 days after the challenged judgment was served on the respondent. Pursuant to Article 9.5 of UNMIK Reg. 2008/4, applicable at the time of rendering the challenged judgment and at the time of filing the appeal, "within thirty (30) days from the day of rendering the decision, the party may file an appeal to Appellate Panel for reviewing such a decision."*

25. On 25 June 2013, the Applicant submitted to the Appellate Panel SCSC a request for the correction of the calculation of the time limit in the Ruling of the Appellate Panel of the SCSC. PAK states:

> *"The Privatization Agency of Kosovo considers that the Appellate Panel has erroneously calculated the time-limit for filing the appeal by PAK against the Judgment of the Municipal Court in Malisheva under number C. no. 149/07 on 04.12.2009, which is contrary to the provision of Article 20.2 of UNMIK Administrative Direction 2008/6, as well as contrary to legal remedy provided in the Judgment C. no. 149/07 of 04.12.2009."*

26. On 27 August 2013, by Ruling AC-II.-12-0120, the Appellate Panel rejected the Applicant's request as inadmissible, by reasoning:

> *"When the appeal was rejected as out of time, the calculation of the period of time was made in compliance with UNMIK Regulation 2008/4, as the highest act in the hierarchy of legal acts, and not in compliance with Administrative Direction 2008/6, which is lower act than the abovementioned Regulation. According to this Regulation, the legal time-limit*

for filing the appeal is 30 days, whereas the appeal is filed after this time-limit.
It is indisputable fact that this jurisdiction for adjudication in the first instance was transferred from the Special Chamber to the Municipal Court in Malisheva. By transfer of the jurisdiction, the Chamber transfers it within the framework of its competence, and which is provided by Regulation 2008/4. Based on this Regulation, the time-limit for appeal is 30 days and more jurisdictions cannot be transferred to other courts, which means also the time-limit of 30 days. The Administrative Direction 2008/6 in fact provides a time-limit of two months against decisions of municipal courts, but the concrete competence was transferred by the Chamber, and the Chamber cannot transfer more competence that it has itself. Secondly, that time-limit for appeal is contrary to time-limit of 30 days, provided by Regulation, which is according to applicable criteria at the law level, whereas administrative direction is sub-legal act, which cannot be contrary to law, in this case the Regulation."

Applicant's allegations

27. The Applicant alleges that the court authorities, namely the Appellate Panel of the SCSC (decisions ASC-II-12-0120 of 20 June 2013 and AC-II-12-0120 of 27 August 2013) violated the rights under Article 102.3 [General Principles of the Judicial System] Article 31 [Right to Fair and Impartial Trial] of the Constitution of Kosovo as well as the rights under Article 6 of ECHR.

28. The Applicant alleges that:

"The ruling AC-II-12-0120 of 20.06.2013 and the ruling AC-II-12-0120 of 27.08.2013 are rendered by erroneous application of substantive law. The Appellate Panel of the Special Chamber erroneously applied Article 9.5 of UNMIK/REG 2008/4 when rejected the PAK appeal filed against the judgment of the Municipal Court in Malisheva C. no. 149/07 of 04.9.2009 as inadmissible, due to the fact that by this provision is provided time limit of 30 days for filing the appeal to the Appellate Panel against decision rendered by the Trial Panel of the Special Chamber."

29. The Applicant alleges in particular that:

> *"Ruling AC-II-12-0120 contains substantial violation of the contested procedure provisions provided by Article 160 in conjunction with Article 169 of LCP, Law no. 03/L-006, due to the fact that in the legal remedy provided in the Judgment C. no. 149/2007 of 04.12.2009, the court determined 60 days time limit for appealing the judgment. Article 169 of the LCP provides that:* ***"The court is bound by its judgment from the moment of rendering it,"*** *whereas, the judgment acts on the party from the day it is served on it. Therefore, a party cannot be injured or deprived of right guaranteed by law, due to violation of law or erroneous interpretation by the court. From the case files it is not disputable the fact that the PAK appeal is filed within time limit provided in the legal remedy for appealing and in compliance with applicable law for appealing the judgment."*

30. The Applicant further alleges:

> *"Through this referral, the Privatisation Agency of Kosovo requests from the Constitutional Court of Kosovo to render judgment by which would declare this referral as admissible, and annul the judgments AC-II-12-0120 of 20.06.2013 and AC-II-12-0120 of 27.8.2013, which were rendered by Special Chamber of Supreme Court of Kosovo."*

31. The Applicant requests from the Court:

> *"Granting the interim measure, banning the execution of Judgment AC-II-12-0120 of 20.06.2013 of the Special Chamber of the Supreme Court of Kosovo, until the court decides on merits, according to the Referral submitted by the Privatization Agency of Kosovo, pursuant to Article 55, item 4 of the Rules of Procedure of the Constitutional Court of Kosovo."*

Admissibility of the Referral

32. In order to be able to adjudicate the Applicant's Referral, 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.

33. In this case, the Court refers to Article 113.7 in conjunction with Article 21 paragraph 4 of the Constitution, which provides:

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

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

34. The Constitutional Court, after examining all evidence and arguments presented by the Applicant, noted that the Applicant mainly complains against the decision of the Appellate Panel of the SCSC, by which the Applicant's appeal is rejected as out of time. The Applicant in its appeal requested from the Appellate Panel of the SCSC to correct the calculation in the ruling. The Privatization Agency of Kosovo considers that the Appellate Panel has erroneously calculated the deadline for filing an appeal by the PAK against the judgment of the Municipal Court in Malisheva.

35. The Court recalls that one of the admissibility requirements of Referral is that the Referral is not manifestly ill-founded, in order that the Court to consider the merits of the Referral.

36. Regarding this, the provisions of Rule 36 (1) c) and Rule 36 (2) b) and (d) of the Rules of Procedure, 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:

b) when the presented facts do not in any way justify the allegation of a violation of the constitutional rights;

c) when the Applicant does not sufficiently substantiate his claim".

37. As for the Applicant's allegation that "the SCSC Appellate Panel decided contrary to the Constitution and the applicable laws of the Republic of Kosovo," the Court finds that the Decision of the Appellate Panel of the Special Chamber does not contain

substantial violations of the constitutional rights because the Applicant failed to explain why and how the decision of the Appellate Panel was contrary to the constitutional provisions.

38. The reasoning of the decision of the Appellate Panel of the SCSC quoted in paragraph 24 of this report is mainly based on general principles of the judicial system, where courts adjudicate based on the Constitution and laws, supporting the reasoning of the decision in accordance with the case law in relation to cases of analogous nature.

39. The Court recalls that the case should be built on the basis of the constitutional argument in order that the Court could intervene.

40. The Court notes that the ground of the Applicant's appeal contains allegations which are related to the substantial violations of the applicable legal provisions and the violations of the contested procedure.

41. 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).

42. The Court reiterates that it is not its task to assess the legality and accuracy of the decisions rendered by regular courts, unless there is convincing evidence that such decisions have been rendered in manifestly unfair and unclear manner.

43. The duty of the Court, with regards to the alleged violations of the constitutional rights, is to analyze and assess whether the proceedings in general, viewed in their entirety, have been fair and consistent with the protection explicitly provided by the Constitution. Hence, the Constitutional Court is not a court of the fourth instance, in respect of the decisions taken by the lower instance courts. It is the role of the latter to interpret and apply the pertinent rules of both procedural and substantive law (see, *mutatis mutandis*, García Ruiz v. Spain [GC], no. 30544/96, § 28, European Court on Human Rights [ECtHR] 1999-I).

44. Moreover, the Applicant has not submitted any *prima facie* evidence indicating violation of its constitutional rights (see Vanek v. Slovak Republic, ECtHR Decision as to the Admissibility of

Application no. 53363/99 of 31 May 2005). The Applicant does not specify how Articles 31 and 102. 3 of the Constitution as well as Article 6 of ECHR support its claim, as required by Article 113.7 of the Constitution and Article 48 of the Law.

45. Furthermore, the Court cannot consider that the respective proceedings, conducted by the Municipal Court as well as by the Special Chamber of the Supreme Court were in any way unfair or arbitrary (see, *mutatis mutandis*, Shub v. Lithuania, ECtHR Decision as to the Admissibility of Application no. 17064/06 of 30 June 2009). The reliance by the Applicant on an advice by the Municipal Court on the length of the time limit within which a possible appeal should be filed cannot function as a substitute for compliance with an unambiguous legal provision. Such a provision has been provided by the legislator for the sake of legal certainty, enabling parties to know their rights to appeal and the duration of the time limit for the submission of such an appeal.

46. The Court further determines that it was the Applicant's duty to ascertain the correct deadline for the filing of the appeal. By relying on the incorrect advice of the Municipal Court, it failed to exercise reasonable care and cannot show reasonable arguments to justify the failure to respect the correct deadline laid down in the appropriate legal provision.

47. In these circumstances, the Court considers that the Applicant's referral does not meet admissibility requirements, because the Applicant has failed to show that the challenged decision has violated its rights and freedoms, guaranteed by the Constitution.

48. In sum, the Court considers that the Applicant's referral, pursuant to Rule 36 (2) b) and d) of the Rules of Procedure, is manifestly ill-founded and, consequently, inadmissible.

Request for interim measures

49. Article 27 of the Law, and in particular Rule 54 (1) of the Rules of Procedure, provide that "*at any time when a referral is pending before the Court and the merits of the referral have not been adjudicated by the Court, a party may request interim measures."*

50. However, taking into account that the Referral has been declared inadmissible, the Applicant, pursuant to Rule 54 (1) of the Rules of Procedure, is not entitled to request interim measures.

51. In addition, the Applicant has only requested from the Court to grant interim measures and has failed to provide additional arguments or relevant documents in its Referral.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution and in compliance with Rule 36 (2) b) and d) and Rule 56 (2) of Rules of Procedure, on 24 March 2014, unanimously

DECIDES

I. TO DECLARE the Referral inadmissible;

II. TO REJECT the request for interim measures;

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

IV. This Decision is effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Ivan Čukalović	Prof. Dr. Enver Hasani

KI191/13, Fejzullah Fejzullahu, Resolution of 25 March 2014 - Constitutional Review of the Decision PN. no. 624/2012, of the Court of Appeal of Kosovo, of 11 October 2013

Case KI191/13, decision of 25 March 2014

Key words: individual referral, manifestly ill-founded.

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 06 November 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 Court of Appeal of Kosovo.

The Applicant does not specify the Articles of the Constitution, which are violated, but alleges that by challenged decision his human and material rights were violated.

On 2 December 2013, the President by Decision No. GJR. KI191/13 appointed Judge Altay Suroy as Judge Rapporteur. On the same day, the President by Decision No. KSH. KI191/13appointed the Review Panel composed of Judges: Robert Carolan (Presiding), Ivan Čukalović and Enver Hasani.

Upon the review of the Referral, the Court concluded that the admissibility requirements have not been met in this Referral. The Court notes that the Applicant in his Referral submitted to the Court, alleges and attached the sale-purchase agreement, which he did not attach to the evidence and documents before the regular courts in Kosovo. In practice, nothing has prevented the Applicant to appeal before the Basic Court and the Court of Appeal against the alleged violation of human rights and to submit the sale-purchase agreement, which would be taken into account as new evidence. If these courts had taken into account violation and new evidence and if the same had fixed it, all would have ended there; if the courts had not corrected the violation or if they had not considered new evidence, the Applicant would have met the requirement for the exhaustion of all legal remedies in the sense that these courts had been given an opportunity to correct the alleged violation. The Constitutional Court finds that the facts of the case do not allow

convincing conclusion that the grounds of appeal of the *"erroneous application of legal provisions, erroneous and incomplete determination of factual situation"* presented before the Court of Appeal meet the test of the European Court. Under these circumstances, it is therefore not necessary to further consider the matter.

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 manifestly ill-founded.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI191/13
Applicant
Fejzullah Fejzullahu
Constitutional review of the Decision of the Court of Appeals of Kosovo, PN. No. 624/2012, of 11 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 and
Arta Rama-Hajrizi, Judge

Applicant

1. The Applicant is Mr. Fejzullah Fejzullahu (hereinafter: the Applicant), residing in Fushë-Kosovë.

Challenged decision

2. The Applicant challenges the Decision of the Court of Appeal of Kosovo PN. No. 624/2012, of 11 October 2013, which was served on the Applicant on an unspecified date.

Subject matter

3. The Applicant requests the constitutional review of the Decision of the Court of Appeal of Kosovo PN. no. 624/2012, of 11 October 2013 and Decision of the Basic Court in Prishtina, no. 316/13, of 26.07.2013, as the decisions, which are not based on facts. The Applicant does not specify the Articles of the Constitution, which are violated, but alleges that by challenged decision his human and material rights were 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 Court

5. On 6 November 2013, the Applicant submitted his Referral to the Court.

6. On 2 December 2013, the President by Decision No. GJR. KI191/13 appointed Judge Altay Suroy as Judge Rapporteur. On the same day, the President by Decision No. KSH. KI191/13 appointed the Review Panel composed of Judges: Robert Carolan (Presiding), Ivan Čukalović and Enver Hasani.

7. On 23 January 2014, the Court notified the Applicant and the Court of Appeal of Kosovo on the registration of the Referral under no. KI191/13.

8. On 25 March 2014, after having considered the report of the Judge Rapporteur, the Review Panel and made a recommendation to the Court on inadmissibility of the Referral.

Summary of facts

9. On 3 February 2009, the Municipal Public Prosecutor's Office in Prishtina (hereinafter: MPPO) by indictment proposal (PP. no. 364-5/2009), accused the Applicant that from an unspecified date until 17 October 2008, he stole electrical energy in the premise, which is in his ownership and by this he has damaged the Kosovo Energy Corporation.

10. On 11 May 2010, the Municipal Court in Prishtina deciding upon the proposal indictment of MPPO rendered the Judgment (P. no. 233/09), by which the Applicant is found guilty of committing criminal offence of theft and he was punished by a fine. In the reasoning of its Judgment, the Municipal Court stated:

"While assessing the material evidence, enclosed to the case file specifically: minutes no.199758 of 17.10.2008, photo documents and bill no.DPR08HP071171 of 18.12.2008, as well as other evidence in the case file, the Court finds that this evidence is convincing, grounded on law and at the same time prove that the accused has committed criminal offense he is accused of and found the same guilty and punished him as in the enacting clause of this Judgment."

11. On 16 June 2010, the Municipal Court in Prishtina, after the Judgment P. no. 233/09 of 11 May 2010 became final, rendered Decision E. no. 1140/2010, thereby allowing the execution against the Applicant, by which the Applicant is obliged that within the time limit of 7 days upon the receipt of the decision, pays the fine, which, if not paid, will be converted to imprisonment sentence. The Applicant had a right of appeal within the time limit of 7 days, from the date the decision was served on him.

12. On 10 November 2010, the Applicant filed an Objection against the Decision E. no. 1140/2010 of 16 June 2010, by challenging it in entirety.

13. On 19 February 2013, the Applicant due to unpaid obligations from the Ruling on execution of the Municipal Court was forcibly taken to serve the imprisonment sentence, from the Decision of the Municipal Court in Prishtina, E. no. 1140/2010 of 11 May 2010.

14. On 30 July 2013, by Decision KP. no. 316/13, the Basic Court in Prishtina, deciding upon the Applicant's request, rejected as ungrounded the Applicant's request to repeat the criminal proceedings, completed by the Judgment P. no. 233/09 of the Municipal Court in Prishtina.

15. In the reasoning of the Decision of the Basic Court KP. No. 316/13, is stated:

"Considering facts and evidence on which the first instance grounded its decision pursuant to the finding of the criminal panel, the allegations of the convict do not present new evidence pursuant to Article 423 of the CPCK. The statements that this Decision is absurd, biased and that the Judge forced him to pay the fine as well as the enclosed evidence –the article in newspaper 'Bota Sot' and several bills from 2005 and 2006 on his name and a report 'Customer Transactions' for the period starting from 01.01.2005 until 31.12.2010 on that same

premise –the same address but not in his name, do not have impact on repetition of the criminal procedure."

16. On 11 October 2013, by the Ruling PN. No. 624/2013, the Court of Appeal of Kosovo, deciding upon the Applicant's appeal, rejected as ungrounded the Applicant's appeal against the Ruling of the Basic Court in Prishtina KP. No. 316/13. In the reasoning of the Court of Appeal is stated:

> "S*ince, apart from the request for repetition of the criminal proceedings and the appeal filed against the Ruling to reject the request, the convict did not provide any new evidence that on its own or with the previous evidence might determine the innocence of the convict in relation to the committed criminal offense. This court's panel, based on this factual situation, and the Proposal of the Appeal's Prosecution, found that the first instance court has correctly applied the provisions of the CPCK when rejecting the request of the convict, since there are no legal grounds for repeating the criminal procedure, which stance is approved by this court too. These were the reasons why the appeal of the convict Fejzullah Fejzullahu was rejected as ungrounded."*

Applicant's allegations

17. The Applicant alleges that the court authorities, namely the Municipal Court in Prishtina, rendered an arbitrary decision, by finding him guilty of the criminal offence of theft of the electrical energy, by not considering the factual situation and the evidence.

18. The Applicant seeks:

> "*I seek the annulment of the Ruling of Basic Court in Prishtina no. 316/13 of 26.07.2013 as not grounded on facts! How can I be punished after several years, 7 years exactly without taking into account the evidence that the purchase/sale was done in 2006 with all the fulfilled obligations by me (the contract certified in the court)."*

19. The Applicant proposes to the Court and requests:

> *"Pursuant to the factual legal situation and presented and substantiated evidence, and on the grounds of the erroneous claim filed against me because the claim should have been filed*

against the purchaser and not against me, on the grounds of physical, human and material mistreatment I propose and seek from the Court to:

- *Seriously analyze the entire material I am enclosing,*
- *Annul the previous Rulings;*
- *Acquit me of the criminal charge;*
- *Compensate the paid fine, all court expenses, and expenses for attorneys and other material-moral expenses."*

Admissibility of the Referral

20. In this case, the Court refers to Article 113 [Jurisdiction and Authorized Parties] which provides:

> *1. "The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties.*
> *[...]*
>
> *7. Individuals are authorized to refer violations by public authorities of their individual rights and freedoms guaranteed by the Constitution, but only after exhaustion of all legal remedies provided by law."*

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

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

22. Furthermore, Rule 36 (1) a), b) and c) of the Rules of Procedure provides that:

> *"(1) The Court may only deal with Referrals if:*
>
> *a) all effective remedies that are available under the law against the Judgment or decision challenged have been exhausted, or*
>
> *b) the Referral is filed within four months from the date on which the decision on the last effective remedy was served on the Applicant, or*

c) the Referral is not manifestly ill-founded."

23. The Court considers that the Applicant has met the prescribed period of four months from the day when the decision of the Court of Appeal has been served on him. In this case, the final decision on the Applicant's case is the Decision of the Court of Appeal PN. No. 624/2013 of 11 October 2013. As a result, the Applicant has shown that he has exhausted all available legal remedies in accordance with applicable laws. He specifically challenges the Decision of the Municipal Court in Prishtina and the Decision of the Court of Appeal, as acts of public authorities; he has clearly stated the relief sought; and he has submitted various decisions and other supporting information and documents.

24. The Constitutional Court further notes that the Applicant did not present any allegation before the Basic Court and the Court of Appeal, on the constitutional ground, either implicitly or in substance, by which he would refer the alleged violation of his constitutionally guaranteed human rights and fundamental freedoms. The Court also notes that the Applicant in his Referral submitted to the Court, alleges and attached the sale-purchase agreement, which he did not attach to the evidence and documents before the regular courts in Kosovo. The reasoning of the Decision PN. no. 624/2013 of the Court of Appeals, reads:

> *"The convict did not present facts or evidence in relation to this, such as the sale/purchase agreement which pursuant to Article 423, paragraph 1, item 1.3 of the Criminal Procedure Code of Kosovo would have been assessed as new evidence and would present the legal ground pursuant to Article 423 of the PCPCK to allow the repetition of the criminal proceedings and that evidence could have put into question the factual situation determined by the punitive order Judgment that found the convict guilty of the criminal offense of Theft pursuant to Article 252, paragraph 2 of the PCCK."*

25. In practice, nothing has prevented the Applicant to appeal before the Basic Court and the Court of Appeal against the alleged violation of human rights and to submit the sale-purchase agreement, which would be taken into account as new evidence. If these courts had taken into account violation and new evidence and if the same had fixed it, all would have ended there; if the courts had not corrected the violation or if they had not considered

new evidence, the Applicant would have met the requirement for the exhaustion of all legal remedies in the sense that these courts had been given an opportunity to correct the alleged violation.

26. In any case, the Constitutional Court finds that the facts of the case do not allow convincing conclusion that the grounds of appeal of the *"erroneous application of legal provisions, erroneous and incomplete determination of factual situation"* presented before the Court of Appeal meet the test of the European Court. Under these circumstances, it is therefore not necessary to further consider the matter.

27. In addition, the Court considers that the Applicant has not shown and substantiated by evidence the alleged violation of his rights by the Basic Court and the Court of Appeal.

28. In fact, the Applicant's allegations for violation of the constitutional rights do not present *prima facie* sufficient ground to refer the case to the Court; the Applicant's dissatisfaction with the decision of the regular courts does not constitute constitutional ground to complain in the Constitutional Court.

29. Moreover, the Court notes that, in order that the *prima facie* case meets the admissibility requirements of the Referral, the Applicant must show that the proceedings before the District Court and the Supreme Court, viewed in their entirety, were not conducted in such a manner that the Applicant would have had a fair trial or that other violations of the constitutional rights could have been committed by the regular courts during the trial.

30. In this respect, the Court refers to Rule 36 (1) c) of the Rules of Procedure, providing that: *"The Court may only deal with Referrals if: (c) the Referral is not manifestly ill-founded."*

31. 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).

32. Thus, the Court is not to act as a court of fourth instance, in the present case, when considering the decisions taken by regular courts. It is the role of regular courts to interpret and apply the pertinent rules of both procedural and substantive law (see, *mutatis mutandis*, Garcia Ruiz v. Spain [GC], no. 30544/96, para. 28, European Court of Human Rights [ECHR] 1999-1)·

33. The Constitutional Court cannot consider that the relevant proceedings before the Basic Court and the Court of Appeal 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)·
34. In sum, the Court concludes that the Referral is inadmissible 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 (1) c) of the Rules of Procedure, in the session held on 25 March 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**
Altay Suroy	Prof. Dr. Enver Hasani

KI221/13, Shaqir Përvetica, Resolution date 14 March 2014 - Request for reconsideration of the Resolution on Inadmissibility of the Constitutional Court of the Republic of Kosovo, Case no. KI67/13, of 12 September 2013

Case KI221/13, decision of 14 March 2014

Key words: individual referral, request for reconsideration of the Resolution on Inadmissibility, violation of unspecified constitutional rights, *ratione materiae*.

The Applicant in this case mainly complained on the work inefficiencies of the judicial system in particular and justice system in general, alleging non-professionalism in the decision-making of the judiciary.

In this case, the Court noted that the present Referral does not meet the requirements of the Rule 36 (3) f) of the Rules of Procedure, as the Court does not have jurisdiction to decide on legal matters it has already decided on.

The Court further concluded: the jurisdiction of the Constitutional Court regarding individual Referrals is clearly defined by Article 113.7 of the Constitution. By individual acts of public authorities within the meaning of Article 113.7, it should be understood all individual acts of public authorities of the Republic of Kosovo that present subject of constitutional review within the meaning of this Article, except for acts of the Constitutional Court itself. Therefore, it should be clearly and rightly understood that the Constitutional Court does not have jurisdiction to reopen and adjudicate its own decisions on matters it has already decided.

In conclusion, the Court found that the Applicant's Referral is incompatible *ratione materiae* with the Constitution, therefore in accordance with Rule 36 (3) f) it must be rejected as inadmissible.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI221/13
Applicant
Shaqir Përvetica
Request for reconsideration of the Resolution on Inadmissibility of the Constitutional Court of the Republic of Kosovo,
Case no. KI67/13, of 12 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, gjyqtar, and
Arta Rama-Hajrizi, Judge

Applicant

1. The Applicant is Mr. Shaqir Prevetica, residing in Prishtina.

Challenged decision

2. In the present Referral, the Applicant has not specified what decision he wishes to challenge. In general, the Applicant has addressed several court authorities, respectively the presidents of these authorities, including the Constitutional Court.

Subject matter

3. The subject matter of the Referral is the request for reconsideration of the Resolution on Inadmissibility of the Constitutional Court of the Republic of Kosovo in Case no. KI67/13, of 12 September 2013, that concerned the constitutional review of the Decision of the Supreme Court Rev. no. 228/2012 of 12 March 2013.

4. In the present Referral, the Applicant did not specify any specific violation of the constitutional provisions.

Legal basis

5. Rule 36 (3) e) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Court

6. On 9 December 2013, the Applicant submitted the Referral to the Court.

7. On 27 December 2013, the President of the Court, by Decision no. GJR. 221/13, appointed Judge Snezhana Botusharova as Judge Rapporteur. On the same day, the President of the Court, by Decision no. KSH. 221/13, appointed members of the Review Panel composed of Judges: Robert Carolan (Presiding), Almiro Rodrigues and Prof. Dr. Enver Hasani.

8. On 27 January 2014, the Court notified the Applicant and requested from him to supplement his Referral with relevant documents.

9. Pursuant to Article 22.4 of the Law on the Constitutional Court, the Applicant has 15 days time from the day of confirmation of the receipt of the letter to submit additional relevant documents to his Referral, as requested from the Court, but this procedure was not respected, even after the expiration of the time limit provided by law.

10. On 14 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

11. The present Applicant's Referral, regarding the reconsideration of the Resolution on Inadmissibility in Case KI67/13, of 12 September 2013, enumerates the following facts: the decisions of the Municipal Court, C1. No. 46/2002, of 10 September 2002 and C1. no. 05/2008, of 1 April 2009, as well as the decisions of the District Court in Prishtina, Ac. no. 592/2002, of 1 February 2005, and Ac. no. 56/2006, of 21 November 2007.

12. The Court notes that, in its previous decision, Case KI67/13, appear the same facts, which the Court has reviewed in the session of the Review Panel of 12 September 2013. The decisions of the regular courts that were reviewed in the previous case are as follows:

> *"On 10 September 2002, the Municipal Court in Prishtina had rendered the Ruling C. no. 46/02, by which rejected the claim of the Applicant as out of time. This court had concluded that the claim was filed out of legal time limit.*
>
> *On 1 February 2005, the District Court in Prishtina, by Decision Ac. no. 592/2002 quashed the Ruling C. no. 46/02 of 10 September 2002 of the Municipal Court in Prishtina and returned the matter to the same court for retrial.*
>
> *On 6 June 2005, the Municipal Court in Prishtina, by Ruling, C. no. 130/05, rejected the Applicant's claim as out of time, because the Applicant missed the legal time limit for filing the claim.*
>
> *On 21 November 2007, the District Court in Prishtina rendered Decision Ac. no. 56/2006, by which quashed the Ruling C. no. 130/05, of 6 June 2005, of the Municipal Court in Prishtina and decided to return the matter for retrial to the first instance court.*
>
> *On 1 April 2009, the Municipal Court in Prishtina (Ruling, Cl. no. 05/2008) terminated the procedure of the further adjudication of the contested matter, "because TCC "Kosova" former "Sloga" in Prishtina was privatized and that the liquidation of the abovementioned company entered into force on 11 April 2007. The abovementioned court bases its reasoning on the submission of 4 June 2007 of Kosovo Trust Agency, which had proposed to the Municipal Court in Prishtina, to terminate the court proceedings against the sued company, since the latter was privatized and that the liquidation process has entered into force since 11 April 2007.*
>
> *On 20 July 2009, the District Court in Prishtina (Ruling, Ac. no. 1178/2009), finally rejected as ungrounded the Applicant's appeal and upheld the Ruling of the Municipal Court in Prishtina Cl.no.05/08 of 27 July 2009, by which the claimant's claim was rejected as out of time. The District Court Panel,*

after reviewing the case, concluded that the first instance served the Ruling Cl.no.05/08 of 1 April 2009 on the Applicant on 2 April 2009, while the representative of the Applicant filed the appeal on 30 June 2009, which according to the assessment of the panel of that court, the appeal was filed after the statutory deadline.

On 12 March 2013, the Supreme Court (Ruling, Rev. no. 228/2012) rejected as ungrounded the Applicant's revision, filed against the Ruling of the District Court Ac.no. 1178/2009 of 20 July 2009. The Supreme Court justifies its decision as following: "Setting from the situation of this matter, the Supreme Court of Kosovo found that the first instance court has correctly applied the provisions of the contested procedure when it found that the appeal was out of time."

Applicant's allegations

13. The Applicant mainly complains on the work inefficiencies of the judicial system in particular and justice system in general, alleging non-professionalism in the decision-making of the judiciary.

14. Applicant has not clarified what he wants to achieve with the present Referral and does not explain the purpose of filing this Referral. He only expresses his dissatisfaction with some of the decisions of the regular courts, whereby he underlined the statements of the courts, qualifying them as being untrue findings. The Applicant also complains against the Resolution on Inadmissibility in the Case no. KI67/13, of 12 September 2013, of the Constitutional Court.

Admissibility of the Referral

15. Before adjudicating the Referral, the Court assesses whether the Applicant's Referral has met all the admissibility requirements, laid down in the Constitution and further specified in the Law and Rules of Procedure.

16. The Applicant in the present Referral complains against the decisions of the court authorities in general, including the Resolution on Inadmissibility in Case no. KI67/13, of 12 September 2013, of the Constitutional Court.

17. In the said case, on 12 September 2013, the Constitutional Court had unanimously decided that the Referral was inadmissible for the following reasons:

> *The Court notes that the Applicant only complains about the decisions of regular courts, regarding the conclusion that the appeal was not filed within the legal time limit, as it was required by the provisions of the applicable law.*
>
> *The Court recalls that it is not its task to assess the legality of decisions issued by regular courts, unless such decisions have been rendered in an arbitrary and unreasoned manner.*
>
> *It is the task of the Court to assess if the proceedings, in their entirety, have been in compliance with the Constitution. So, the Constitutional Court is not a fourth instance in respect to the decisions taken by regular courts. It is the role of the regular courts to interpret and apply the pertinent rules of both procedural and substantive law (see, mutatis mutandis, Garcia Ruiz v. Spain, no. 30544/96, § 28, European Court on Human Rights [ECHR] 1999-1).*
>
> *In the present case, the Applicant has not provided any prima facie evidence which would show that the alleged violation mentioned in the Referral constitute a violation of his constitutional right (see Vanek vs. Slovak Republic, ECHR Court on admissibility, Application no. 53363/99 of 31 May 2005)*
>
> *Therefore, the Court cannot consider that the pertinent proceedings conducted in the Supreme Court were in any way unfair or arbitrary (see mutatis mutandis, Shub v. Lithuania, ECHR Decision as to the Admissibility of Application no. 17064/06 of 30 June 2009).*
>
> *Finally, the Court concludes that the Applicant's Referral does not meet all the admissibility requirements and thus, pursuant to Article 113 (1) and (7) of the Constitution, Article 48 of the Law and Rule 36 (2) a) and b) of the Rules of Procedure, the Referral is manifestly ill-founded and inadmissible."*

18. In the concrete case, it can be clearly noted that the present Referral of the Applicant does not present any new evidence or new

allegation of a violation of his fundamental rights as guaranteed by the Constitution.

19. The Court cannot consider this Referral filed by the Applicant as a new Referral because regarding the arguments raised in the present Referral, the Court has already decided by Resolution on Inadmissibility in case No. KI67/13 of 12 September 2013.

20. In this respect, the Rule 36 (3) item f) of the Rules of Procedure, clearly provides that:

> "*36 (3) A Referral may also be deemed inadmissible in any of the following cases:*
> *(f) the Referral is incompatible ratione materiae with the Constitution;"*

21. In this context, the present Referral does not meet the requirements of the abovementioned Rule as the Court does not have jurisdiction to decide on legal matters it has already decided on.

22. The jurisdiction of the Constitutional Court regarding individual Referrals is clearly defined by Article 113.7 of the Constitution. By individual acts of public authorities within the meaning of Article 113.7, it should be understood all individual acts of public authorities of the Republic of Kosovo that present subject of constitutional review within the meaning of this Article, except for acts of the Constitutional Court itself. Therefore, it should be clearly and rightly understood that the Constitutional Court does not have jurisdiction to reopen and adjudicate its own decisions on matters it has already decided.

23. The Constitutional Court wishes to recall that its decisions are final and binding on the judiciary, all persons and institutions of the Republic of Kosovo.

24. In this regard, Article 116.1 [Legal Effect of Decisions] of the Constitution provides: *"Decisions of the Constitutional Court are binding on the judiciary and all persons and institutions of the Republic of Kosovo."*

25. The parties may request from the Court to rectify clerical or numerical errors, if such errors were made in its decisions.

26. In this respect, Rule 61 of the Rules of Procedure provides:

"(1) The Court may, ex officio, or upon application of a party made within two weeks of the service of a Judgment or decision, rectify any clerical and calculation errors in the judgment or decision.

(2) A rectification order shall be attached to the original of the rectified Judgment or decision."

27. In conclusion, the Court finds that the Applicant's Referral is not compatible *ratione materiae* with the Constitution, therefore in accordance with Rule 36 (3) f) it must be rejected as inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Rule 36 (3) f) and Rule 56 (2) of the Rules of Procedure, on 14 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**
Snezhana Botusharova	Prof. Dr. Enver Hasani

KI89/13, Arbresha Januzi, Judgment of 12 March 2014 - Constitutional Review of the Judgment Rev. no. 74/2011, of the Supreme Court, of 12 March 2013

Case KI89/13, decision of 12 March 2014

Key words: individual referral, civil dispute, right to fair and impartial trial, right to work, admissible referral.

In the present case, the Applicant alleged that the Supreme Court by Judgment Rev. no. 74/2011 of 12 March 2013 has violated her constitutional rights, as guaranteed by Article 49 [Right to Work and Exercise Profession]; Article 53 [Interpretation of Human Rights Provisions]; Article 55 [Limitations on Fundamental Rights and Freedoms] of the Constitution, and in particular Article 31 [Right to Fair and Impartial Trial] of the Constitution, in conjunction with Article 6.1 [Right to a fair trial] of the ECHR. The Applicant further argued that the Supreme Court, on the same legal basis as in her case, by Judgment Rev. no. 32/2013 approved the claim of the other two employees under completely identical circumstances. She claimed that "the Supreme Court has established diverse case law on completely identical cases and this undoubtedly confirms that" as the Applicant claimed "my right to fair trial was violated".

Regarding the rights sought by the Applicant, in the present case 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." In this context the Court referred to case Stefanica and others v. Romania, of 2 November 2010, paragraph 23· Therefore, the Court emphasized that will analyze the complaints of the Applicant based on the alleged facts and the evidence attached to the Referral regarding her allegations of a violation of fundamental rights guaranteed by the Constitution and the ECHR.

In the present case, the Court finally held that there has been a breach of Article 24 [Equality before the Law], Article 31 [Right to Fair and Impartial Trial] of the Constitution, Article 6.1 [Right to a Fair Trial] of the European Convention on Human Rights.

JUDGMENT
in
Case no. KI89/13
Applicant
Arbresha Januzi
Constitutional Review of the Judgment of the Supreme Court
Rev. no. 74/2011 of 12 March 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 has been submitted by Mrs. Arberesha Januzi, residing in Prishtina.

Challenged decision

2. The challenged decision is the Judgment of the Supreme Court, Rev. no. 74/2011, of 12 March 2013, which was served on the Applicant on 29 May 2013.

Subject matter

3. The subject matter of the Referral is the constitutional review of the Judgment of the Supreme Court, Rev. No. 74/2011, of 12 March 2013, regarding the alleged violations of the constitutional rights as guaranteed by Article 49 [Right to Work and Exercise Profession]; Article 53 [Interpretation of Human Rights Provisions]; Article 55 [Limitations on Fundamental Rights and Freedoms] of the Constitution, and in particular regarding violation of Article 31

[Right to Fair and Impartial Trial] of the Constitution, in conjunction with Article 6.1 [Right to a fair trial] of the ECHR.

Legal basis

4. Article 113.7 of the Constitution, Article 20 and 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 (hereinafter: Rules of Procedure).

Proceedings before the Court

5. On 19 June 2013, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 24 June 2013, the President of the Court by Decision no. GJR. KI89/13 appointed Deputy President Ivan Čukalović as Judge Rapporteur. On the same date, the President of the Court, by Decision no. KSH. KI89/13 appointed the Review Panel composed of judges: Altay Suroy (Presiding), Snezhana Botusharova and Arta Rama-Hajrizi.

7. On 2 July 2013, the Court notified the Supreme Court and the Applicant of the registration of the Referral.

8. On 26 August 2013, the Applicant submitted the Judgment of the Supreme Court Rev. no. 32/2013 to the Court.

9. On 30 August 2013, the Court requested from the Supreme Court to submit the certified copy of the Judgment Rev. no. 32/2013 of 30 July 2013.

10. On 4 September 2013, the Applicant again submitted additional documents.

11. On 5 September 2013, the Supreme Court submitted a copy of the Judgment Rev. no. 32/2013 of 30 July 2013, as requested by the Court.

12. On 23 September 2013, the Applicant once again submitted additional documents in relation to her case. In this submission, the Applicant mentioned several judgments of the Supreme Court where the latter had decided prior to her case which she considers them to be similar to her case. Among others, she claims that "*the*

legal provisions of the Regulation 2001/27 on ELLK and the normative act had provided for a disciplinary proceeding to be conducted and in my case no disciplinary proceeding was conducted".

13. On 12 March 2013, the Court reviewed the Referral and voted on the admissibility and the merits of the Referral.

Summary of the facts

14. On 17 March 2004, the Applicant concluded an employment contract (contract: no. 446/04) with the International Airport of Prishtina (hereinafter: employer) for an indefinite period of time in the position: Ground Stewardess.

15. On 18 May 2005, the Applicant was notified by her employer of the immediate termination of the employment contract. The employer based the termination of the employment contract on the initiation of the criminal proceedings by the Border Police of Kosovo, pursuant to Article 13 of the employment contract and Article 11.3 of UNMIK Regulation No. 2001/27 on Essential Labor Law of Kosovo (hereinafter: Regulation 2001/27 on ELLK).

16. On 18 May 2005, the Applicant filed an appeal against the notification, without number, of 17 May 2005 with the Director of the Management of the Airport.

17. The response to the Applicant's appeal, based on the case file, is dated 26 June 2005, but the said response was served on her by the Employer on 15 February 2006 in the main hearing.

18. On 25 August 2005, the Applicant filed a claim with the Municipal Court in Prishtina against the notification on termination of the employment contract. By this claim, the Applicant requested the annulment of the notification, without number, of 17 May 2005, as unlawful, since according to the Applicant's authorized representative, "*pursuant to the applicable legal provisions the Applicant could have been suspended pending the completion of the proceedings, and under no circumstances was her employment relationship to be terminated*. The Applicant's authorized representative also stated that "*the assessments of the employer that the Applicant has allegedly disclosed 'the business secret' do not stand*". For these reasons, according to the Applicant, the termination of the employment contract by the employer was

done in violation of the provisions of the Regulation 2001/27 on ELLK.

19. On 19 December 2007, the Municipal Court in Prishtina (Judgment: Cl. No. 208/06) approved the Applicant's claim and annulled as unlawful the Employer's decision on termination of the employment relationship. The Court in question ordered the employer to reinstate the Applicant to her previous position or to another position, which corresponds to her professional qualification, with all rights that derive from the employment relationship, starting from 14 May 2005, and obliged the employer to compensate the salary to the Applicant, by applying also the legal interest for the lost salaries. The following are parts quoted from the Judgment:

> *"In order that the Court determines in a correct and complete manner the factual situation in this legal matter conducted the procedure of evidence: by examination of the employment contract no. 446/04 dated 17.03.2004, notification on termination of the employment contract without number dated 17.05.2005, the claimant's appeal dated 17.05.2005, the respondent's response to appeal dated 26.05.2005, submitted to the court on 15.02.2006 as well as the judgment of this Court P.no. 1388/05 dated 10.10.2005*
> *[...]*
> *According to the assessment of this court, the termination of the claimant's employment contract by the respondent, pursuant to the abovementioned legal provisions is in contradiction to the provisions of Article 11, 11.1, 11.2 and 11.3 of the Essential Labour Law of Kosovo, UNMIK Regulation no. 2001/27, because the abovementioned legal provisions were included in item 11.3, where as serious cases of misconduct are mentioned: unjustified objection to the duties specified in the contract of employment, theft, destruction, damage or unauthorized use of employer's assets, the disclosure of business secrets, the consumption of drugs and alcohol at work and behaviour of such nature, as a result of which would be unreasonable to expect further extension of employment relationship. From this results that none of these cases of misconduct have to do with the case of the claimant* 208/06 *who did not refuse without any reason finishing of work duties, did not steal, destroy, damage and used without authorization the assets of the employer, did not disclose business secrets, did not use drugs and alcohol [...].*

From this determined factual situation, the Court assesses that the employee is responsible only for the violations of labor obligations, which at the time of commission were provided by legal provisions and by general legal act of the enterprise, provided by provision of Article 111, para. 2 of the Law on Employment Relationship (Official Gazette of SAPK, no. 12/89). From these reasons it finds that the employment contract no. 446/04 dated 17.03.2004 was *terminated to claimant Arberesha Januzi in unlawful manner, respectively her employment relationship was terminated, therefore it approves the claimant's statement of claim in entirety as grounded."*

20. The Applicant's employer filed an appeal against the Judgment of the Municipal Court of Prishtina with the District Court in Prishtina.

21. On 30 December 2010, the District Court in Prishtina (Judgment: Ac. no. 421/2008) rejected the appeal of the Employer as ungrounded, thereby upholding the judgment of the first instance court as being correct and lawful.

22. The Applicant's employer filed a revision with the Supreme Court of Kosovo against Judgment Ac. no. 421/2008 of the District Court in Prishtina. The appeal of the Applicant's Employer was based on substantial violations of the provisions of the contested procedure and erroneous application of the substantive law.

23. On 13 March 2013, the Supreme Court (Judgment: Rev. no. 74/2011) approved the revision filed by the Applicant's employer and modified the decisions of the lower instance courts. The Supreme Court justified its Judgment by the fact that the lower instance courts have correctly and completely determined the factual situation, but they erroneously applied the substantive law (law), when adjudicating that the Applicant's claim was grounded. The reasoning of the judgment in question is as follows:

"The Supreme Court of Kosovo, setting from such a situation of the matter, concluded that the first instance court determined factual situation in a correct and complete manner, it has erroneously applied the substantive law when it approved the claimant's statement of claim as grounded. The first instance court wrongly concluded that pursuant to Article 13.3 (a,b,c,d,e) (note: it should be Article 11.3) of the Essential

Labour Law, UNMIK Regulation no. 2001/27, the claimant's actions are not qualified as serious violations of work duties, since the misconduct, pursuant to item b), have to do with employer's assets and not with assets of the third person.

Such legal stance of the first instance court cannot be accepted as correct since Article 11.3 of the Essential Labour Law provides that the employment contract is terminated by the Employer in serious cases of misconduct or of unsatisfactory performance of work duties by the employee. In Article 11.3 explicitly are enumerated cases of misconduct. [...] According to the assessment of this court, theft at the workplace is qualified as misconduct of serious nature, after which it would be unreasonable to expect the extension of the employment relationship to the claimant due to the fact that the claimant's behavior questions her moral integrity in performing those duties and this is reflected also on other employees and on the image of the respondent [...]. From the reasons above, it is rightly stated in the revision that the appealed judgment was rendered based on erroneous application of the substantive law and both judgments had to be modified and the claimant's claim had to be rejected."

Applicant's allegations

24. The Applicant alleges that the Supreme Court by Judgment Rev. no. 74/2011 of 12 March 2013 has violated her constitutional rights, as guaranteed by Article 49 [Right to Work and Exercise Profession]; Article 53 [Interpretation of Human Rights Provisions]; Article 55 [Limitations on Fundamental Rights and Freedoms] of the Constitution, and in particular Article 31 [Right to Fair and Impartial Trial] of the Constitution, in conjunction with Article 6.1 [Right to a fair trial] of the ECHR.

25. The Applicant further argues that the Supreme Court, on the same legal basis as in her case, by Judgment Rev. no. 32/2013 approved the claim of the other two employees under completely identical circumstances. She claims that "the Supreme Court has established diverse case law on completely identical cases and this undoubtedly confirms that" as the Applicant claims "my right to fair trial was violated".

26. The Applicant also refers to the Judgment of the Constitutional Court, namely Case KI120/10 of 29 January 2013, where the Court found a violation of Article 31 of the Constitution and Article 6.1 of

the ECHR with respect to the Supreme Court's failure to give proper reasoning in its Judgment.

The case of the other two employees, Judgment of the Supreme Court Rev. no. 32/2013, of 30 July 2013, for which the Applicant alleges that it is completely identical with her case

27. For the purposes of substantiating her Referral and in support of her allegation of the violation of the constitutional rights, the Applicant in the meantime attached to the Referral the Judgment of the Supreme Court Rev. no. 32/2013 of 30 July 2013, where, according to the Applicant, her case and the case of her two colleagues are completely the same. In that Judgment, the Supreme Court rejected the Employer's Revision (Prishtina International Airport) and approved the claimant's claim, finding that the lower instance courts decided correctly when they annulled the employer's decisions, regarding the termination of their employment contract. The lower instance courts assessed that the termination of employment contract was contrary to the provisions of Regulation 2001/27 on ELLK and of the normative act of the employer because the employer did not comply with the procedures set forth in Article 11.5 of the Regulation 2001/27 on ELLK, namely it did not conduct the disciplinary proceedings provided by the applicable law and by employer's normative act.

28. Below is the reasoning of the judgment: *"The respondent was notified of this case by the airport border police and the respondent's managing director on 23.12.2008 rendered the decisions to terminate the employment relationship to both claimants. The decisions were rendered pursuant to the provision of Article 8 of Airport Staff Policies Regulation and Article 11.3 of the Essential Labour Law – UNMIK Regulation no.2001/27, with the justification that the claimants had committed serious misconduct, after which it would be unreasonable to expect the continuation of the employment relationship.*
[...]
Setting from such a factual situation of the matter, the Supreme Court found that the lower instance courts, by determining the factual situation in a correct and complete manner, have correctly applied the provisions of the contested procedure and the substantive law, when finding as grounded the claimant's claim in the part I of the enacting clause of the first instance judgment.

It is correct the conclusion of the lower instance courts that the provision of Article 11.3 (e) of the Essential Labor Law, provides as a serious case of misconduct, which is the ground for termination of the employment contract by the Employer, the behavior of a very serious nature, as a result of which would be unreasonable to expect further extension of the employment relationship.

However, in order to terminate the employment contract on this legal ground, the same law in Article 11.5 provides that, in this case, the employer shall notify the employee in writing that it intends to terminate the labour contract. Such notice shall include the grounds for termination and a meeting shall be held between the employer and the employee, and at such meeting the employer shall provide the employee with an oral explanation of the grounds for termination. In the present case it was not acted like this, but the managing director took the written decisions, and they were served on the claimants, by disregarding the procedures described above.

Therefore, the Supreme Court approved as correct the finding of the lower instance courts, in the part it has to do with approval of the claimant's claim and the confirmation that the decisions of the managing director of the respondent on termination of claimant's employment contract are null and void-the enacting clause I of the first instance judgment as well as in part II of enacting clause, which has to do with reinstatement of claimant to her previous working place. In this part, the challenged judgment was rendered by correct application of the provisions of the contested procedure and of the substantive law".

The Judgment of the Constitutional Court in case KI120/10, Zyma Berisha, adopted on 29 January 2013, for which the Applicant alleges that it is applicable to her case

29. In that case (KI120/10, Zyma Berisha of 29 January 2013), Mrs. Berisha had alleged that: *"the Supreme Court, by Judgment Rev. 308/2007, dated 10 June 2010, placed her in an unequal position vis-a-vis her former colleagues who were in the same situation, i.e. had permanent employment status within the same company and won their cases before the Supreme Court, whereafter they were reinstated into their previous workplaces.*

The Applicant argued that only her case was decided differently by the Supreme Court and that, therefore, she became the victim

of injustice and discrimination. Initially, she attached to her referral two judgments of the Supreme Court both issued on 17 January 2008 (under Rev. nr. 126/2007 and Rev. nr. 177/2007) which related to two of her former colleagues, while, in her written submission of 26 September 2011, she listed the names of 6 former colleagues who had won their cases before the Supreme Court, (including the names of the two colleagues whose judgments she already had submitted).

30. This Court's findings in that case are as follows: "*In the instant case, the Court notes that the Applicant requested the ordinary courts to confirm her permanent employment status in the same way as they had done in the case of her former colleagues. She referred, in particular, to the provisions of the Collective Agreement applicable to her employment status as well as to the relevant provisions of the UNMIK Regulation on Essential Labour Law in Kosovo and also presented the evidence that she was entitled to enjoy all rights from the permanent employment status, as the findings of the Labour Inspectorate had also confirmed. In view of the previous judgments of the Supreme Court in the identical cases of her former colleagues based on similar facts as the Applicant's case, the Applicant could legitimately expect that the revision initiated by "Kosova e Re" would be rejected.*

However, although the Supreme Court, as the text of the contested judgment shows, found that the lower instance courts had fairly and fully ascertained the factual situation related to the decisive facts for a fair adjudication of the case, it apparently did not analyze the Applicants' claim in a similar way as it had done in the cases of her former colleagues and as the lower instance court had done in the Applicant's case. Instead the Supreme Court viewed that, contrary to the Applicant's submissions, the subject matter of her case concerned the extension of the fixed term contract and did not at all consider the Applicant's arguments and evidence related to her claim to be entitled to permanent employment status and reinstatement into her working place.

Thus, while the Applicant had clearly raised the issue of her permanent employment status in the same way as her former colleagues had done before the Supreme Court, the Supreme Court considered her claim only as a matter of extension of her contract.

As a consequence, the Supreme Court, in its judgment in the Applicant's case, ruled differently than in the identical cases of the Applicant's former colleagues. Instead of finding in those cases that the lower instance courts had "fairly applied provisions of contested procedure and material law when finding that the claim suit of plaintiff is grounded", the Supreme Court found in the Applicant's case that the lower instance courts had "erroneously applied material law when finding that the claim suit of the plaintiff is grounded".

The Supreme Court further held that "The legal stance of the lower instance courts that the plaintiff [Applicant]'s contract should have been extended, because her working position exists in normative acts of the respondent ["Kosova e Re"], to the view of this Court, is in violation of provisions of the Law, considering that the contract extending the employment relationship may be signed with the consent of employer and employee, if not in contradiction with the law and normative acts, and, therefore, the plaintiff's working contract was terminated with the expiry of the duration of the contract".

It is not the task of the Constitutional Court to decide what would have been the most appropriate way for the Supreme Court to deal with the Applicant's arguments regarding the status of her permanent employment based on the above mentioned Collective Agreement and applicable law.

However, in this Court's opinion, 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 fulfil 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).

Moreover, the Court notes that the Supreme Court, in its Judgment Rev.nr.154/2008, dated 7 February 2011 i.e. 7 months after its judgment in the Applicant's case, did not repeat its findings in the Applicant's case, but again ruled in the same way as it had done in the four cases prior to the Applicant's case, considering the confirmation of the permanent employment status as the subject matter of the disputes and using similar

extensive and thorough reasoning to reject the revision submitted by "Kosova e Re".

In these circumstances, the Court finds that the Supreme Court has dealt with the Applicant's case in an evidently arbitrary manner, contrary to the principles elaborated by the ECtHR in its above mentioned judgment in Nejdet Sahin and Perihan Sahin v. Turkey [GC], no. 13279/05, 20 October 2011.

The Court, therefore, concludes that there has been a violation of Article 31 of the Constitution in conjunction with Article 6.1 of the ECHR.

Admissibility of the Referral

31. 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.

32. The Court first determines whether the Applicant is an authorized party within the meaning of Article 113.7 of the Constitution, which provides that "*Individuals are authorized to refer violations by public authorities of their individual rights and freedoms guaranteed by the Constitution [...].*" In this respect, the Referral was submitted by the Applicant pursuant to Article 113.7 of the Constitution (Individual Referrals). Therefore, the Court considers that the Applicant in this case is an authorized party, entitled to refer this case to the Court.

33. The Court should also determine whether the Applicant has met the requirements of exhaustion of effective legal remedies, as stipulated by Article 113.7 of Constitution and Article 47.2 of the Law which provides: *"[...] The individual may submit the referral in question only after he/she has exhausted all the legal remedies provided by the law."*

34. In that regard, the Court refers to its Case KI41/09 where it is stated: *"The Court wishes to emphasize that the rationale for the exhaustion rule, as interpreted by the European Court of Human of Rights (see Article 53 of the Constitution), is to afford the authorities concerned, including the courts, the opportunity to prevent or put right the alleged violation of the Constitution. The rule is based on the assumption that the Kosovo legal order will*

provide an effective remedy for the violation of constitutional rights. This is an important aspect of the subsidiary character of the Constitution. (see, mutatis mutandis, ECHR, Selmouni v. France, no. 25803/94, decision of 28 July 1999). However, it is not necessary for the constitutional rights to be explicitly raised in the proceedings concerned. As long as the issue was raised implicitly or in substance, the exhaustion of remedies is satisfied (see, mutatis mutandis, ECHR, Azinas v. Cyprus, no. 56679/00, decision of 28 April 2004).

In this connection, the Court would like to stress that applicants are only required to exhaust remedies that are available and effective. Discretionary or extraordinary remedies need not to be exhausted, for example requesting a court to revise its decision (see, mutatis mutandis, ECHR, Cinar v. Turkey, no 28602/95, decision of 13 November 2003).

Where an applicant has tried a remedy that the Court considers inappropriate, the time taken to do so will not interrupt the running of the four-month time limit (Art. 49 "Deadlines" of the Law), which may lead to the complaint being rejected as out of time (see, mutatis mutandis, ECHR, Prystavka, Rezgui v. France, no 49859/99, decision of 7 November 2000).

35. In the present case, the Applicant challenges the Judgment of the Supreme Court of Kosovo (extraordinary legal remedy) which approved the revision filed by her employer. Thus, in absence of another available legal remedy, the Court concludes that the Applicant has met the requirement for exhaustion of effective legal remedies.

36. The Applicant should also comply with the requirements of Article 49 of the Law and Rule 36 (1) b) of the Rules of Procedure, regarding the submission of Referral within prescribed legal time limit. From the case file it can be clearly seen that the last decision in the case of the Applicant is the Judgment of the Supreme Court Rev. no. 74/2011 of 12 March 2013. The Applicant submitted the Referral to the Court on 19 June 2013, which means that the Referral was submitted within the four (4) month time limit, as prescribed by the Law.

37. The Court also assesses whether the Applicant has specified and clarified in her Referral what rights and freedoms she claims that have been violated, by what act and by what court or public authority. In her Referral, the Applicant has accurately mentioned

the alleged violations of the constitutional rights and she has also filed various documents, supporting her allegation, regarding the fact that the Supreme Court has violated her fundamental rights and freedoms, guaranteed by the Constitution.

38. Since the Applicant's Referral has met the procedural requirements for admissibility also based on the fact that the Referral is not manifestly ill-founded, the Constitutional Court decides that the Applicant's Referral is admissible for review, and, therefore it will deal with the assessment of the merits of the Referral.

Merits of the Referral

39. The Applicant alleges that the Judgment Rev. no. 77/2011 of the Supreme Court of 12 March 2013, violates her fundamental rights, guaranteed by Article 49 [Right to Work and Exercise Profession], Article 53 [Interpretation of Human Rights Provisions], Article 55 [Limitations on Fundamental Human Rights and Freedoms] of the Constitution, and in particular violates Article 31 [Right to Fair and Impartial Trial] of the Constitution, in conjunction with Article 6.1 [Right to a fair trial] of the ECHR.

40. Regarding the rights sought by the Applicant, 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 *Judgment of ECtHR in case Stefanica and others v. Romania, of 2 November 2010, paragraph 23*).

41. Therefore, the Court will analyze the complaints of the Applicant based on the alleged facts and the evidence attached to the Referral regarding her allegations of a violation of fundamental rights guaranteed by the Constitution and the ECHR.

42. The Applicant argues that the Supreme Court, only three months later, in completely identical circumstances, by Judgment Rev. no. 32/2013, approved the claim of the other two employees. On the other hand, in her case, the same court with the same legal basis rejected the Applicant's statement of claim. She alleges that the development by the Supreme Court of an inconsistent case law, confirms the lack of a fair trial, which not only contradicts with the case law of the court itself, but it also violates her right to a "fair trial" because the administration of justice in her case does not

guarantee for an equal protection of the parties to proceedings before that court.

43. As to allegations of the violation of Article 31 of Constitution, in conjunction with Article 6 of ECHR, the Court refers to the following constitutional provisions:

Article 31.1 [Right to Fair and Impartial Trial] of the Constitution, provides that: *"1. Everyone shall be guaranteed equal protection of rights in the proceedings before courts, other state authorities and holders of public powers."*

Article 53 [Interpretation of Human Rights Provisions] of the Constitution: *"Human rights and fundamental freedoms guaranteed by this Constitution shall be interpreted consistent with the court decisions of the European Court of Human Rights."*

In addition, Article 6 of the European Convention on Human Rights provides: *"In determination of his civil rights and obligations [...] everyone is entitled to a fair ... hearing ... by ... a tribunal..."*

Supreme Court's divergences in the case of the Applicant and the other two employees

44. According to the Applicant, only a few months following her case, the Supreme Court issued Judgment Rev. no. 32/2003, approving the claim of the other two employees as well-founded under completely identical circumstances to those of the Applicant.

45. The Constitutional Court, after the findings it made from the case file, notes that Judgment Rev. no. 74/2013, (the Applicant's case) and Judgment Rev. no. 32/2013 (the case of the other two employees) are identical in the legal basis, facts and evidence.

46. According to Judgment Rev. no. 74/2011, the Applicant's case: a) The responding party before the Supreme Court is Prishtina International Airport (Employer); b) The subject matter is the violation of procedures provided by the law and the normative act of the employer; c) the termination of the employment contract was based on the initiation of the criminal proceedings by the Airport Border Police; The legal ground for the rejection of the Applicant's statement of claim is Article 11.3 item e) of the Regulation 2001/27 on Essential Labor Law in Kosovo: *"behavior of such a serious*

nature that it would be unreasonable to expect the employment relationship to continue".

47. According to Judgment Rev. no. 32/2013 of 30 July 2013, the case of the other two employees: a) The responding party before the Supreme Court in this case too is Prishtina International Airport (Employer); b) The subject matter in this case is the violation of procedures provided by the law and the normative act of the employer, c) the termination of the employment contract, in this case too, was based on the initiation of the criminal proceedings by the Airport Border Police; d) The legal basis for the approval of the statement of claim, in this case too, is Article 11.3 item e) of the Regulation 2001/27 on ELLK: *"behavior of such a serious nature that it would be unreasonable to expect the employment relationship to continue".*

48. It is evident that the claim of the Applicant was rejected on the same legal basis, on which the claim of the other two employees was approved. Therefore, as we are dealing with completely identical cases, it is necessary to understand where lie the conflicting differences in the treatment of these cases.

49. In the Applicant's case, the Supreme Court concluded that the lower instance courts established the facts and the evidence in a correct manner, but according to it, "*they erroneously applied the substantive law"*, because in this case the violation of work duties is based on item "e)" of Article 11.3 of the Regulation 2001/27 on ELLK, which provides *"behavior of such a serious nature that it would be unreasonable to expect the employment relationship to continue".*

50. Meanwhile, in the case of the other two employees, on the same legal basis, the same court endorsed the conclusions of the lower instances as being correct, both in terms of the administration of evidence and the application of the procedural and substantive law, the reasoning of the court in that case being as follows: *"It is correct the conclusion of the lower instance courts that the provision of Article 11.3 (e) of the Essential Labor Law, provides as a serious case of misconduct, which is the ground for termination of the employment contract by the Employer, the behavior of a very serious nature, as a result of which would be unreasonable to expect further extension of the employment relationship. However, in order to terminate the employment contract on this legal ground, the same law in Article 11.5 provides*

that, in this case, the employer shall notify the employee in writing that it intends to terminate the labour contract. Such notice shall include the grounds for termination and a meeting shall be held between the employer and the employee, and at such meeting the employer shall provide the employee with an oral explanation of the grounds for termination.

51. What does Regulation 2001/27 on ELLK applied in these cases provide:

"Article 11, Termination of Labour Contract

11.1 A labour contract shall terminate:

[…]

(c) on the grounds of serious misconduct by the employee;

(d) on the grounds of unsatisfactory performance by the employee;

[…]

11.2 A labour contract shall be terminated by the employer on the grounds of serious misconduct or unsatisfactory performance by the employee.

11.3 Serious misconduct shall include the following:

(a) unjustified refusal to perform the obligations set out in the labour contract;

(b) theft, destruction, damage or unauthorized use of the employer's assets;

(c) disclosure of business secrets;

(d) consumption of drugs or alcohol at work; and

(e) behavior of such a serious nature that it would be unreasonable to expect the employment relationship to continue.

11.5 Where section 11.2 applies:

(a) the employer shall notify the employee in writing that it intends to terminate the labour contract. Such notice shall include the grounds for termination; and

(b) a meeting shall be held between the employer and the employee, and at such meeting the employer shall provide the employee with an oral explanation of the grounds for termination. If the employee is a member of a union, the employee shall be entitled to have a union representative present at such meeting.

52. The Supreme Court's differences in treatment of these cases lie in the fact that in the Applicant's case, that court selectively applied the legal norms which fulfilled the requirements of one party only, in the present case, of the employer only, because the Supreme Court did not take into consideration the Applicant's rights deriving from Article 11.5, as it did in the cases of the other two employees. This legal norm provided for the conduct of administrative proceedings before the Employer would take a decision to terminate the employee's contract. Pursuant to the applicable laws normative acts have been adopted which provide for the initiation of the disciplinary proceedings.

53. The Supreme Court has maintained this stance in all other cases, when it adjudicated on the same legal basis pursuant to Regulation 2001/27 on ELLK and Law no. 12/1989 on the Employment Relationship in Kosovo. These legal norms expressly provide that the employer must conduct administrative/disciplinary proceedings in order to assess and qualify the violations of work duties. The establishment of the disciplinary committees is regulated by law and by legal normative acts of each employer.

54. In her Referral, the Applicant has cited some cases in which the Supreme Court had decided prior and subsequent to her case, regarding proceedings that an employer is obliged to conduct in relation to the employee before an employee's employment contract is terminated. Such cases include: Judgment, Rev. no. 126/2007, of 17 January 2008; Judgment, Rev. no. 177/2007, of 17 January 2008; and Judgment Rev. no. 32/2013, of 30 July 2013, to which the Applicant precisely refers.

55. The Constitutional Court notes that the Supreme Court like in Judgment Rev. no. 32/2013 (the case of the other two employees)

has maintained this stand in all other cases raised before it, such as:

> Judgment Rev. no. 43/2006 of 21 September 2006 which approved the plaintiff's revision and quashed the decisions of the lower instance courts and the case was remanded to the first instance court for retrial, precisely due to the violation of procedures and obligations that derived from Article 11.5 of Regulation 2001/27 on ELLK (See case KI 103/13 of this Court Mazllum Zena, under paragraph 18 of the Resolution on Inadmissiblity);
>
> Judgment Rev. no. 368/2011 of 2 May 2013 which approved the plaintiff's claim and modified the decisions of the lower instances due to non-initiation of the disciplinary proceedings by the employer to assess the violation of work duties. In that case, the Supreme Court has emphasized that in order to assess the violations of employment relationship, the applicable Law no. 12/1998 on Employment Relationship in Kosovo provides the initiation of the disciplinary proceedings and the setting up of disciplinary committees to qualify the violations committed in the employment relationship (See, Resolution on Inadmissibility, Case KI185/13, Kosovo Energy Corporation, under paragraph 21);
>
> Judgment Rev. no.151/2003 of 5 June 2013 which also approved the plaintiff's claim upon revision and modified the decisions of the lower instances due to non-initiation of the disciplinary proceedings by the employer to assess the violation of work duties (See Resolution on Inadmissibility, Case KI186/13, Kosovo Energy Corporation, paragraph 20).

56. However, it is evident that the Supreme Court only in Applicant's case decided differently from abovementioned cases. In this respect, the Supreme Court has failed to equally treat the parties to proceedings for the reason that it based itself on a norm which satisfied the requirements of one party only and it did not base itself on the norm which presented an obligation for the employer and a right for the Applicant. In the present case, it cannot be said that the Supreme Court maintained the same position in completely analogous cases (see how it was acted in the case of the other employees, Judgment Rev. No. 32/2013, of 30 July 2013).

57. The Supreme Court applied Regulation no. 2001/27 on ELLK and in all cases where it applied Article 11.1, 11.2 and 11.3, it recalled on

the lower instances that in relation to this legal basis, the legislator had provided for the application of Article 11.5 which obliges the employers to conduct the respective proceedings. However, this was not the case with the Applicant.

58. Even in cases when the Supreme Court applied the Law on Employment Relationship no. 12/1989, the main ground for quashing and modifying the decisions of lower instances was precisely the fact that the employers had arbitrarily terminated the employees' contracts without having conducted the respective proceedings.

59. Regarding the test whether this machinery has been applied, based on the quoted Judgments of the Supreme Court we understand that in most of the cases a unified position has been maintained in the application of those legal norms, except for the Applicant's case. Building a different case law, in the concrete case, cannot be said to have been done for the purposes of sustainable reform and administration of justice.

As to the inconsistency of the decisions on completely identical cases

60. In this respect, the Court refers to ECtHR case law, namely case Beian v. Rumania, 30658/05 of 6 December 2007, where ECtHR held that: "the high level of inequality of judgments of the Cassation Court in Romania on same legal issues is in itself contrary to the principle of legal certainty, which is implicit in all articles of the Convention and is one of the fundamental elements of the rule of law.

61. Further it reads that this inequality has become itself a source of legal uncertainty, undermining public confidence in the judiciary. The ECtHR concluded that this uncertainty has had precedential effect of depriving the applicant of any opportunity to enjoy the rights provided by law, while other people in the same situation enjoyed these rights. The reasoning of the decision in question is as follows: "*The practice which developed within the country's highest judicial authority is in itself contrary to the principle of legal certainty, a principle which is implicit in all the Articles of the Convention and constitutes one of the basic elements of the rule of law (see, mutatis mutandis, Baranowski v. Poland, no. 28358/95, § 56, ECHR 2000-III). Instead of fulfilling its task of establishing the interpretation to be followed, the HCCJ itself*

became a source of legal uncertainty, thereby undermining public confidence in the judicial system (see, mutatis mutandis, Sovtransavto Holding v. Ukraine, no. 48553/99, § 97, ECHR 2002 -VII, and Păduraru, cited above, § 98; see also, by contrast, Pérez Arias v. Spain, no. 32978/03, § 27, 28 June 2007). The Court therefore concludes that this lack of certainty with regard to the case-law had the effect of depriving the applicant of any possibility of obtaining the benefits provided for by Law no. 309-2002, while other persons in a similar situation were awarded those benefits. Accordingly, there has been a violation of Article 6 § 1 of the Convention".

62. In this case, the Supreme Court *ex officio* should have taken care of applying its case law by avoiding violations of the rights of the parties to proceedings before it, and not to become itself a source of legal uncertainty. This way of administering justice surely influences the decrease of citizens' trust in the judicial system.

As to the discriminatory differences in treatment of completely identical cases

63. Article 24 paragraph 1 [Equality before the Law] of the Constitution provides that: "*All are equal before the law. Everyone enjoys the right to equal legal protection without discrimination*".

64. This Article first and foremost guarantees the equality of all citizens before the law and provides for their right to equal judicial protection without making any difference between them. In fact, the meaning of this Article is the constitutional prohibition of discrimination as a fundamental prerequisite to ensuring the respect of all other human rights guaranteed by the Constitution and the exercise of the these rights under equal terms.

65. Regarding the ensuring of the equality before the law, consequently the prohibition of the discrimination on any grounds, it should be stressed that this Article contains constitutional provisions with a purpose to eliminate or change the circumstances that impede the realization of the equality of persons or groups of persons who are in fact in unequal position *vis-à-vis* other citizens.

66. With regard to discriminatory differences in the treatment of the parties before the law, the Court has already established its own case law. Therefore, in analogy with the circumstances of the present Applicant, the Court refers to its Judgment in case KI04/12

of 11 July 2012, published on 20 July 2012, where the Court, *inter alia*, found a violation of Article 24 of the Constitution.

67. In this regard, the Court referred to ECtHR case law and quoted parts of ECtHR decisions*: "In this respect, the ECtHR in the Lithgov case, the ECtHR stressed that Article 14 of ECHR protects persons [...] who are placed in similar situations against discriminatory differences in treatment (Lithgow and others v. United Kingdom, Judgment of 8 July 1986, Series A, No. 102; (1986) 8 EHRR 329). Further, the ECtHR in Fredrin case stressed that, in order for the Applicant's referral to be successful, it should be ascertained, inter alia, that the situation the alleged victim is in can be considered similar to the situation of persons who had a better treatment (see Fredrin v. Sweden, Judgment of 18 February 1991, Series A, No. 192; (1991) 19 EHRR 784).*

68. Further, ECtHR stressed that*: "it is the obligation of local courts or authorities to show and prove that treatment of a case differently from other cases with similar circumstances should be substantiated, convincing and reasoned properly. In this respect, in the Lithgov case, the ECtHR stated that: [...] for the purpose of Article 14, discriminatory difference in treatment is discriminatory if this difference has no objective or reasonable justification, i.e. if it does not pursue a legitimate aim.*

69. In its Judgment KI04/12, the Constitutional Court concluded that*: the District Court did not take into account its previous decisions in order to qualify and adjudicate Applicant's case pursuant to its decisions based on the principle of the right to equal treatment, as it had previously decided in cases with completely similar circumstances such as the Applicant's case. In these circumstances, the Court holds that this discriminatory difference in treatment constitutes a violation of the right to equal treatment before the law".*

70. Consequently, in this sense too, the Applicant was placed in an unequal position with other persons who won their cases on the same legal basis and under completely identical circumstances as the Applicant.

Lack of reasoning in the Judgment in Applicant's case and application of general principles to the concrete case

71. In order to apply the test of the ECtHR to this case, the Court needs to examine whether in the Applicant's case, the Supreme Court had given sufficient and convincing reasons for rejecting her arguments or whether its judgment shows "*evident arbitrariness*".

72. In this respect, the Court refers to its well-established case law regarding the obligation of the regular courts to give reasons for their judgments.

73. For instance in its case Judgment KEK I and later on in Judgment KI72/12 Veton Berisha and Ilfete Haziri, of 7 December 2012, Constitutional review of the Supreme Court Judgment A.nr. 1053/2008 dated 31 May 2012, where the Court found a violation of Article 31 [Right to Fair and Impartial Trial] of the Constitution in conjunction with Article 6.1 of ECtHR.

74. In its first judgment on KEK cases, the Court recalled the case law of the European Court of Human Rights as follows: *"Article 6.1 ECtHR obliges courts to give reasons for their judgments, but cannot be understood as requiring a detailed answer to every argument. The extent to which this duty to give reasons applies may vary according to the nature of the decision. It is, moreover, necessary to take into account, inter alia, the diversity of the submissions that a litigant may bring before the courts and the differences existing in the Contracting States with regard to statutory provisions, customary rules, legal opinion and the presentation and drafting of judgments. Thus the question whether a court has failed to fulfill the obligation to state reasons, deriving from Article 6 of the Convention, can only be determined in the light of the circumstances of the case (see Ruiz Torija v. Spain, judgment of 9 December 1994, Series A no. 303-A, § 29).*

75. And finally, in Case KI120/10 Zyma Berisha, adopted on 29 January 2013, Constitutional review of the Supreme Court Judgment Rev. no. 308/2007, of 10 June 2011, the Court found that there was a breach of Article 31 [Right to Fair and Impartial Trial] of the Constitution, in conjunction with Article 6 paragraph 1 [Right to a Fair Trial] of the European Convention on Human Rights, precisely due to the failure to taking into consideration the arguments raised by the Applicant in her claim.

76. As noted above, the Applicant through her claim requested the annulment of the employer's decision as being unlawful, particularly emphasizing that this was so due to her employer not having taken into consideration any preliminary procedure for

dismissing her, as provided by the law and normative act of the employer. The authorized representative of the Applicant has argued that the Applicant's employment contract was terminated in contradiction with the applicable law, because pursuant to the law and the normative act "*the Applicant should have been preliminarily suspended until the conclusion of the proceedings and by no means was her employment contract to be terminated.*"

77. Instead, the Supreme Court's view despite the submissions filed by the Applicant was to consider as a subject matter in her case the nature of the violation of work duties under Article 11.3 item e), a basis which was applied by the lower instance courts and it did not consider the Applicant's allegations regarding the violation of procedures by her employer (Article 11.5), which was a legal obligation for the employer and a legitimate right for the Applicant. This relevant fact in the Applicant's case is the best proof of the absence of objective assessment and reasoning of Judgment.

78. Furthermore, the Court notes that on the same legal basis, the same court by Judgment Rev. no. 32/2013 approved the claim of the other two employees (Applicant's colleagues), upholding the decisions of the lower instance courts which had ordered the employer to reinstate them to their workplace. Below is the finding of the Supreme Court in that case:

> *"It is correct the finding of lower instance courts that the provision of Article 11.3 (e) of the Basic Law on Labour, envisages as a serious case of misconduct that serves as ground to terminate the employment contract by the employer, the serious misconduct after which it would be unreasonable to further expect the continuation of the employment relation.*
>
> *But, in order to terminate the employment contract pursuant to these legal grounds, the same law in Article 11.5 envisages that in this case the employer will notify the employee in writing of his intent to terminate his employment contract and this notification will also include the reasons for the termination of the employment contract and the employer will have a meeting with the employee to also explain orally to the employee the reasons for the termination of the contract."*

79. However, in the Applicant's case the Supreme Court did not reason why it was not necessary to conduct procedures provided by the

applicable law (Article 11.5), whereas in the other completely identical cases, prior and subsequent to her case, Supreme Court deemed that conducting administrative procedures before the termination of the employment contract was necessary.

80. In these circumstances, in the Applicant's case, the Supreme Court did not fulfill its obligations under Article 6.1 of the ECHR to sufficiently give proper reasons for rejecting the Applicant's claim upon revision. Based on the completely identical facts and circumstances as in her case, the Applicant had a legitimate expectation that the revision filed by her employer would be rejected.

81. Proper treatment of submissions by the Court in civil proceedings is essential for correctness of the civil contested procedure. When reviewing a case, the court is obliged to efficiently review grounds, arguments and evidence presented by the parties. The failure of the court to properly review the specific, pertinent and important arguments of the party was continuously considered by the European Court on Human Rights (ECtHR) as a violation of Article 6 of ECHR.

82. The reasoning of a judgment is a key component of the fair trial and it is essential to the delivering of justice and it is the best indicator which proves that the courts' statements in their decisions are well-founded. The function of a well reasoned decision is to show to the parties that they have been heard. On the other hand, it is only by giving a reasoned decision that there can be public scrutiny of the administration of justice (see, Tatishvili v. Russia, ECtHR Judgment of 9 July 2007, paragraph 58 and Case Hirvisaari v. Finland, with respective amendments, paragraph 30, ECtHR Judgment of 27 September 2001).

83. The principle of the rule of law, on which a democratic state is based, entails rule of law and avoiding arbitrariness, in order to achieve respect and guarantee for the human dignity, justice and legal certainty. Legal certainty, as a constitutional concept, includes clarity, comprehensibility and sustainability of the normative system.

84. Finally, the Constitutional Court, considering all the principles elaborated above, concludes that the challenged decision violates the Applicant's rights to a fair trial; it violates the Applicant's right to equal treatment before the law; it is in contradiction with the

case law of that very court and in contradiction with the principles of rule of law and legal certainty.

FOR THESE REASONS

The Constitutional Court, in its session of 12 March 2014, by majority:

DECIDES

I. TO DECLARE the Referral admissible.

II. HOLDS that there has been a breach of Article 24 [Equality before the Law], Article 31 [Right to Fair and Impartial Trial] of the Constitution, Article 6 [Right to a Fair Trial] of the European Convention on Human Rights.

III. DECLARES invalid the Judgment of the Supreme Court of Kosovo Rev. No. 74/2011, dated 12 March 2013.

IV. REMANDS the Judgment of the Supreme Court for reconsideration in conformity with the Judgment of the Constitutional Court;

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

VI. ORDERS this Judgment be notified to the Parties and, in accordance with Article 20.4 of the Law, be published in the Official Gazette;

VII. This Judgment is effective immediately.

Judge Rapporteur
Prof. Dr. Ivan Čukalović

President of the Constitutional Court
Prof. Dr. Enver Hasani

Case no. KI89/13
Applicant
Arbresha Januzi
Constitutional Review of the
Judgment Rev. No. 74/2011 of the Supreme Court,
of 12 March 2013
Dissenting Opinion
of
Judge Almiro Rodrigues and Arta Rama-Hajrizi

We welcome the judgment of the Majority judgment of the Judges of the Constitutional Court (hereinafter, the Majority judgment). However, with all respect, we cannot agree with it for the reasons that follow hereunder.

In fact, in our view, the Majority judgment went beyond the scope of the Referral (I) and has not met the European Court of Human Rights (hereinafter, the ECtHR) principles as to the conflicting regular court decisions (II), namely, in relation to the question (a) whether there is a difference, (b) whether profound and long-standing differences exist in the case-law of a supreme court, (c), whether the domestic law provides for machinery for overcoming these differences and, if so, (d) whether that machinery has been applied and (e) if appropriate, to what effect. In addition, the Majority judgment considered allegations going beyond the scope of the Referral (III).
We will be short and going straightforward to the three pointed out main subjects.

I. Beyond the scope of the Referral

1. The Applicant, after having filed her Referral on 19 June 2013, submitted additional allegations and arguments on 3, 6, 17 and 23 September 2013.

2. Taking them all into account, the Majority judgment states that the Applicant alleges that the Judgment Rev. no. 74/2011 of the Supreme Court, dated 12 March 2013, *"has violated the Applicant's fundamental rights, as guaranteed by Article 49 [Right to Work and Exercise Profession]; Article 53 [Interpretation of Human Rights Provisions]; Article 55 [Limitations on Fundamental Rights and Freedoms], and, in particular, Article 31 [Right to Fair and Impartial Trial] of the Constitution, in conjunction with Article 6.1 [Right to a fair trial] of the ECHR"*.

3. Thus, the Applicant mainly alleges two violations: her right to work and exercise profession (Article 49 of the Constitution) and her right to fair and impartial trial (Article 31 of the Constitution, in conjunction with Article 6.1 of the ECHR).

4. We concur with the Majority judgment saying that "*A complaint is characterized by the facts alleged in it and not merely by the legal grounds or arguments relied on*" (See, ECtHR judgment in the case of *Ştefanica and others v. Romania*, of 2 November 2010, para. 23).

5. However, the facts alleged in the Referral are not sufficient for the legal grounds and arguments built by the Majority judgment. Therefore, the legal grounds or arguments relied on by the Majority judgment could not go beyond the facts alleged in the Referral.

6. In fact, the Majority judgment went beyond the scope of the Referral, namely when considering the displaced allegation as to discriminatory differences in treatment of the Applicant and the lack of the judgment's reasoning.

II. Principles as to the conflicting regular court decisions

7. The ECtHR (see, *Iordan Iordanov and Others*, cited above, paras. 49-50) established the criteria for assessment of the conditions in which conflicting decisions of different domestic courts at last instance are in breach of the fair trial requirement enshrined in Article 6.1 of the Convention.

8. These criteria consist in establishing whether profound and long-standing differences exist in the case-law of the domestic courts, whether the domestic law provides for machinery for overcoming these inconsistencies, whether that machinery has been applied and, if appropriate, to what effect.

9. The Majority judgment acknowledged these criteria. However, in our view, these criteria were misinterpreted and misapplied by the Majority judgment.

a) Whether there is a difference

10. In general, each case is an individual case and as such is indivisible. In the case under review, either the alleged difference is

related to previous cases and it would be only one case to diverge or the alleged difference is related to a case delivered three months later and could not have been foreseen. Nevertheless, the case is different and a different decision is to be expected.

11. The ECtHR holds that giving different treatment cannot be considered to give rise to conflicting case-law, when this is justified by a difference in the factual situations at issue (see, *Erol Ucar v. Turkey* (dec.), no. 12960/05, 29 September 2009). Then, let us compare the factual situations at issue, in order to see whether there is a difference.

Factual situation in the case of the Applicant (Judgment Rev. no. 74/2011 of the Supreme Court, of 12 March 2013)

12. On 17 May 2005, the Applicant allegedly committed a criminal offence in the working place premises. When it was discovered, the Applicant was notified that her employment contract was terminated, based on Article 13 of the employment contract and Article 11.3 (*termination of employment contract for serious cases of misconduct*) of the Essential Labor Law (UNMIK Reg. 2001/27).

13. On 25 August 2005, the Applicant complained to the Municipal Court in Pristina, claiming that, according to applicable legal procedures, the Employer should have suspended the termination until the criminal proceedings would have been terminated. The Applicant also submitted that the serious cases of misconduct had to do with the Employer's property and not with the property of third persons, as was the case in her situation; therefore, in her opinion, the termination of employment was unlawful.

14. On 10 October 2005, the Applicant was convicted and sentenced to the payment of a fine of 350 Euro for the alleged criminal offence.

15. On 19 December 2007, the Municipal Court decided that the termination of the Applicant's contract was unlawful, since *serious cases of misconduct* only concern the property of the Employer and not that of third persons as was the case in the Applicant's situation; the employee is only responsible for violations of labor obligations.

16. On 30 December 2010, the District Court in Pristina rejected the appeal of the Employer on the ground that the employment contract of the Applicant was immediately terminated, pursuant to Article 13 of the employment contract and Article 11.3 of the

Essential Labor Law, for the reason that the Applicant committed the criminal offence as alleged.

17. On 12 March 2013, the Supreme Court approved the revision of the Employer and modified the judgments of the Municipal and District Courts for the reason that *Article 11.3 (e) of the Essential Labor Law it was provided that the labor contract may be terminated in cases of behavior of such a serious nature that it would be unreasonable to expect the employment relationship to continue. According to the assessment of this court, the theft in the workplace is qualified as misconduct of a serious nature, after which it would be unreasonable to expect the employment relationship with the claimant [the Applicant] to continue due to the fact that the claimant's behavior questions her moral integrity to perform such duties and this is reflected also on other employees and on the image of the respondent [the Employer]….*"

<u>Factual situation in the case of the Applicant's colleagues</u>
(Judgment Rev. no. 32/2013 of the Supreme Court, of 30 July 2013)

18. On 17 December 2008, other employees of the Employer committed similar criminal offence in the working place premises. When it was discovered, the Employer rendered the decision, dated 23 December 2008, to terminate the employment contract of the two employees.

19. On 10 May 2012, the Municipal Court approved the claim of the Applicant's colleagues and confirmed that the decision of the Employer of 23 December 2008 was null and void. The Municipal Court found that the Employer had erroneously applied the provisions of Article 11 and 11.5 of the Essential Labor Law as invoked by the Applicant's colleagues, since they were not notified of the intent to terminate their employment relation. Moreover, the notification should have included the reasons for the termination and the provisions of the Airport Staff Policies Regulation should have been respected, since, pursuant to its Article 10, the Disciplinary Committee should have conducted the disciplinary procedure [the Regulation was not yet in force at the time of the events which happened in the Applicant's case].

20. On 23 November 2012, the District Court accepted the factual findings and legal stance of the Municipal Court, rejected as not

grounded the Employer's appeal and confirmed the Municipal Court's judgment by finding that it did not contain any violations.

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21. On 30 July 2013, the Supreme Court, in a different composition of judges as in the Applicant's case, upheld the lower courts' decisions by which the Employer's claim had been rejected, stating that, in order to terminate the employment contract under Article 11.3 of the Essential Labor Law, the same Law, in its Article 11.5, envisages that the Employer has to notify the employee in writing of his intent to terminate the employment contract and to include the reasons for the termination, while the Employer should also have a meeting with the employee to orally explain such reasons.

22. The Supreme Court further considered that the Employer had rendered the decisions in writing and served them upon the Applicant's colleagues without following the proper procedures under the Law. The Supreme Court also referred to Article 8.3 of the Airport Staff Policies Regulation of 26 June 2005, according to which the Employer can terminate a contract without warning or compensation, in case it considers that there is sufficient ground to do so, like serious lack of discipline, continuous incomplete and inconsistent performance of the duties or serious professional insults. Such sufficient ground for termination would have to be determined by the Disciplinary Committee, whose work is regulated by Article 10 of the Regulation.

23. The Supreme Court's considered that neither of these procedures had been respected in the case of the Applicant's colleagues.

Comparison of both cases

24. As set out above, the factual situations in the Applicant's case and the one of the Applicant's colleagues are not identical for the reasons that follow.

25. According to the submissions of the Applicant, unlike her colleagues, the Applicant has been convicted and sentenced for the alleged criminal offence during the proceedings initiated by the Applicant for unlawful termination of contract.

26. Moreover, it appears that the Applicant, unlike her colleagues, has not invoked Article 11.5 of the Labor Law in the proceedings before the Municipal, District and Supreme Court, but based her arguments on Article 11.3 of the Law, which speaks of theft of "the

Employer's assets" and not of theft of assets of a "third person", as happened in the present case.

27. The case of the Applicant's colleagues is, thus, not based on similar arguments used by the Applicant in her case, but exclusively on Article 11.5 of the Law.

28. Therefore, we conclude that the Applicant's case and the one of the Applicant's colleagues are not identical; even if they would be identical, they would not entail violation, as we further explain.

b) Whether "profound and long-standing differences" exist in the case-law of a supreme court

29. In the case of *Nejdat Şahin and Perihan Şahin v. Turkey*, No. 13279/05 of 20 October 2011, the Grand Chamber of the ECtHR set out the general principles to be applied in such cases (paras. 49-58). The ECtHR has stated, *inter alia*,:

> *"50. [...] save in the event of evident arbitrariness, it is not the Court's role to question the interpretation of the domestic law by the national courts (see, for example, 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; and Ādamsons, cited above, para. 118).*
>
> *58. The Court points out, however, that the requirements of legal certainty and the protection of the legitimate confidence of the public do not confer an acquired right to consistency of case-law (see Unédic v. France, no. 20153/04, para. 74, 18 December 2008). [...]"*

30. In reaching its conclusion, the Majority judgment has relied on the interpretation provided of the facts and the law in a judgment of the Supreme Court wherein the situation is alleged to be identical to that of the Applicant.

31. However, the Majority judgment has based its decision on the alleged inconsistency between the judgment of the Supreme Court

(Judgment Rev. no. 74/2011, of 12 March 2013) and the one in the Applicant's colleagues case delivered four months later (Judgment Rev. no. 32/2013 of the Supreme Court, of 30 July 2013). In this respect, reference is made to paras. 44 and 45 of the Majority Judgment reading as follows: *"44. According to the Applicant, only a few months following her case, the Supreme Court issued Judgment no. 32/2003, approving the claim of the other two employees as well-founded under completely identical circumstances to that of the Applicant. 45. The Constitutional Court, after the findings made from the case-file, notes that Judgment Rev. no. 74/2013 (the Applicant's case) and Judgment Rev. no. 32/2013 (the case of the two other employees) are identical in the legal basis, facts and evidence."*

32. We note that the ECtHR, on a variety of occasions, has had to decide on the implications of inconsistent judicial decisions on the right to a fair trial. In some of those ECtHR cases, a number of them have concerned conflicting decisions of domestic Supreme Courts.

33. The Majority has justified its decision with reference to the judgment of the ECtHR in the case of *Beian v. Romania* (No.1), (No. 30658/05, 6 December 2007).

34. In the Applicant's case, the Supreme Court judgment is contrasted with only one other judgment of the Supreme Court which was delivered four months later in Applicant's colleagues case concerning allegedly similar facts, evidence and law.

35. Therefore, based on only one judgment of the Supreme Court (Rev. no. 32/2013), and, even more, delivered four months later in a different composition of judges, it is difficult to see how 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, undermine the rule of law. It is almost logically impossible to say that there is a profound and long-standing divergence when it occurs in between only two judgments or only one set of judgments and one another judgment.

36. In contrast, the case of *Beian v. Romania* concerns the determination of entitlements to special social benefits provided under a new law for persons who had been compelled to undergo compulsory non-military public service in the 1950s. The law specified that beneficiaries were persons who had been engaged in compulsory service under the authority of a particular agency

called the DGT. The Applicant in that case had performed compulsory service, but not under the authority of the DGT. Over the period 2003-2006 the supreme court of Romania had been called upon to rule whether persons having performed compulsory service not subject to the DGT were nevertheless eligible for the benefits specified in the law. During this time-frame the supreme court of Romania ruled 18 times in favor of persons not subject to the DGT, and 17 times against such persons. Sometimes, contradictory rulings were even made on the same day. The ECtHR was particularly concerned that the Supreme Court itself was the source of legal uncertainty, given the importance of a supreme court's role to resolve contradictions in judicial interpretation.

37. The case of *Beian v. Romania* involves a substantial series of contradictory decisions given by the Romanian Supreme Court over a period of more than three years, which alternate indiscriminately between one interpretation and another. The multitude of cases over a significant period of time lacking all consistency is what leads to the conclusion of manifest arbitrariness in that case. It is this finding of manifest arbitrariness which leads to the conclusion of a violation of Article 6 (1) of the Convention.

38. The contrast with the case under consideration by the Constitutional Court is significant. In fact, as mentioned in the Majority Judgment in paras. 44 and 45, the Applicant only presented the details of one case of the Supreme Court, which was delivered four months later and, therefore, could not have been known by the Applicant at the time of the court proceedings in her case. Nevertheless, even assuming that the Applicant's case could be compared with a later case,, the time-frame during which these allegedly inconsistent Supreme Court judgments were made comprises a short period of some four months and only with two judgments in that period.

39. The Supreme Court's interpretation of the material law was allegedly different in the two cases. Neither the number of these allegedly inconsistent judgments, nor the time-frame wherein these judgments occurred, reach the level of severity or legal uncertainty, which would warrant the Majority's conclusion of manifest arbitrariness nor a consequent violation of the Applicant's right to a fair and impartial trial.

40. Consequently, we cannot agree that the assumed divergence of legal interpretation in the Supreme Court judgment in the Applicant's case vis-à-vis the other judgment taken four months later demonstrates a profound and long-lasting difference in the case-law of the Supreme Court.

c) Whether the domestic law provides for machinery for overcoming these differences

41. We recall two of the most repeated principles in the Constitutional Court decisions.

42. One is that it is not the task of the Constitutional Court to deal with errors of fact or of law (legality) allegedly committed by regular courts, unless they may have infringed rights and freedoms protected by the Constitution (constitutionality). Thus, the Court should not act as a court of fourth instance, when considering the decisions rendered by the regular Courts.

43. The other is that the rationale for the exhaustion rule is to afford the authorities concerned 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.

44. In the present case, the Applicant's submissions do not show that, when the Employer submitted revision to the Supreme Court against the District Court's ruling (which was in the Applicant's favor), she made explicit reference in those revision proceedings to Article 11.5 of the Essential Labor Law or used any other arguments as used by the two other employees in their case or which were used in the unspecified previous cases, mentioned by the Applicant.

45. Moreover, the Supreme Court is competent to unify the application of laws and may call a General Session of all its judges to issue decisions that promote unique application of the Laws (Articles 22. 1.3 and 23.1 of the Law 03/L-199 on Courts). The Applicant could have requested the Supreme Court to review her case under such competence.

46. Finally, we note that the Supreme Court was not given the opportunity to prevent or put right the alleged violation of the Constitution, nor did the Applicant raise this issue before it.

d) Whether that machinery has been applied and, if appropriate, to what effect

47. There is no indication that the Applicant before coming to the Court has used any of the tools provided by the domestic law machinery for overcoming these differences.

III. Allegations beyond the scope of the Referral

a) Discriminatory differences in treatment

48. As said above, none of the allegations regarding discriminatory differences in treatment were substantiated and proven by the Applicant and thus the Majority judgment went beyond the scope of the Referral.

49. Nevertheless, the Majority judgment considered that this difference in the judgment in the Applicant's case, versus the Applicant's colleagues case, amounted to unequal treatment before the law in violation of Article 24, para. 1, of the Constitution.

50. Article 24 [Equality Before the Law] of the Constitution establishes:

> *"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."*

51. In accordance with the consistent case-law of the European Court of Human Rights, it is incumbent upon the Applicant to demonstrate in what way she has been treated differently, and on what grounds this difference in treatment has allegedly occurred (e.g. *Fredin v. Sweden* (No. 1), No. 12033/86, 18 February 1991, paras. 60-61) . Only once the difference in treatment has been established and the nature of the grounds for this difference in treatment has been found can the justification for this differential treatment be tested for its reasonableness and objectivity.

52. The Applicant has not substantiated and proven any discrimination "*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".*

53. In fact, there is no allegation and evidence that the Applicant was allegedly treated differently for any reason linked with the grounds mentioned in Article 24 (2) of the Constitution and there is no evidence either that the Supreme Court's judgment with respect to the Applicant was, for any reason other than the Court's clarification of the applicable law, discriminatory in the sense of that Article.

54. Therefore, even if alleged, there has been no violation of the Applicant's rights to equality before the law or equal protection by the law as defined by Article 24 of the Constitution.

b) Lack of reasoning of the Supreme Court's decision

55. Again, no allegation as to the lack of reasoning of the Supreme Court's decision was substantiated and proved by the Applicant, and, thus, the Majority judgment went beyond the scope of the Referral.

56. One of the principles to be applied is that "*the requirements of legal certainty and the protection of the legitimate confidence of the public do not confer an acquired right to consistency of case-law* (see, *Unedic v. France*, no. 20153/04, § 74, 18 December 2008)."

57. In our view, the Chapter entitled "*Lack of reasoning in the Judgment in Applicant's case and application of general principles to the concrete case*" is displaced, illogical and irrelevant.

58. In fact, the failure of the Supreme Court to reason can only be understood in the following sense:

- either the failure is in relation to the Applicant's judgment and the Supreme Court could not decide in the future, in the abstract, as the other decision came out only four months later;

- or the failure is in relation to the set of judgments of the Supreme Court previously delivered to the Applicant's judgment and the Supreme Court is not obliged to give reasons, even more when an argument was not presented and there is not an acquired right to consistency of case law;
- or the failure is in relation to the judgment of the Applicant's case itself and there is a thorough and clear reasoning in that judgment of the Supreme Court.

59. Thus, the application to the case at issue of the general principles with respect to the "*Lack of reasoning in the Judgment […]*" is displaced, illogical and irrelevant.

Conclusion

60. Therefore, we cannot agree with the Majority judgment finding a violation of the right to a fair trial and a violation of the right to equality before the law and we conclude that the Constitutional Court acted as a fourth instance court.

Respectfully submitted,
Judge Almiro Rodrigues
Judge Arta Rama-Hajrizi

KI08/14, Skënder Gashi, Resolution of 27 March 2014 - Constitutional Review of Decision Rev. no. 118/2010, of the Supreme Court of Kosovo, of 4 March 2013

Case KI08/14, decision of 27 March 2014

Key words: individual referral, direct applicability of international agreements and instruments, protection of property, expropriation, statute of limitation, manifestly ill-founded.

The Applicant submitted the Referral in compliance with Article 113.7 of the Constitution, challenging the Decision Rev. no. 118/2010, of the Supreme Court of Kosovo, of 4 March 2013, by which was solved the property-legal dispute, created with the Applicant's request that the Municipality of Klina compensates the monetary counter value for the expropriated property.

The Applicant considers that by this were violated his constitutional rights under Article 22 [Direct Applicability of International Agreements and Instruments] and 46 [Protection of Property] of the Constitution of the Republic of Kosovo, because he was not compensated for this immovable property or, in the alternative, to allocate to him the construction-urban land of equivalent value for permanent use in Klina.

Deciding on the referral of the Applicant Skënder Gashi, the Constitutional Court found that Judgment Ac. no. 220/08, of the District Court in Peja, of 12 April 2010, and the Decision Rev. no. 118/2010, of the Supreme Court in Prishtina, of 4 March 2013, in their reasoning reason in a detailed manner and provide response to the Applicant's allegations, which the Applicant stated as the basis for filing the referral with the Constitutional Court. The Court accepted the reasoning of the Supreme Court that the general time limit for statute of limitation of the claim is 10 years, whereas the claim was filed after 23 years.

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. KI08/14
Applicant
Skënder Gashi
Constitutional review of the Decision of the Supreme Court of Kosovo,
Rev. no. 118/2010, of 4 March 2013

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

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

Applicant

1. The Referral was submitted by Mr. Skënder Gashi (hereinafter: the Applicant), residing in Municipality of Klina.

Challenged decision

2. The Applicant challenges the Decision of the Supreme Court of Kosovo Rev. no. 118/2010, of 4 March 2013, which was served on him on 23 September 2013.

Subject matter

3. The subject matter is the constitutional review of the Decision of the Supreme Court of Kosovo Rev. no. 118/2010, of 4 March 2013, which, according to the Applicant's allegations, violated Articles 22 [Direct Applicability of International Agreements and Instruments] and 46 [Protection of Property] 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 (hereinafter: the Rules of Procedure).

Proceedings before the Court

5. On 20 January 2014, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 7 February 2014, the President by Decision no. GJR. KI08/14 appointed Robert Carolan as Judge Rapporteur. On the same day, the President by Decision no. KSH. KI08/14, appointed the Review Panel composed of Judges: Snezhana Botusharova (Presiding), Kadri Kryeziu and Arta Rama-Hajrizi.

7. On 5 March 2014, the Court notified the Applicant and the Supreme Court of Kosovo of the registration of Referral.

8. On 27 March 2014, the Review Panel, composed of Judges: Snezhana Botusharova (Presiding), Kadri Kryeziu and Arta Rama-Hajrizi, considered the report of the Judge Rapporteur Robert Carolan made a recommendation to the full Court on the inadmissibility of the Referral.

Summary of facts

9. On 25 April 1979, the Municipality of Klina, by Decision 04-462-2/2, expropriated a part of the cadastral plot no. 1911, in surface area of 0.06,79 ha, which based on the sale-purchase contract, certified under the number 504/75 of 7 December 1975, from the ownership of the Applicant, registered in the possession list no. 220 CZ-Drsnik.

10. On 26 April 1979, the Municipality of Klina by Decision, 04-462-2/2 expropriated a part of the cadastral plot no. 1900/3, in surface area of 0.03.70 ha, from the Applicant, which according to the

registration in the possession list, no. 360 CZ-Drsnik was in the ownership of the Applicant.

11. On 29 June 1979, the Municipality of Klina, by Decision 04-462-2/2 expropriated a part of the cadastral plot no. 1908, in a surface area of 0.07,30 ha, which according to the registration in the possession list, no. 321 CZ-Drsnik was in the ownership of the Applicant's brother, now deceased Hamit Gashi. On 14 May 2001 the Applicant, based on the contract of replacement, Leg. No. 658/2001 became the owner of the parcel.

12. Based on the above-mentioned three decisions, the Municipality of Klina expropriated a total surface area of 00.17, 79 ha, for the construction of housing, buildings, and roads.

13. On 19 July 2002, the Applicant filed a claim with the Municipal Court in Klina, that the Municipality of Klina compensates him monetary equivalent value for the expropriated property, because he was not compensated for this immovable property or, in the alternative, to allocate to him construction-urban land of equivalent value for permanent use in Klina.

14. On 24 January 2008, the Municipal Court in Klina, by Judgment C. no. 150/2006 approved as grounded the Applicant's statement of claim and ordered the following;

> *"The respondent, Klina Municipality on behalf of the compensation for the expropriated land, is obliged that within a 15 day time limit from the day the Judgment is served, to allocate in the permanent use of claimant Skender Gashi from Klina an area of 00.17,79 ha of urban construction land with the construction permit in the town of Klina, or in case of inability to allocate the urban construction land with construction permit on behalf of compensating the equivalent value of the expropriated land with the area of 00.17,79 ha, he is paid the amount of 266.930,00 €, with the legal interest Commercial Banks in Kosovo pay to their clients on bank deposits starting from 3.6.2005 until the final payment."*
>
> *"The respondent is also obliged to compensate to the claimant within the same time limit the amount 10.080,00 Euros, due to the damage caused by the destruction of the fruit trees in the expropriated land, again with legal interest starting from 3.6.2005 until the final payment."*

"The respondent is obliged to compensate to the claimant within the same time limit the expenses of the contested procedure at the amount of €2.605."

15. Against the Judgment of the Municipal Court in Klina C. no. 150/2006 of 24 January 2008, the Municipality of Klina, as a respondent, filed in a timely manner an appeal alleging substantial violations of the contested procedure provisions, erroneous and incomplete determination of the factual situation and erroneous application of the material law, with the proposal that the appealed judgment be modified and the claimant's statement of claim be rejected as ungrounded, or to annul the same and to remand the case to the first instance court for reconsideration and retrial.

16. On 12 April 2010, the District Court in Peja, by Judgment Ac. no. 220/08 modified the Judgment of the Municipal Court in Klina C. no. 150/06 of 24 January 2008, and ordered the following:

"REJECTED in entirety as ungrounded the statement of claim of claimant Skender Gashi from Klina, by which he requested that within a 15 day time limit from the day the Judgment was rendered, on behalf of the compensation for the expropriated land, the respondent Klina Municipality is obliged to allocate to the claimant in permanent use an area of 00.17,79 ha of urban construction land with the construction permit in the town of Klina, or in case of inability to allocate the urban construction land with construction permit on behalf of compensating the equivalent value of the expropriated land with the area of 00.17,79 ha, he is paid the amount of 266.930 €, with the legal interest the Commercial Banks pay to their clients on bank deposits starting from 3.6.2005 until the final payment. It was also sought that within the same time limit the respondent would compensate to the claimant the amount 10.080 €, with legal interest starting from 3.6.2005 until the final payment, due to the damage caused by the destruction of the fruit trees in the expropriated land, and also cover the claimant's expenses of the contested procedure at the amount of 2.605 ."

17. Against the Judgment of the District Court in Peja Ac. no. 220/08 of 12 April 2010, the Applicant filed revision, in a timely manner, alleging erroneous application of the material law, with the proposal that the Judgment of the District Court in Peja Ac. no. 220/08 of 12 April 2010, be modified, so that the Judgment of the

Municipal Court in Klina C. no. 150/2006 of 24 January 2008, would remain in force.

18. On 4 March 2013, the Supreme Court of Kosovo, by Decision Rev. no. 118/2010 rejected, as ungrounded the revision of the Applicant, filed against the Judgment of the District Court in Peja, Ac. no. 220/2008 of 12 April 2010, with the following reasoning:

> *"In the appealed procedure, the second instance court found that the first instance court has correctly determined factual situation, but erroneously applied the material law, therefore pursuant to Article 373, paragraph 1, item 4 of the LCP it modified the appealed judgment and rejected the statement of claim as not grounded."*
>
> *"The Supreme Court of Kosovo, by approving the allegations and the legal stance from the reasoning of the second instance judgment, found that the material law had been correctly applied by that court, when modified the first instance court judgment rejected the claimant's statement of claim as not grounded."*
>
> *"Pursuant to Article 371 of the LOR, amended with Article 58 of the Law on Amending and Supplementing this law, the general time limit for statute of limitation of the claim is 10 years. The above mentioned expropriation rulings date from 1979, whereas the claim was submitted on 19.07.2002 that is 23 years later. This court adds that the claimant did not deny the fact that the respondent has immediately entered into possession and pursuant to Article 20 of the LE, the expropriation user acquires the right of possession over the immovable property expropriated on the day the decision becomes final, or on the day determined in that ruling, but not before the ruling on expropriation became final, whereas pursuant to the above mentioned Article, except on the ground of the request of the proposer who submitted the document on provided means of payment, the real estate may have been given into possession before the decision became final, if confirmed that it is necessary because of urgent situation, and against this decision an administrative contest could have been initiated."*

Applicant's allegations

19. The Applicant alleges that the Supreme Court erroneously applied the material law and erroneously calculated the statute of limitations by the Supreme Court of Kosovo. He argues that:

> *"The main fact is that on 22.03.1989, after approving its Constitution, the former Serb regime had abolished the autonomy of Kosovo, its authorities and legal system. In such conditions when the applicable laws of Kosovo, pursuant to which the claimant's matter was processed in the procedure before the competent authority of the municipal administration, were abolished, and in the meantime the work of the authority was suspended as well, it was established a legal situation when due to discriminating legal causes, no action was taken officially in relation to the claimant's legal matter under review, and it should not be calculated as the statute of limitation. This is due to the fact that with the reorganizing of the authorities after the war, due to the change of the regime, the nature of reviewing the cases changed as well, thus the time that has passed since 22.03.1989 and beyond, including the time during and after the war until the second claim was submitted, should not be calculated in that way in the statute of limitations. If before the war there were legal obstacles installed by the discriminating regime, now due to the change of the regime they remain provisions of a totally different nature".*

20. Based on what was presented in this Referral, the Applicant requests from the Constitutional Court of the Republic of Kosovo to:

> *"... approve the Applicant's Referral (....) that the Ruling of the Supreme Court of Kosovo, Rev. no. 118/2010 of 04.03.2013 is annulled as ungrounded and unlawful, and to return the matter to the competent body for reconsideration and retrial, or to repeat the contested procedure, based on the case file and the material evidence, submitted in this submission, which constitute integral part of this challenged matter."*

Admissibility of the Referral

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

22. In that 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 also refers to Article 48 of the Law, which provides:

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

24. Furthermore, 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. Considering the Applicant's allegations regarding the violations related to the erroneous application of the material law and erroneous way of calculation of the time limits, the Constitutional Court reiterates that it is not a court of appeal, when reviewing the decisions rendered by regular courts. It is the role of the regular courts to interpret and apply the pertinent rules of both procedural and substantive law (see, *mutatis mutandis*, Garcia Ruiz v. Spain [GC), no. 30544/96, § 28, European Court on Human Rights [ECHR 1999-1). The Judgments of the District Court in Peja Ac. no. 220/08 of 12 April 2010 and the Decision of the Supreme Court in Prishtina, Rev. no. 118.2010 of 04 March 2013, in their reasoning reason in a detailed manner and provide response to the Applicant's allegations.

26. The Constitutional Court reiterates 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, ECtHR Decision as to the Admissibility of Application no. 53363/99 of 31 May 2005).

27. In the present case, the Applicant was provided numerous opportunities to present his case and challenge the interpretation of the law, which he considers as being incorrect, before the District Court in Peja and the Supreme Court of Kosovo. After having examined the proceedings in entirety, the Constitutional Court did not find that the pertinent proceedings were in any way unfair or arbitrary (see *mutatis mutandis*, Shub v. Lithuania, ECtHR Decision as to the Admissibility of Application no. 17064/06 of 30 June 2009).

28. Finally, the admissibility requirements have not been met in this Referral. The Applicant has failed to show and substantiate the allegations that his constitutional rights and freedoms have been violated by the challenged decision.

29. Accordingly, the Referral is manifestly ill-founded and should be declared inadmissible pursuant to 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 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**
Robert Carolan	Prof. Dr. Enver Hasani

KI222/13, Rrustem Veseli and Xhafer Zeqë Smajli, Resolution of 25 March 2014 - Constitutional Review of the Judgment, Rev. no. 118/2012, of the Supreme Court, of 10 June 2013

Case KI222/13, decision of 25 March 2014

Key words: individual referral, manifestly ill-founded.

The Applicants 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 10 December 2013, the Applicants filed the Referral with the Constitutional Court of the Republic of Kosovo and requested from the Court the constitutional review of the Judgment of Rev. no. 118/2012, of the Supreme Court.

The Applicants allege in their Referral that the Supreme Court and the first and second instance courts have violated the provisions of the Law on Obligatory Relations, namely Article 103.2, by not specifying what rights guaranteed by the Constitution have been violated.

On 13 January 2013, the President, by Decision No. KI222/13, appointed Judge Ivan Čukalović as Judge Rapporteur. On the same date, the President, by Decision No. KSH. KI222/13, appointed the Review Panel composed of Judges Altay Suroy (Presiding), Snezhana Botusharova and Arta Rama-Hajrizi.

Based on the submitted documents, the Court notes that the allegations made by the Applicants before the Court are grounded on violation of the Law on Obligation and not on the Constitution. In this respect, the Court concludes 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). Thus, the Applicants have not submitted any prima facie evidence indicating a violation of his rights under the Constitution (See *Vanek v. Slovak Republic*, No. 53363/99, ECHR, Decision of 31 May 2005) and did not specify which provisions of the Constitution have been violated, as required by Article 48 of the Law.

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 ungrounded.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI222/13
Applicants
Rrustem Veseli and Xhafer Zeqë Smajli
Constitutional Review of the Judgment, Rev. no. 118/2012, of the Supreme Court, dated 10 June 2013

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

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

Applicants

1. The referral was filed by Mr. Rrustem Veseli and Mr. Xhafer Zeqë Smajli from Gjakova (hereinafter: the "Applicants'"), represented by Mr. Prenk Pepaj a practicing lawyer from Gjakova.

Challenged decision

2. The Applicants challenge the judgment of the Supreme Court, Rev. no. 118/2012, dated 10 June 2013, which according to the Applicant was served to him on 29 August 2013.

Subject matter

3. The Applicants request constitutional review of the judgment of the Supreme Court, Rev. no. 118/2012, of 10 June 2013. The Applicants consider that the regular courts have violated their property rights.

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, 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 Court

5. On 10 December 2013, the Applicants submitted the Referral to the Constitutional Court.

6. On 13 January 2013, the President, by Decision No. KI222/13, appointed Judge Ivan Čukalović as Judge Rapporteur. On the same date, the President, by Decision No. KSH. KI222/13, appointed the Review Panel composed of Judges Altay Suroy (Presiding), Snezhana Botusharova and Arta Rama-Hajrizi.

7. On 27 January 2014, the Court requested from the Applicants to submit the power of attorney.

8. On 27 January 2014, the Court notified the Supreme Court of the referral.

9. On 10 February 2014, the Applicants submitted the power of attorney to the Court.

10. 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

11. D. H. is the former spouse of the Applicant Rrustem Veseli. The Applicant Rrustem Veseli sold the property to the second Applicant Xhafer Smajli. D.H. filed a claim with the regular court requesting the annulment of the sales contract.

12. On 24 December 2010, the Municipal Court of Gjakova rendered Judgment C. no. 557/06, whereby it confirmed that the property sales contract between the Applicants for half of the property is null and thus does not have legal effect for D. H. Furthermore, it is confirmed that D.H. is the owner of the half of the property. The Municipal Court of Gjakova held that *"Pursuant to the legal provision of Article 307, paragraph 1 of the Law on marriage and family relations the property that is acquired through work*

during the marital union and the income from that wealth are joint wealth thus cumulatively two presumptions or conditions must be met: 1) joint work and 2) existence of the marital union. Both the claimant and the first respondent fulfill these conditions. The claimant's work can also be considered as indirect work (such as working to take care of the children and cooking food for the family), because for this performed work no payment is received, but the contribution consists in the fact that it enables the other spouse to acquire rights through direct work. Thus the work of the spouse but also same assistance that one spouse provides for the other in taking care for the children, managing the household, caring and maintaining the wealth and any other work and cooperation in administering and taking care of the joint wealth pursuant to Article 314 of the above mentioned law) are contributions that in this particular case are dedicated to the claimant (and which gave to the first respondent the time and opportunity to also work in supervising a building in Austria, which meant more income for him) thus it is derived the conclusion that "the wealth acquired in marriage through the work of spouses is joint wealth". Thus, the Court in this particular case completely approved the claimant's specified statement of claim."

13. On 5 March 2012, the District Court in Peja, by Judgement Ac. no. 390/2011, rejected the appeal of the Applicants as ungrounded and confirmed the Judgment of the Municipal Court in Gjakova.

14. On 10 June 2013, the Supreme Court, by decision Rev. no. 118/2012, rejected as ungrounded the Applicants request for revision. The Supreme Court held that the lower instance courts have correctly assessed the factual situation and correctly applied the material law.

Applicants' allegations

15. The Applicants alleges that *"[...] the JUDGMENTS of both first and second instance and the Judgment of the Supreme Court of Kosovo in Prishtina have been rendered in violation to the provisions of Article 103, paragraph 2 of the Law on Obligatory Relations (applicable at the time in Kosovo)."*

Assessment of the Admissibility of the Referral

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

17. Article 113.7 of the Constitution determine the general framework in order for the Referral to be deemed admissible:

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

18. Furthermore, Rule 36 (1) c) of the Rules provides that:

> *"The Court may only deal with Referrals if: the Referral is not manifestly illfounded."*

19. Based on the submitted documents, the Court notes that the allegations made by the Applicants before the Court are grounded on a violation of the Law on Obligation and not on the Constitution.

20. In this respect, the Court concludes 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).

21. Thus, the Applicants have 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 which provisions of the Constitution have been violated, as required by Article 48 of the Law.

22. It follows that there is no constitutional violation and thus the Referral is manifestly ill-founded and in compliance with Rule 36 (1) c) of the Rules Referral must be declared as inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution and in compliance with Rule 36 (1) c) of Rules of Procedure, on 25 March 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 on the Constitutional Court; and

III. This Decision is effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Ivan Čukalović	Prof. Dr. Enver Hasani

KI230/13, Tefik Ibrahimi, Resolution of 25 March 2014- Constitutional Review of Article 7.5 of the Law No. 03/L-072 on Local Elections in the Republic of Kosovo

Case KI230/13, decision of 25 March 2014

Key words: Individual referral, unauthorized party.

The Applicant requests "the constitutional review of Article 7, paragraph 5 of the Law 03/L-072 on Local Elections in the Republic of Kosovo, by submitting that "the Constitutional Court should find whether this Article is in compliance with Article 45 paragraph 1 of the Constitution of the Republic of Kosovo".

The Court recalls that only authorities that are explicitly enumerated in Article 113.2 to 113.6 of the Constitution are authorized parties to refer to the Court matters of abstract constitutional review and to request the constitutional review of the legislation.

The Court having in mind the quoted provisions of the Constitution concludes that the Applicant is not an authorized party to bring such a request.

The Constitutional Court pursuant to Article 113 .7 of the Constitution, Article 48 of the Law and Rule 36 (3) c) of the Rules of the Procedure, in its session held on 25 March 2014, unanimously considers that that the Applicant is not an authorized party to challenge the constitutionality in abstract of a law and, thus, his Referral should be declared inadmissible.

RESOLUTION ON INADMISSIBILITY

in
Case No. KI230/13
Applicant
Tefik Ibrahimi
Constitutional Review of Article 7.5 of the Law No 03/L-072 on Local Elections in 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
Arta Rama-Hajrizi, Judge

Applicant

1. The Referral is submitted by Mr. Tefik Ibrahimi (hereinafter: the "Applicant"), residing in Gjilan.

Challenged decision

2. The Applicant challenges the Article 7.5 of the Law 03/L-072 on Local Elections in the Republic of Kosovo.

Subject matter

3. The Applicant requests the Constitutional Court to review whether Article 7.5 of the Law 03/L-072 on Local Elections is in compliance with Article 45.1 of the Constitution [Freedom of Election and Participation].

4. The Applicant also requests the Court to: "*annul this Article and [that] I am elected as a municipal council member since I have the highest number of votes of my political subject AKR in Gjilani.*"

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 of 16 December 2008, which entered into force on 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 24 December 2013, the Applicant submitted the Referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the "Court").

7. On 15 January 2014, the President of the Constitutional Court by Decision GJR. KI160/13, appointed Judge Kadri Kryeziu as Judge Rapporteur. On the same day, the President of the Court by Decision No. KSH. KI160/13 appointed the Review Panel composed of Judges Robert Carolan (Presiding), Almiro Rodrigues and Ivan Čukalović.

8. On 28 January 2014, the Applicant was notified of the registration of the Referral. On the same day the Court notified the Supreme Court of the registration of the Referral.

9. On 25 March 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

10. The Applicant, as a member of political party AKR (Aleanca Kosova e Re), was a candidate for Gjilan Municipal Council in local elections held on 3 November 2013.

11. On 2 December 2013, the Central Elections Commission (hereinafter: CEC) announced the results of the local elections. According to these results the Applicant gained 302 votes.

12. Notwithstanding the results, the Applicant did not become a member of Gjilan Municipal Council, because the seat in the Municipal Council was accorded to the female candidate from the same political party, who was second on the list and who received 69 votes, pursuant to the provisions of the Law No. 03/L-072 on

Local Elections, establishing a gender quota for municipal council members.

13. On 3 December 2013, the Applicant lodged a complaint before Elections Complaints and Appeals Panel (hereinafter: ECAP).

14. On 6 December 2013, ECAP rendered Decision A. no. 1120/2013, rejecting the Applicant's complaint as ungrounded. In the reasoning of the ECAP Decision, it was, *inter alia*, stated *"From the case file the ECAP found that the complainant claims are unsustainable because the allocation of seats in Municipal Council is performed by the CEC pursuant to Article 8 of the Law on Local Elections. Pursuant to this it is implied that it is the competency of the CEC to allocate the seats in the Municipal Councils to each Municipal Council member candidates by respecting the gender quota pursuant to above mentioned provision."*

15. The Applicant filed an administrative appeal with the Supreme Court, within the deadline foreseen by law.

16. On 12 December 2013, the Supreme Court by Judgment AA-Uzh. No. 8936/2013, rejected the Applicant's appeal as ungrounded.

17. In its judgment the Supreme Court stated that *"Pursuant to this situation of the case, the Supreme Court found that the ECAP has correctly and completely found the factual situation and did correctly apply the law when it rejected as not grounded the complaint of Tefik Ibrahimi, a candidate of Aleanca Kosova e Re (AKR), to become a member of Gjilani Municipal Council, because he did not argument his appeal claims with any evidence."* Further the Supreme Court reasons that *"Pursuant to the Court's finding the contested Decision is clear and understandable, whereas its reasoning contains sufficient reasons on decisive facts that are accepted by this Court, which also finds that the material right was correctly applied. Pursuant to the above mentioned situation of the case this Court found that the factual situation was correctly found and no law was broken against the appellant, therefore his appeal claims were not approved, because they have no impact in finding a different factual situation from the one found by the ECAP."*

Applicant's allegations

18. The Applicant claims that *"Pursuant to the final results of the CEC and CRC in the registry of Gjilani Municipal Council Members Candidates from AKR – Aleanca Kosovae Re, he has the most votes 302 in total. Whereas the political subject through which he was nominated has won two seats in the Gjilani Municipal Council. Out of these two seats one was given to the bearer of the list and the second to the female candidate that received only 69 votes."*

19. Further, the Applicant alleges "*the CEC allocated two seats to the mentioned subject, and decided that one seat goes to the bearer of the list and the other to the female candidate that has only 69 votes. This allocation is done pursuant to the 30% quota which I find to be unjust, unfair and discriminatory treatment."*

Assessment on the Admissibility of the Referral

20. The Court notes that to be able to adjudicate upon the Applicant complaint, 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.

21. Articles 113.1 and 113.7 of the Constitution establish the general legal framework required for the admissibility of individual referrals. They 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. The Court notes that the Applicant does not challenge the constitutionality of the decision of ECAP A. No. 1120/2013 and judgment AA. Uzh. no. 893/2013 of the Supreme Court.

23. In the present case, the Applicant requests the "Constitutional review of Article 7 paragraph 5 of Law no. 03/L-072 on Local Elections in the Republic of Kosovo," submitting that "The Constitutional Court should ascertain whether this Article is in

harmony with Article 45, paragraph 1 of the Constitution of the Republic of Kosovo."

24. In fact, the Applicant refers to Article 113.7 of the Constitution as a legal basis to submit his Referral.

25. The Court recalls that only authorities that are explicitly enumerated in Article 113.2 to 113.6 of the Constitution are authorized parties to refer to the Court matters of abstract constitutional review and to request the constitutional review of the legislation.

26. The Court having in mind the quoted provisions of the Constitution concludes that the Applicant is not an authorized party to bring such a request.

27. Therefore, the Court considers that the Applicant is not an authorized party to challenge the constitutionality in abstract of a law and, thus, his Referral should be declared inadmissible.

FOR THESE REASONS

The Constitutional Court pursuant to Article 113 .7 of the Constitution, Article 48 of the Law and Rule 36 (3) c) of the Rules of the Procedure, in its session held on 25 March 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**
Dr. Sc. Kadri Kryeziu	Prof. Dr. Enver Hasani

KI07/14, Lulzim Gosalci and Gjylymsere Feratаj, Resolution of 14 March 2014- Constitutional Review of the Judgment PML. No. 231/2013, of theSupremeCourt of Kosovo, of 24 December 2013

Case KI07/14, decision of 14 March 2014

Key words: Individual Referral, *prima facie,* manifestly ill-founded.

The Applicants have not specified directly a violation of any constitutional provision, but stated that "after having exhausted all legal remedies provided by law, they addressed the Constitutional Court of the Republic of Kosovo, requesting the fundamental right protected by the Constitution of the Republic of Kosovo for equal protection of the rights before the courts". They have also stated that "the sentencing ruling was not made known during the session, but it was sent in written, thus denying the right to use legal remedies."

The Court notes that in this present case, apart from allegations of procedural violations, the Applicants do not complain of human rights violations, in any criminal procedure stage before the regular courts, and now, they request from the Constitutional Court to find the violations on the grounds of correct application of legality or determination of factual situation, which is not a duty of the Constitutional Court.

The Court concludes that the Applicants have not substantiated their allegation, and have not presented any *prima facie* evidence to support their allegation of a violation of their rights as guaranteed by the Constitution.

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 14 March 2014, unanimously declares the Referral inadmissible.

RESOLUTION ON INADMISSIBILITY
in
Case no. KI07/14
Applicant
Lulzim Gosalci and Gjylymsere Feratаj
Request for the Constitutional Review of the Judgment of the Supreme Court of Kosovo, PML. No. 231/2013, 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
Kadri Kryeziu, Judge
Arta Rama-Hajrizi, Judge

Applicant

1 The Applicants are Mr. Lulzim Gosalci and Mrs. Gjylymsere Feratаj from Prishtina.

Challenged decision

2. The challenged decision is the Judgment of the Supreme Court of Kosovo, PML. No. 231/2013, of 24 December 2013, served on the Applicants on 10 January 2014.

Subject matter

3. The subject matter is constitutional review of the Judgment of the Supreme Court of Kosovo, PML. No. 231/2013, which rejected the Applicants' request for protection of legality, filed against the final decision of the Basic Court in Prishtina, Kp. No. 429/2013, of 20 September 2013. The Applicants requested that the Supreme Court approve their request and annul the impugned Judgment in order

for them to be *"acquitted of the charges within the meaning of Article 364 of CPCK"*.

Legal basis

4. Article 113.7, in conjunction with Article 21.4 of the Constitution, 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 the Republic of Kosovo.

Proceedings before the Court

5. On 20 January 2014, the Applicant filed a referral with the Court.

6. On 31 January 2014, by Decision no. GJR. KI07/14, the President of the Court appointed Judge Arta Rama-Hajrizi as Judge Rapporteur, and the Review Panel composed of judges: Altay Suroy (Presiding) Snezhana Botusharova and Kadri Kryeziu.

7. On 10 February 2014, the Constitutional Court notified the applicant and the Supreme Court of the registration of the referral.

8. On 14 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 11 December 2009, the Municipal Court in Prishtina rendered the Judgment P. no. 562/2008, thereby finding the Applicants guilty and sentenced them as follows: the first applicant for the criminal offence of Violating Orders for Covert or Technical Measures of Surveillance or Investigation under Article 172 paragraph 2 of the Criminal Code of Kosovo (CCK), to imprisonment of 8 months, and the second applicant for commission of criminal offence of Disclosing Official Secrets under Article 347 paragraph 1 of CCK, to imprisonment of 6 months. The Applicants were not to serve the sentence, if they did not commit any other criminal offence within a time limit of 1 (one) year of the day that Judgment became final.

10. Both the defense and the public prosecutor filed their appeals against this Judgment, for the reasons provided in their respective appeals.

11. On 15 November 2011, the District Court in Prishtina rendered the Ruling Ap. No. 87/2010, thereby rejecting the appeals of the applicants and the public prosecutor, as inadmissible, since according to the reasoning of the Ruling, in compliance with Article 400 paragraph 1 of the Provisional Criminal Procedure Code of Kosovo (PCPCK), persons entitled to appeal must announce an appeal, which according to the District Court, they have not done, and therefore, the appeals were both inadmissible.

12. On 12 April 2012, the Applicants filed a request for reopening of criminal proceedings before the Municipal Court in Prishtina, thereby requesting review of the Judgment of the Municipal Court in Prishtina, and the Ruling of the District Court in Prishtina, thereby alleging that such court decisions were tainted by *"violations of criminal law"* and that the "*criminal procedure provisions*" were violated.

13. On 20 September 2013, the Basic Court in Prishtina rendered Ruling Kp. No. 429/13, thereby rejecting as ungrounded the Applicants' requests for reopening of the criminal proceedings that were concluded by the Judgment of the Municipal Court in Prishtina, P. no. 562/2008, of 11 December 2009.

14. The reasoning of this Ruling, amongst others, provides: "*From examination of the case file and from the investigation, namely the reference of the judge Vesel Ismajli for reviewing the facts presented in the request, it results that after the end of the main hearing, during a pause the prosecutor and the convicted persons were invited to the office were the judgment was announced and briefly were given the reasons, on which occasion the parties and their defence counsels stated that they are satisfied with the judgment. From the minutes of the main session dated 11.12.2009, it can be seen that there is no conclusion that the parties after the announcement of the judgment have announced appeal*".

15. On 18 October 2013, the Applicants filed an appeal with the Court of Appeal, against the Ruling of the Basic Court by which the review of proceedings was rejected.

16. On 21 November 2013, the Court of Appeal rendered Ruling PN. No. 703/2013 thereby rejecting the appeal of the Applicants and upholding the Judgment of the Basic Court in Prishtina, Kp. No. 429/13, of 20 September 2013, by which the request for review of the criminal proceedings was rejected.

17. In the reasoning of this Ruling, the Court of Appeals underlined: "*Since neither the request for reopening of the criminal procedure, nor the appeal filed against ruling on rejection of convicted persons' request contains any evidence under Article 423 para.1, sub-paragraphs 1..1 to 1.5 of Criminal Procedure Code of Kosovo (CPCK), the panel of this court based on this factual situation, the proposal of Appeals Prosecution Office, evaluated that the first instance court has correctly acted when rejecting the request of the convicted persons, since there are no legal grounds to reopen the criminal procedure, a view which is endorsed by this court too…*"

18. Unsatisfied with this Ruling, the Applicants filed a request for protection of legality with the Supreme Court of Kosovo.

19. On 24 December 2013, deciding upon the request for protection of legality, the Supreme Court rendered the Judgment Pml. No. 231/2013, rejecting as ungrounded the requests for protection of legality filed against the Ruling of the Basic Court in Prishtina, Kp. no. 49/2013, of 20 September 2013.

Applicant's allegations

20. The Applicants have not specified a violation of any constitutional provision, but stated that "*after having exhausted all legal remedies provided by law, they addressed the Constitutional Court of the Republic of Kosovo, requesting the fundamental right protected by the Constitution of the Republic of Kosovo for equal protection of the rights before the courts".* They have also stated that "*the sentencing ruling was not made known during the session, but it was sent in written, thus denying the right to use legal remedies.*"

Admissibility of the Referral

21. In order to be able to adjudicate the Applicant's Referral, the Court must first 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.

22. 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".

23. The Court considers that in the view of these provisions, the Applicants are authorized parties, and that they have exhausted all legal remedies provided by law, and have submitted their referral within the legally prescribed deadline.

24. Nevertheless, the Court must also take into account 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 (...)".

25. Apart from the above, the Court also refers to Rule 36, which provides that:

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

[...]
(c) the Referral is not manifestly ill-founded."

(2) The Court shall reject a Referral as being manifestly ill-founded when it is satisfied that:
[...],

(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".

26. In fact, the Court notes that the Applicants have challenged the Ruling of the District Court in Prishtina, which rejected their appeal as inadmissible, due to erroneous and incomplete determination of the factual situation, erroneous application of substantive law, and decision on criminal sanction, and now, they challenge the Judgment of the Supreme Court, thereby alleging that it infringes upon their guaranteed right to "due process and judicial protection of rights".

27. The Court wishes to remind that in compliance with the principle of subsidiarity, the Applicants must raise their alleged constitutional violations initially before the regular courts, thereby ensuring respect of basic rights as enshrined in the Constitution.

28. The Court notes that in this concrete case, apart from allegations of procedural violations, the Applicants do not complain of human rights violations, in any criminal procedure stage before the regular courts, and now, they request from the Constitutional Court to find the violations on the grounds of correct application of legality or determination of factual situation, which is not a duty of the Constitutional Court.

29. Furthermore, the Court also reminds that the District Court had rejected the applicants' complaint as inadmissible, due to the fact that according to the PCPCK, "*persons entitled to appeal must announce an appeal*", an obligation not fulfilled by the applicants, and the same legal stance was held in all subsequent court decisions up to the Supreme Court, when reviewing complaints of the applicants in this case. Nevertheless, the applicants have failed to clarify specifically how and why such a decision infringed their rights to fair and impartial trial and judicial protection of rights.

30. In addition, the Court considers that both the Ruling of the District Court and the Judgment of the Supreme Court provide extensive and complete reasoning on the facts of the case, and especially in relation to the main allegation of the failure to announce the sentencing decision, when finding that "*after the conclusion of the main hearing, a break was taken, and afterwards, the parties, the prosecutor and the convicted persons were invited to the office, when the judgment was announced, and the reasoning was presented in short, on which occasion the parties and their defense stated their satisfaction with the judgment.*"

31. The Court further notes that the legal conclusions are well-reasoned and clear in response to the allegation raised by the applicants. Therefore, the Court finds that the regular court proceedings were entirely fair (see, *mutatis mutandis*, Shub v. Lithuania, No. 17064/06, ECtHR, Decision of 30 June 2009).

32. In this regard, the Court reiterates that it is not its duty, according to the Constitution, to act as a fourth-instance court in relation to the decisions taken by regular courts. It is the role of regular courts to interpret and apply pertinent rules of procedural and material 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 Besart Hima, Inadmissibility Resolution of 16 December 2011).

33. The Constitutional Court may only review whether the evidence was presented in such a manner that the proceedings in general, viewed in their entirety, were conducted in such a manner that this applicant had a fair trial (see, amongst others, Edwards v. United Kingdom, No. 13071/87, European Commission Report on Human Rights, of 10 July 1991).

34. In sum, the Court cannot find any argument or proof that the challenged Judgment, PML. No. 231/2013, of 24 December 2013, of the Supreme Court of Kosovo, was rendered in a manifestly unfair and arbitrary manner.

35. Therefore, the Court concludes that the applicants have not substantiated their allegation, and have not presented any *prima facie* evidence to support their allegation of a violation of their rights as guaranteed by the Constitution, the ECHR and its protocols, or the Universal Declaration of Human Rights.

36. In such circumstances, the Referral, pursuant to Rule 36 (1) b) and d), is manifestly ill-founded, and therefore inadmissible.

FOR THESE REASONS

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 14 March 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 on the Constitutional Court;

III. This Decision is effective immediately.

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

KI160/13, Desa Aleksić, Resolution of date 27 March 2014 - Constitutional Review of the Judgment, AC-II- 12-006, of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo, of 30 May 2013

Case KI160/13, decision of 27 March 2014

Key words: Individual referral, *ratione temporis*.

According to the Applicant, the challenged judgment was adopted in violation of "constitutionality and legality, as provided by Chapter VII, Article 102, paragraph 3 of the Constitution of the Republic of Kosovo, which provides that Courts shall adjudicate upon Constitution and Law." The Applicant further claims that there has been violation of Article 31 of the Constitution that guarantees the right to fair and impartial trail as well as Article 6 of the European Convention on Human Rights. The Applicant also claims that her property rights guaranteed by Article 46 of the Constitution have been violated.

The Applicant challenges the application of the Law on Obligational Relationship that according to her is in contradiction with the Convention. The Applicant further argues the contract on sale signed by the Applicant's predecessor "can be recognized as nothing else but contracts of a totalitarian state, and must be considered as absolutely null and void, ... in compliance with the Convention."

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).

In this connection, the Constitutional 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.

Based on all above Applicant's referral with regard to the alleged violation of his property rights related to the events that occurred prior 15 June 2008, is incompatible ratione temporis with the provisions of the Constitution.

The Constitutional Court pursuant to Article 113.7 of the Constitution, Article 48 of the Law and Rule 36 (1) c) and h) of the Rules of the Procedure, in its session held on 27 March 2014, unanimously declares the Referral inadmissible.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI160/13
Applicant
Desa Aleksić
Constitutional Review of the Judgment, AC-II- 12-006, of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo, dated 30 May 2013

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

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

The Applicant

1. The Referral was submitted by Ms. Desa Aleksić (hereinafter: "the Applicant"), who is represented by Mr. Muhamet Shala, a practicing lawyer from Prishtina.

Challenged decision

2. The Applicant challenges the Judgment of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo (hereinafter: "the Appellate Panel of the Special Chamber"), AC-II- 12-006, dated 30 May 2013. The Applicant received this Judgment on 12 June 2013.

Subject matter

3. The Subject matter is the constitutional review of the Judgment of the Appellate Panel of the Special Chamber, AC-II- 12-006, dated 30 May 2013, by which the appeal of the Respondent (AI "Kosova-Export", SOE "Bujqësia" from Fushë-Kosova/Kosovo Polje)

represented by Kosovo Property Agency (KTA) was accepted as grounded. In the same time the Judgement of the Municipal Court in Prishtina, P.nr 550/08 dated 20 April 2010 was annulled.

4. According to the Applicant challenged judgment was adopted in violation of "constitutionality and legality, as provided by Chapter VII, Article 102, paragraph 3 of the Constitution of the Republic Of Kosovo, which provides that Courts shall adjudicate upon Constitution and Law." The Applicant further claims that there has been violation of Article 31 of the Constitution that guarantees the right to fair and impartial trail as well as Article 6 of the European Convention on Human Rights. The Applicant also claims that her property rights guaranteed by Article 46 of the Constitution have been violated.

Legal basis

6. The Referral is based on Art. 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. On 12 October 2013, the Applicant via registered mail submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: "the Court"). The referral was received on 16 October 2013.

8. On 31 October 2013, the President of the Court with Decision No. GJR. KI160/13 appointed Judge Kadri Kryeziu as Judge Rapporteur. On the same day, the President of the Court by Decision No. KSH. KI160/13 appointed the Review Panel composed of Judges Robert Carolan (Presiding), Almiro Rodrigues and Ivan Čukalović.

9. On 12 November 2013, the Court notified the Applicant and requested her to submit the power of authorization for the lawyer Muhamet Shala from Prishtina.

10. Also on 12 November 2013, the Court notified the Appellate Panel of the Special Chamber and Kosovo Property Agency (KTA) on the registration of the Referral.

11. On 4 December 2013, the lawyer Muhamet Shala submitted the power of authorization given to him by the Applicant.

12. On 27 March 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

13. The following is the summary of the facts as alleged by the Applicant in her referral and elaborated in the attached challenged judgment.

14. On 20 February 2008, the Applicant filed a claim before the Special Chamber requesting to annul the sales contract of immovable properties OV. BR. 3039/63 dated 21 November 1963, certified with the Municipal Court in Prishtina and concluded between the Applicant's predecessor, her father (now late) Mile Vukmirović and AIC "Kosmet-Export".

15. On 12 March 2008, the Trail Panel of the Special Chamber, by Decision SCC-08-0044, referred the claim of the Applicant to the Municipal Court in Prishtina, instructing the parties that in case of any appeal against the decision or judgment, it should be lodged with the Special Chamber.

16. On 20 April 2010, the Municipal Court in Prishtina by judgement P. nr. 550/08, approved the claim of the Applicant and confirmed that the sales contract of the immovable property is null, OV. Br 3-39 dated 21 November 1963 and obliged the Respondent AIC "Kosmet-Export" to return the ownership and possession to the claimant as the first line of inheritor and to allow the Applicant to register disputed property into her name.

17. On 5 August 2010, the Respondent filed a timely appeal against the Municipal Court in Prishtina judgement P. nr. 550/08 dated 20 April 2010. In the appeal the Respondent alleged, *inter alia*, that the first instance court should have checked whether the claim for annulment of the contract is timely, since the sales contract was concluded on 23 November 1963, whereas the claim for annulment of the contract was filed in 2009, it derives that the claimant did not use legal deadlines, therefore the claim as such should be rejected as ungrounded.

18. On 25 June 2012, the Appellate Pane served the appeal and the supporting documents on the Applicant in order to file a response to the appeal.

19. On 8 August 2012, that Applicant challenged the appeal of the Respondent entirely and proposed the Special Chamber to reject the appeal of the Respondent as ungrounded, to confirm the appealed Judgment, because that judgment is according the Applicant very clear, comprehensible and grounded on the law.

20. On 30 May 2013, the Appellate Panel of the Special Chamber issued judgement no. AC-II- 12-006. According to the legal reasoning of that judgement *"The appealed Judgment of the Municipal Court in Prishtinë/Prishtina is not correct in its outcome and in the legal reasoning; therefore, it has to be annulled"*.

21. The Appellate Panel of the Special Chamber further stated that "*The first instance Court did not correctly and completely determine the factual situation by the appealed Judgment, and as a consequence it also erroneously applied the substantive law, when it completely approved the claim of the Claimant as grounded and it annulled the sales contract of the immovable property. The Court failed to reject the claim as ungrounded, because it was filed after the legal deadline set forth by the law."*

22. The Appellate Panel of the Special Chamber further elaborated that the Applicant "*alleged that the contract was concluded under pressure and serious threat, (while it is assumed that the there was a lack of will by the predecessor of the Claimant to conclude it) and even if these legal provisions were into force, which in the case at hand were not applicable as stated above, their application is not correct. Therefore, only the provisions of Article 111 of the LO [i.e. Law on Obligation] that regulate refutable contracts (relative nullity) could be applicable for the current case and not Articles 103 and 104 of the LO (that regulate absolute nullity of the contracts) which foresee the nullity of the contracts concluded contrary to the determined constitutional principles of social order, the obligatory provisions and the morale of the society, hereby this contract was not verified by anything that it was contrary to the values mentioned of the then judicial-constitutional system. Therefore, for the above mentioned reasons and based on Article 10.10 of the Law of the Special Chamber, it was decided as in the enacting clause.*"

Applicant's Allegation

23. The Applicant argues that notwithstanding that the Republic of Kosovo has not adopted the law on restitution of private property that was taken during the socialist regime, in the present case the European Convention on Human Rights (hereinafter "the Convention") should be applicable directly in particular since the right of the restitution of the private property is according to the Applicant guaranteed by the Convention.

24. Therefore, the Applicant challenges the application of the Law on Obligation that according to her is in contradiction with the Convention. The Applicant further argues the contract on sale signed by the Applicant's predecessor "*can be recognized as nothing else but contracts of a totalitarian state, and must be considered as absolutely null and void, ... in compliance with the Convention*."

25. The Applicant further argues "*it is not disputable that since 1990, a large number of citizens have obtained this right in an institutional manner, in administrative or judicial proceedings, on the basis of annulment of immovable property sale contracts. Therefore, now we have the category of citizens such as Desa Aleksiæ, which in comparison with other citizens, has been discriminated against in terms of enjoying her property rights and restitution.*"

25. The Applicant also argues that the Special Chamber in the similar cases decided differently than in the Applicant case, and in this respect attached the copy of the Decision in the case SCA-08-0042 whereby the KTA complaint was rejected as inadmissible.

Assessment of the admissibility of the Referral

26. 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 that are foreseen by the Constitution and further specified in the Law and the Rules of Procedure.

27. In connection with this, the Court notes that the substance of the Applicant's complaints relate to the alleged violation of her right to fair trial and right to property both guaranteed by the Constitution and the Convention.

- As regards the Applicant's complaint related to the alleged violation of her right to fair trial:

28. The Court notes that the Applicant disagree with the findings of the Appellate Panel of the Special Chamber and argues that the Appellate Panel of the Special Chamber wrongly applied the Law on Obligation.

29. In this regard, the Court takes into account Rule 36 of the Rules of Procedure, which provides:

> *"(1) The Court may review referrals only if: (c) The referral is not manifestly ill-founded."*

30. 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).

31. In this connection, the Constitutional 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*).

32. The Constitutional Court notes that the Applicant has used all legal remedies prescribed by the Law on Contentious Procedure, by submitting the appeal against the Municipal Court in Prishtina and that the Appellate Panel of the Special Chamber took this into account and indeed answered his appeals on the points of law.

33. The Court, therefore, considers that there is nothing in the Referral which indicates that the case lacked impartiality or that proceedings were otherwise unfair (see, *mutatis mutandis*, *Shub v. Lithuania,* ECHR Decision on Admissibility of Application No. 17064/06 of 30 June 2009).

34. As regards to the Applicant complaint that a large number of citizens have obtained this right in an institutional manner, in

administrative or judicial proceedings, on the basis of annulment of immovable property sale contracts. And that she has been discriminated against terms of enjoying her property rights and restitution. The Court notes that the Applicant did not substantiate her allegations. The only evidence in support of the claims that Applicant attached to her referral, i.e. Decision of the Special Chamber in the case SCA-08-0042 is irrelevant since in that case the KTA complaint was rejected as out of time.

- As regards the Applicant's complaint related to the alleged violation of her property rights

35. The Applicant further requested the Court to declare the challenged judgement of the Appellate Panel of the Special Chamber null and avoid since the contract her deceased father signed in 1963 is "*... nothing else but contract[s] of a totalitarian state, and must be considered as absolutely null and void, ...in compliance with the Convention*".

36. The Court notes that the Applicant referees to the events that happened in 1963.

37. In this respect the Court's has to determine its temporal jurisdiction.

38. The Court recalls that pursuant to Rule 36 of the Court's Rules of the Procedure: "*Referral may also be deemed inadmissible in any of the following cases: h) the Referral is incompatible ratione temporis with the Constitution".*

39. Similar admissibility criterion is applied by the European Court on Human Rights.

40. In accordance with the case-law of the European Court on Human Rights "*Deprivation of ownership or of another right in rem is in principle an instantaneous act and does not produce a continuing situation of "deprivation of a right"* (see *Malhous v. the Czech Republic* (dec.) [GC], no. 33071/96, ECHR 2000-XII, with further references).

41. In this respect the Court recalls that it cannot deal with a Referral relating to events that occurred before the entry into force of the Constitution, i.e. before 15 June 2008 (see, the Court's Resolution

on Inadmissibility in Case No 18/10, *Denic et al*, of 17 August 2011).

42. Based on all above Applicant's referral with regard to the alleged violation of his property rights related to the events that occurred prior 15 June 2008, is incompatible *ratione temporis* with the provisions of the Constitution..

43. Moreover, the Court would like to reiterate that according to the jurisprudence of the European Court on Human Rights "*Article 1 of Protocol No. 1 cannot be interpreted as imposing any general obligation on the Contracting States to restore property which was transferred to them before they ratified the Convention. Nor does Article 1 of Protocol No. 1 impose any restrictions on the Contracting States' freedom to determine the scope of property restitution and to choose the conditions under which they agree to restore property rights of former owners"* (see *Jantner v. Slovakia,* no. 39050/97 § 34, 4 March 2003).

44. Taking all above mentioned into account, the Court finds that the Referral does not meet the criteria for admissibility, pursuant to Article 113.7 of the Constitution, and Rule 36 (1) c) and h) 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 Rule 36 (1) c) and h) of the Rules of the Procedure, in its session held on 27 March 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 Cou**
Dr. Sc. Kadri Kryeziu	Prof. Dr. Enver Hasani

KI180/13, Radomir Nikolić, Resolution of 27 March 2014 - Constitutional Review of Decision Rev. no. 125/2013, of the Supreme Court of Kosovo, of 29 July 2013

Case KI180/13, decision of 27 March 2014

Key words: individual referral, right to fair and impartial trial, protection of property, manifestly ill-founded.

The Applicant submitted the Referral in accordance with Article 113.7 of the Constitution, challenging the Decision Rev. no. 125/2013, of the Supreme Court of Kosovo, of 29 July 2013, by which was solved property-legal dispute of the ownership over the premise between the Applicant and the Municipality of Suhareka.

The Applicant considers that by this Decision were violated Article 22 and 31 of the Constitution of the Republic of Kosovo as well as Article 10 of the Universal Declaration of Human Rights and Article 6 of the European Convention for Protection of Human Rights and Fundamental Freedoms.

On 07 July 2010, the Municipal Court in Suhareka, by Judgment C. no. 03/04 approved the claim and the statement of claim of the claimant as grounded, and thereby terminated the contract 01 no. 361-1507, of 09.11.1998, concluded between the Municipality of Suhareka, and Nikolic Radomir, certified by the Municipal Court in Suhareka, with the case number VR. no. 2132/98, of 29.12.1998, due to non-performance of the contract as per Article 3 of the above mentioned contract, thereby reasoning:

„The respondent has failed to perform obligations, as provided by Article 3 of this contract, for the total amount to be paid in 12 equal installments. He has not paid any installment as required by Article 3 of the contract on sale of the business premises“.

Considering the Applicant's allegations regarding the claim that the decisions: *"i) were rendered by the authority (court) that had no jurisdiction on rendering such decisions"* as well as the allegation that *"ii) the possibility was not provided to the Applicant to participate when tackling this issue during the main hearing"* in the justification of the violations by the Applicant, the Constitutional Court reiterates that the Judgment Ac. no. 627/2010, of the District Court in Prizren, of 25 September 2012, and the Decision Rev. no. 125/2013 of the Supreme

Court in Prishtina, of 29 July 2013, provide their detailed reasoning and give response to these Applicant's allegations.

Considering the Applicant's allegations, regarding the claim that *"iii) the Court exceeded the statement of claim of the Claiming Party;* as well as the allegations that *"iv) the Court failed to address issues raised by the Applicant,"* in the justification of the violation by the Applicant, the Constitutional Court reiterates that the Applicant in his Referral of 10 January 2014, alleges that *"the debtor Radomir Nikolic (now the Applicant) was unable to fulfill the contract due to circumstances, for which he is not responsible"* This leads to conclusion that the Applicant could not become the owner of the premise in question.

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 INADMISIBILITY
in
Case no. KI180/13
Applicant
Radomir Nikolić
Constitutional review of the Decision of the Supreme Court of Kosovo, Rev. 125/2013, of 29 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 filed by Mr. Radomir Nikolić (hereinafter: the Applicant), temporarily residing in Mladenovac, R. Serbia, represented before the Constitutional Court by Mr. Gani Guraziu and lawyer Mr. Ramiz Suka.

Challenged decision

2. The Applicant challenges the Decision of the Supreme Court of Kosovo, Rev. 125/2013, of 29 July 2013, which was served upon him in September 2013.

Subject matter

3. The subject matter is the constitutional review of the Decision of the Supreme Court of Kosovo, Rev. 125/2013, of 29 July 2013, which according to allegations of the Applicant violated Article 22 and 31 of the Constitution of the Republic of Kosovo as well as Article 10 of the Universal Declaration of Human Rights and Article

6 of the European Convention for Protection of Human Rights and Fundamental Freedoms.

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 of (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 23 October 2013, the Applicant filed his Referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 31 October 2013, the President by Decision no. GJR. KI180/13, appointed Judge Ivan Čukalović as Judge Rapporteur. On the same date, the President of by Decision no. KSH. KI180/13, appointed the Review Panel composed of Judges: Altay Suroy (Presiding), Snezhana Botusharova and Arta Rama-Hajrizi.

7. On 9 December 2013, the Court notified the Applicant and the Supreme Court of Kosovo of the registration of the Referral.

8. On 19 December 2013, the Applicant's representative filed with the Court additional documents with new allegations regarding the case.

9. On 10 January 2014, the Applicant's representative submitted to the Court additional documents with new allegations regarding the case.

10. On 30 January 2014, the Applicant's representative submitted to the Court additional documents in the form of the "*supporting act*" with new allegations regarding the case.

11. On 11 February 2014, the Constitutional Court, through a letter requested from the Applicant and his representatives to specify the allegations of violations of the Applicant's rights.

12. On 19 February 2014, the Applicant's representative submitted to the Court the specified allegations of the violations of the Applicant's right.

13. On 27 March 2014, after having reviewed the report of Judge Rapporteur Ivan Čukalović, the Review Panel composed of judges: Altay Suroy (presiding), Snezhana Botusharova and Arta Rama-Hajrizi, made a recommendation to the full Court on the Inadmissibility of the Referral.

Summary of facts

14. On 09 November 1998, a contract 01 no. 361-1507 on sale/purchase of the business premise no. 1/B-3, surface area of 19.90m², ground floor, and surface area of 13.90m² in the attic, in the Commercial Centre in Suhareka, was entered between the Municipality of Suhareka, represented by the Mayor Stanimir Radić, on the one hand, and Radomir Nikolić on the other, certified by the Municipal Court in Suhareka, as Vr. no. 2132/98, of 29 December 1998.

15. On an unspecified date of 2004, the Municipal Public Attorney in Suhareka filed a claim against the respondent Radomir Nikolić, represented with power of attorney by lawyer Ruzhdi Gashi, from Suhareka, due to termination of contract on sale/purchase of the business premise in the Commercial Centre in Suhareka, since the respondent has failed to pay the instalments for the months of January, February, March, April, May, until 07.06.1999, to the bank account of the claimant 48502-630-042.

16. The Municipal Public Attorney of Suhareka, in his claim, proposed that the contract on sale/purchase of the abovementioned premise be terminated due to failure to pay dues as per contract.

17. On 28 October 2005, Radomir Nikolić, as seller, signed a contract on sale of disputed property, which is not certified in the court, with Gani Guraziu, (in the proceedings before the Constitutional Court, the representative of Radomir Nikolić) as a buyer in the contract, with the note on interim measures imposed by the Municipal Court in Suhareka, in relation to the ownership rights.

18. On 07 July 2010, the Municipal Court in Suhareka, by Judgment C. no. 03/04 approved the claim and the statement of claim of the claimant as grounded, and thereby terminated the contract 01 no.

361-1507, of 09.11.1998, entered between the Municipality of Suhareka, and Nikolić Radomir, certified by the Municipal Court in Suhareka, with the case number VR. no. 2132/98, of 29.12.1998, due to non-performance of the contract as per Article 3 of the above mentioned contract, thereby reasoning:

> *"The respondent has failed to perform obligations, as provided by Article 3 of this contract, for the total amount to be paid in 12 equal instalments. He has not paid any instalment as required by Article 3 of the contract on sale of the business premise. The claimant filed a claim to request the termination of contract due to failure in enforcement, pursuant to Article 124 of the LOR, applicable according to an UNMIK regulation. When the obligation in a certain timeline is an essential and integral part of the contract, and the debtor does not perform on such obligation within such deadline, the contract is terminated by Law itself (Article 125, paragraph 1 of the LOR). Article 3 of the Contract on sale of the business premise, in item 3 provides that failure to pay three consecutive instalments results into an entitlement for the seller to terminate the contract.*
>
> *"The allegations of the authorized representative of the respondent, lawyer Ruzhdi Gashi from Suhareka, that the respondent had lawfully purchased commercial premises, and that he had certified the contract with the Court, and had fulfilled his obligations as per contract in their entirety, the letter that the claimant submitted is unilateral and ungrounded, and that the statement of claim of the claimant is under statutory limitation, were taken under the review of the Court, but the Court rejected it as ungrounded, since the authorized representative of the claimant offered proof of failure of payment of instalments to the claimant, while the respondent did not offer any evidence against such claim, and on the other hand, the claim and the statement of claim have not been time-barred (Article 373 of the LOR)."*

19. Deciding upon the complaint of the respondent's representative, filed against the Judgment of the Municipal Court in Suhareka, C. no. 03/04, of 07 July 2010, the District Court in Prizren, by Judgment Ac. no. 627/2010 of 25 September 2012, rejected the complaint of the respondent's representative as ungrounded, and upheld the Judgment of the Municipal Court in Suhareka, C. no. 03/04, of 07 July 2010.

20. Deciding upon the revision of the respondent, filed against the Judgment of the District Court in Prizren, Ac. no. 627/2010, of 25 September 2012, the Supreme Court of Kosovo, by Decision Rev. no. 125/2013, of 29 July 2013, rejected as time-barred the revision of the respondent, filed against the Judgment of the District Court in Prizren, Ac. no. 627/2010, of 29.09.2012, thereby reasoning that:

> *"From the case file, it may be ascertained that the respondent's representative by proxy, lawyer Ruzhdi Gashi from Suhareka, has received the second instance court Judgment Ac.no. 627/2010, of 25.09.2012, on 20.12.2012, that may be proven by delivery slip in the case file, while filing revision against the second instance court Judgment on 04.02.2013, by the respondent's authorized representative Aida Bilibani, rendering clear that it was filed beyond legal timeline."*

Applicant's allegations

21. In the submitted Referral, the Applicant reasons in a detailed manner a series of violations, which he considers were committed against him in the regular courts and alleges the following: *"that the challenged decisions, rendered by respective courts, violated the rights guaranteed by Constitution and international acts directly applied in Kosovo, based on Article 22 of the Constitution. Consequently, the challenged decisions, concerning their constitutionality, are ungrounded, because of the following: i) were rendered by the authority (Court) that had no jurisdiction on rendering such decisions; ii) the possibility was not provided to the Applicant to participate when tackling this issue during the main hearing; iii) the Court exceeded the statement of claim of the Claiming Party; iv) the Court failed to address issues raised by the Applicant, etc. These and other violations resulted in violation of Article 31 of the Constitution of the Republic of Kosovo, respectively the right to a fair and impartial trial, guaranteed also by Article 10 of the Universal Declaration of Human Rights and Article 6 of the European Convention for Protection of Human Rights and Fundamental Freedoms and its Protocols".*

22. Based on the allegations, reasoned in a detailed manner in this Referral, the Applicant seek from the Court:

- *"To declare the Applicant's Referral as admissible."*

- *"In accordance with Rule 39 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo, to order a hearing and"*

- *To hold that there has been a violation of individual right of the Applicant, Mr. Radomir Nikolic, guaranteed by Article 31 of the Constitution of the Republic of Kosovo, Article 10 of the Universal Declaration on Human Rights and Article 6 of the European Convention for Protection of Human Rights and Fundamental Freedoms and its Protocols.*

- *To hold that there has been any other violation of rights to the Applicant that this Court may find during the review of the matter.*

Assessment of admissibility of the Referral

23. The Court observes, that in order to be able to adjudicate the Applicant's Referral, it is necessary first to examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution, and further specified by 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 further 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".*

26. Furthermore, the Court refers to Rule 36 (2) b) 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*

...

b) when the presented facts do not in any way justify the allegation of a violation of the constitutional rights".

27. Considering the Applicant's allegations, regarding the allegation that the decisions: "*i) were rendered by the authority (Court) that had no jurisdiction on rendering such decisions;"* as well as the allegation that *"ii) the possibility was not provided to the Applicant to participate when tackling this issue during the main hearing;"* in the justification of the violations by the Applicant, the Constitutional Court reiterates that the Constitutional Court is not a court of appeal, when considering decisions rendered by regular courts. It is the role of regular courts to interpret the law and apply pertinent rules of procedural and material law (see, *mutatis mutandis*, *García Ruiz v. Spain* [GC], no. 30544/96, paragraph 28, European Court of Human Rights [ECtHR] 1999-I). The Judgments of the District Court in Prizren, Ac. no. 627/2010 of 25 September 2012 and the Ruling of the Supreme Court in Prishtina Rev. No. 125/2013 of 29 July 2013, provide their detailed reasoning and give response to these Applicant's allegations.

28. Considering the Applicant's allegations, regarding the allegations that "*iii) the Court exceeded the statement of claim of the Claiming Party;"* as well as the allegations that *"iv) the Court failed to address issues raised by the Applicant,"* in the justification of the violation by the Applicant, the Constitutional Court reiterates that the Applicant has not provided any *prima facie* evidence, indicating the violation of his constitutional rights (see, *Vanek v. Republic of Slovakia*, ECHR Resolution on Admissibility of Application, no. 53363/99 of 31 May 2005). Furthermore, the Applicant in his Referral of 10 January 2014, alleges that *"the debtor Radomir Nikoliæ (now the Applicant) was unable to fulfill the contract due to circumstances, for which he is not responsible"* This leads to conclusion that the Applicant could not become the owner of the premise in question.

29. At the same time, the Applicant in the initial Referral, submitted on 23 October 2013, alleged that *"The temporary representative has not acted upon authorization (decision) on appointment of the temporary representative, and intentionally missed the deadline for using legal remedy, thereby also failing to notify Radomir Nikolic, or his authorized representative Aida, and by this, the*

right of citizen to fair trial- Article 3 of the Constitution of Kosovo, was violated".

30. In the additional documents, submitted on 19 December 2013, the Applicant stated the opposite *"... that the representative Aida filed revision in time, which she received on 20.12.2012, which is confirmed by the service note in the case file"*. The Supreme Court made a mistake "*While calculating the time limit it was calculated that from 20.12.2012 until 04.02.2013 not counting official holidays and non working days - Saturdays and Sundays, in total it is 28 days 12 hours. This means that the Revision was in time but it was not calculated properly by the Supreme Court".*

31. In this case, the Applicant was provided opportunity to present his case and challenge the interpretation of law, which he considers to be inaccurate, before the Municipal Court in Suhareka, District Court in Prizren, and the Supreme Court of Kosovo. Upon the review of entire proceedings, the Constitutional Court did not find that such proceedings were in any way unfair or arbitrary (See, *mutatis mutandis*, *Shub v. Lithuania*, ECtHR Resolution on Admissibility, no. 17064/06 of 30 June 2009).

32. Ultimately, the admissibility requirements were not met in this Referral. The Applicant failed to show and support by evidence that by challenged ruling were allegedly violated his constitutional rights and freedoms.

33. Pursuant to the above, the Referral is manifestly ill-founded, and must be declared inadmissible, in compliance 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, on 27 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 Ivan Čukalović

President of the Constitutional Court Prof. Dr. Enver Hasani

KI92/13, Shefqet Tolaj, Resolution of 17 March 2014 - Constitutional Review of the Judgment Rev. no. 272/2011, of the Supreme Court, of 16 April 2013

Case KI92/13, decision of 17 March 2014

Key words: individual referral, individual rights and freedoms, right to work, health and social protection, manifestly ill-founded referral.

The Applicant filed Referral based on Article 113.7 of the Constitution of Kosovo, by alleging that by the Judgment Rev. no. 272/11, of the Supreme Court, were violated his rights guaranteed by the Constitution, namely his right to work and to health and social protection. The Judgment of the Supreme Court annulled the decisions of the first and second instance court, which entitle the Applicant to reinstate to his working place. The Supreme Court found that the lower instance courts rendered decisions based on inadmissible evidence.

The Court notes that in the present case the regular courts have treated the Applicant's allegations within their scope and competences. The Court reiterates that assessment of the legality falls within the jurisdiction of the regular judiciary. Furthermore, the dissatisfaction with the decision 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. The Court reiterates that it is not its task under the Constitution to act as a court of appeal, or a court of fourth instance, in respect of the decisions taken by regular courts. Therefore, the Court declared the Applicant’s allegations as inadmissible as manifestly ill-founded.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI92/13
Applicant
Shefqet Tolaj
Constitutional Review of the Judgment Rev. nr. 272/2011, of the Supreme Court, dated 16 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 Referral is submitted by Mr. Shefqet Tolaj (hereinafter: the "Applicant"), residing in Prishtina, represented by Mr. Ndue Thaqi and Mr. Qerim Zogaj, practicing lawyers from Prishtina.

Challenged decision

2. The Applicant challenges the Supreme Court Judgment Rev. no. 272/11, dated 16 April 2013, which was served upon the Applicant on 14 May 2013.

Subject matter

3. The Applicant requests constitutional review of the Supreme Court Judgment Rev. no. 272/11, which allegedly violates his human rights as guaranteed by Article 49 [Right to Work and Exercise Profession] and Article 51 [Health and Social Protection] 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, 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. On 26 June 2013, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the "Court").

6. On 1 July 2013, the President by Decision GJR. KI92/13 appointed Judge Robert Carolan as Judge Rapporteur. On the same day, by Decision KSH. KI92/13 the President appointed the Review Panel composed of Snezhana Botusharova (Presiding), Kadri Kryeziu and Arta Rama-Hajrizi.

7. On 11 September 2013, the Applicant was notified of the registration of the Referral. On the same day the Supreme Court was notified and was provided with a copy of the Referral.

8. On 13 September 2013, the Court requested from the Basic Court in Prishtina the case file of the employment dispute which was dealt with in regular courts, between the Applicant and KEK.

9. On 18 September 2013, the Basic Court in Prishtina submitted a copy of the requested case file to the Court.

10. On 11 December 2013, KEK was notified of the registration of the Referral and was provided with a copy of the Referral.

11. On 17 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 facts

12. The Applicant was employed in the Kosovo Energy Corporation (hereinafter: KEC) with a contract for an indefinite period of time.

13. On 27 July 2003 the Applicant was encountering some health issues, after initial check-ups at the private Medical Institute "Galaxy +", he was hospitalized and had to undergo medical surgery. Thus, he was on medical leave until 31 October 2003.

14. On 2 December 2003, the Manager of the Distribution Division of KEC (where the Applicant was employed) issued a Decision 1348 on termination of the Applicant's employment relationship, due to *"absence without leave from work for more than 5 (five) days uninterrupted starting from 01.09.2003 until 31.10.2003. This type of absence from work is sanctioned by Article 11 paragraph 11.1 item (ç) in conjunction to paragraph 11.4 item (a) of the BLL (Basic Labour Law) and Article 13 paragraph 1, item 7 of the Regulation on employment relationships and KEC's Memorandum on the implementation of the disciplinary proceedings protocol no.388 dated 10.02.2003 on 01.12.2003."*

15. Within the applicable deadline, the Applicant appealed from Decision 1348 of 2 December 2003, with the Manager of the Human Resources Division of KEC.

16. On 15 January 2004 the Human Resources Division issued Decision 161, which *"REJECTS the appeal of employee Shefqet Tolaj as not grounded and the Decision of the Distribution Division Manager No 1348 dated 02.12.2003 is CONFIRMED*."

17. On an unspecified date, the Applicant filed a lawsuit with the Municipal Court in Prishtina for *"annulment of decisions for the termination of the employment relationship and for reinstatement at working place"*.

18. On 17 September 2010, the Municipal Court in Prishtina adopted Judgment C1. nr. 261/08 which *"APPROVED the claim of the claimant Shefqet Tolaj from Prishtina, as grounded, and ANNULLED the decisions of the respondent – the Kosovo Energy Corporation JSC no.1348 dated 02.12.2003 and no.161 dated 15.02.2004 that terminated the employment relationship with the claimant."*

19. In its Judgment, the Municipal Court stated that:

> *"The court finds that in this particular case none of the conditions envisaged with the quoted provisions were met in order to terminate the claimant's employment relationship*

with the respondent. This is because in this particular case, claimant's absence without leave from work for more than 5 working days uninterruptedly, on what the respondent basis their decision was not proven. The claimant suffering from illness and having undertaken an operation provided the discharge paper from "Galaksy" clinic in Prishtina, proving the justification for his absence from work. The evidence on the illness and operation confirms the factual situation regarding the claimant's health conditions during the contested time span, thus that evidence absolutely cannot be ignored by the respondent under the assumption that the same was not delivered to the respondent at the time the respondent considers necessary. The law obliges the employee to notify the employer when he takes medical leave, which according to the witness Lutfi Breznica the claimant did through him, therefore in this situation the respondent should have waited on the claimant's proof for absence from work and not only be satisfied with his absence and decide to terminate his employment relationship."

20. On an unspecified date, KEC filed an appeal with District Court in Prishtina against Judgment C1. nr. 261/08 of Municipal Court in Prishtina.

21. On 26 May 2011, District Court in Prishtina rendered the Judgment Ac. nr. 1139/2010, rejecting the appeal of KEC and confirmed the Judgment of the Municipal Court in Prishtina.

22. In its Judgment, the District Court in Prishtina stated that:

"According to the panel's finding based on the confirmed factual situation, the first instance court correctly applied the material law when it found that the reasons and conditions for the termination of the employment relationship are envisaged with Article 11 of UNMIK Regulation no.2001/27 on the Basic Law on Labour in Kosovo, which are not met in this particular case in order to terminate the claimant's employment relationship due to absence without leave from work. Additionally, it cannot be considered a violation of the respondent's disciplinary proceeding, because the claimant justified with medical evidence his absence from work during the contested time span. Further, the first instance court proved with evidence that the respondent was notified of the illness, respectively the operation of the claimant, facts which were confirmed by the court through evidence and testimonies

of witnesses Fatime Ahmeti and Lutfi Breznica. Pursuant to the panel's finding, the first instance court in this factual situation correctly implemented the above mentioned provisions on the Basic Law on Labour in Kosovo, as well as Article 452 of the LCP when it found that the claimant's statement of claim is grounded and that the respondent is obliged to compensate the expenses of the proceedings."

23. On an unspecified date, KEC filed a revision with the Supreme Court, against Judgment Ac. nr. 1139/2010 of the District Court in Prishtina.

24. On 16 April 2013, Supreme Court adopted Judgment Rev.nr.272/2011, which approved the revision of KEC, and annulled, as unlawful, Judgment C1. nr. 261/08 of Municipal Court in Prishtina and Judgment Ac.nr.1139/2010 of the District Court in Prishtina.

25. In its reasoning the Supreme Court stated that: *"The lower instance courts, based on inadmissible proof, accepted the claimant's claim that he was justifiably absent from work for more than 5 days in a row, since he was ill, and he had undergone an appendicitis operation, facts he proved with the discharge paper from HI "Galaxy" in Prishtina dated 22.08.2003. Due to the fact that he had been sick and operated on, the claimant notified the respondent in time, but the KEC's Regulation on the Employment Relationship dated 18.12.2001 that is found in the case file, in Article 10.4 envisages that the competent body to give medical leave to KEC employees is the Occupational Health Institute (OHI). From this it is found that the claimant did not act pursuant to Article 10.4 of this Regulation since during the contested period he did not obtain his medical leave from the Occupational Medical Health, which is part of KEC. Instead the claimant bases his absence from work mainly on the above mentioned discharge paper, in violation of the above mentioned provision of this Regulation, thus without obtaining the medical leave from the above mentioned institute."*

The Applicable Legislation

26. The Court notes that at the time when the events took place, the applicable law in this matter was UNMIK Regulation No. 2001/27 on Essential Labour Law in Kosovo (hereinafter: the "UNMIK Regulation 2001/27").

27. In Section 11 – Termination of a Labour Contract of the UNMIK Regulation 2001/27, *inter alia,* it is stipulated:

> *"11.1 A labour contract shall terminate:*
>
> *...*
>
> *(d) on the grounds of unsatisfactory performance by the employee;*
>
> *...*
>
> *11.4 Unsatisfactory performance shall include the following:*
>
> *(a) Unjustified absence from work; and*
> *(b) Repeated mistakes not sufficient in themselves to justify a dismissal, but which given their frequency and seriousness disrupt the normal course of the employment relationship."*

28. Section 22 of the UNMIK Regulation 2001/27, regulates the issue of Sick Leave, where is stated that:

> *"22.1 An employee shall notify the employer within 48 hours if taking sick leave.*
>
> *22.2 Where sick leave is taken as a result of a work-related accident or illness, an employee shall be entitled to his/her salary/wage for such period."*

29. On 18 December 2001, KEC also adopted its Regulation on Employment Relationship (hereinafter: "KEC Regulation"), which regulates rights and obligations of KEC employees.

30. Article 10 of KEC Regulation regulates medical leave for KEC employees, stating that:

> *"10.1 The employees are entitled to a maximum of 15 days of paid medical leave for each calendar year.*
>
> *10.2 Excluding the medical leave due to injury at work or vocational illness acquired at the working place.*
>
> *10.3 The employee must notify the employer within 48 hours when medical leave is taken.*

10.4 For the KEC employees the Occupational Health Institute (OHI) has the competencies to allocate medical leave.

10.5 The payment for up to 7 days medical leave will be calculated at the rate of up to 70%, the rest up to 15 days at 90%.

10.6 The employee will be entitled to 100% payment for medical leave due to injury at the work place."

31. In Article 13 of KEC Regulation is stated that:

"The employment contract of an employee at KEC-entity is terminated:

• Upon the employees death;

• Upon written agreement between the employer and the employee;

• In serious cases of misconduct by the employee;
• Due to unsatisfactory fulfillment of work duties by the employee;

• Upon the expiration of the duration of employment contract and

• Pursuant to legal power;

• Unjustified absence from work for more than 5 consecutive days;

• Repeated errors which are insufficient per se to justify the dismissal from work but with their frequency and weight disrupt the normal flow of employment relation;
…."

Applicant's allegations

32. The Applicant claims that *"In this case Article 49, paragraph 1 and Article 51 of the Constitution of the Republic of Kosovo have been violated, because the right to work and health protection are rights guaranteed by the constitution and enshrined in the respective international conventions. Additionally, due to the fact*

that the rights emphasized above are two of the most fundamental human rights, as well as the violation of the provisions of the basic Law on Labour."

33. Furthermore, the Applicant requires from the Court to *"Annul the Judgment of the Supreme Court of Kosovo Rev. no. 272/2011 dated 16.04.2013 due to the violation of fundamental human rights as a constitutional category, in conjunction to the basic rights to work, to leave in force the Judgments of both the first instance and second instance court, or redirect the case to the competent court for retrial."*

Admissibility of the Referral

34. The Court notes that to be able to adjudicate the Applicant's complaint, 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.

35. In this regard, the Court refers to the Article 113.7 of the Constitution, which provides that:

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

36. The Court notes that the most recent decision related to this case is the Supreme Court decision of 16 April 2013, which was served on the Applicant on 14 May 2011. The Applicant filed the referral with the Constitutional Court on 16 June 2013, which means that he filed the referral before this Court in compliance with requirements of Article 113.7 of the Constitution and within the deadline set forth by Article 49 of the Law.

37. In addition, the Court also takes into account Rule 36 of the Rules of Procedure, which provides:

> *"(1) The Court may review referrals only if:*
>
> *...*
>
> *(c) The referral is not manifestly ill-founded.*
>
> *...*

(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
...
(d) When the Applicant does not sufficiently substantiate his claim."

38. The Court notes that in the present case the regular courts have treated the applicant's allegations within their scope and competences. The Court reiterates that assessment of the legality falls within the jurisdiction of the regular judiciary.

39. Furthermore, the dissatisfaction with the decision 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. (see Resolution on Inadmissibility in Case KI185/13, Applicant KEK, Constitutional review of the Decision Rev. No. 368/2011 of the Supreme Court of the Republic of Kosovo, of 18 February 2014).

40. The Court reiterates that it is not its task under the Constitution to act as a court of appeal, or a court of fourth instance, in respect of the decisions taken by regular courts.

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

42. As a result, the Court finds that the Applicant's Referral does not meet the admissibility requirements, since the Applicant has failed to substantiate his allegations and submit supporting evidence on the alleged constitutional violation by the Challenged Decision.

43. 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 Rule 36 (2) b) and 56.2 of the Rules of Procedure, on 17 March 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 immediately effective.

Judge Rapporteur	**President of the Constitutional Court**
Robert Carolan	Prof. Dr. Enver Hasani

KI232/13, Fatos Kakeli, Resolution of 14 March 2014 - Constitutional Review of the Judgment of the Supreme Court, Rev. Mlc. no. 197/2011, of 14 May 2013

Case KI232/13, decision of 14 March 2014

Keywords: individual referral, right to fair and impartial trial, right to property, out of time.

The applicant filed a Referral pursuant to Article 113.7 of the Constitution of Kosovo challenging the Judgment of the Supreme Court, Rev. Mlc. no. 197/2011, dated 14 May 2013 because the "principle of protection of right to property has been violated by the court instances." and that "The basic principle that has to do with fair and impartial trial has been violated, since the decision was rendered as a result of criminal offence...". Furthermore, the Applicant requested the Court not to disclose his identity because the "Interference of many persons, who have impacted on decisions."

On the issue of the admissibility of the Referral, the Court held, that the Referral was inadmissible because the final judgment of the Supreme Court, Rev. Mlc. no. 197/2011 was taken on 14 May 2013, and was served on the Applicant on 31 May 2013, whereas the Applicant filed the Referral with the Court on 27 December 2013, i.e. more than 4 months from the day upon which the Applicant has been served with the Supreme Court decision. As to the Applicant's request for not having his identity disclosed, the Court rejected it as ungrounded, because no supporting documentation was provided to support the reasons for the Applicant not to have his identity disclosed

RESOLUTION ON INADMISSIBILITY
in
Case No. KI232/13
Applicant
Fatos Kakeli
Constitutional review of the Judgment of the Supreme Court, Rev. Mlc. no. 197/2011, dated 14 May 2013.

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

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

Applicant

1. The Referral was submitted by Mr. Fatos Kakeli (hereinafter: the "Applicant"), residing in Prizren, represented by Mr. Nexhat Helshani, a practicing lawyer from Prizren.

Challenged decision

2. The Applicant challenges the Judgment of the Supreme Court, Rev. Mlc. no. 197/2011, of 14 May 2013, which was served on the Applicant on 31 May 2013.

Subject matter

3. The subject matter is the constitutional review of the Judgment of the Supreme Court by which the Applicant alleges that Article 31 [Right to Fair and Impartial Trial] and Article 46 [Protection of Property] of the Constitution of the Republic of Kosovo (hereinafter: the "Constitution") have been violated.

4. Furthermore, the Applicant requests the Court not to disclose his identity because the *"Interference of many persons, who have impacted on decisions."*

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 27 December 2013, the Applicant submitted the Referral to the Constitutional Court for the Republic of Kosovo (hereinafter: the "Court").

7. On 15 January 2014, the President of the Court, by Decision No. GJR. KI232/13, appointed Judge Robert Carolan as Judge Rapporteur. On the same date, the President of the Court, by Decision No. KSH. KI232/13, appointed the Review Panel composed of Judges Snezhana Botusharova (Presiding), Kadri Kryeziu and Arta Rama-Hajrizi.

8. On 27 January 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 14 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 facts

10. On 29 May 2003, the Municipal Court in Prizren (Judgment C. no. 425/01) rejected as ungrounded the complaint of the Applicant to have a sale-purchase contract of immovable property annulled. The Applicant filed a complaint against this Judgment with the District Court Prizren.

11. On 1 June 2005, the District Court of Prizren (Decision Ac. no. 409/2003) approved the complaint of the Applicant, annulled the

Judgment of the Municipal Court in Prizren and sent it back for retrial.

12. On 6 June 2007, the Municipal Court in Prizren (Judgment C. no. 505/05) rejected as ungrounded the Applicant's complaint.

13. On 14 May 2013, the Supreme Court (Judgment Rev. Mlc. no. 197/2011) rejected as ungrounded the request for protection of legality against the Judgment of the District Court in Prizren, Ac. no. 333/2009, of 13 April 2011 and Judgment of the Municipal Court in Prizren, C. no. 762/2008, of 7 May 2009.

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

Applicant's allegations

15. The Applicant alleges that the *"principle of protection of right to property has been violated by the court instances."* and that "*The basic principle that has to do with fair and impartial trial has been violated, since the decision was rendered as a result of criminal offence…".*

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 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. […]".*

18. 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 […].”

19. The final judgment of the Supreme Court, Rev. Mlc. no. 197/2011 was taken on 14 May 2013, and was served on the Applicant on 31 May 2013, whereas the Applicant filed the Referral with the Court on 27 December 2013, i.e. more than 4 months from the day upon which the Applicant has been served with the Supreme Court decision.

20. 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.

21. As to the Applicant’s request for not having his identity disclosed, the Court rejects it as ungrounded, because no supporting documentation was provided to support the reasons for the Applicant not to have his identity disclosed.

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 14 March 2014, unanimously

DECIDES

I. TO REJECT the Referral as Inadmissible;

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

III. TO NOTIFY the Parties of this Decision;

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

V. TO DECLARE this Decision immediately effective.

Judge Rapporteur	**President of the Constitutional Court**
Robert Carolan	Prof. Dr. Enver Hasani

KI223/13, Xhafer Murati, Decision of date 2 April 2014 - Constitutional Review of an unspecified decision of the public authority

Case KI223/13, decision of 2 April 2014

Key words; Individual Referral, strike out the Referral

The Applicant filed Referral 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, and Rule 56, of the Rules of Procedure of the Constitutional Court of Kosovo.

On 10 December 2013, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo, requesting from the Court to exercise his right to 20% share from the privatization of SOE „Ramiz Sadiku".

The Applicant does not specify what Articles of the Constitution have been violated by this Judgment.

Having considered the Referral, the Court concludes that there is no case or dispute that should be considered in the abovementioned "Referral" and, accordingly, there is no reason for further proceedings in accordance with Rule 32 (4) of the Rules of Procedure and the Referral should be struck out.

Taking into consideration all circumstances of the submitted Referral, the Constitutional Court of Kosovo, in its session held on 2 April 2014, decided that there is no reason for further proceedings, therefore it decided to strike out the Referral

DECISION TO STRIKE OUT THE REFERRAL
in
Case No. KI223/13
Applicant
Xhafer Murati
Constitutional review of an unspecified decision
of the 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
Kadri Kryeziu, Judge and
Arta Rama-Hajrizi, Judge

Applicant

1. The Applicant is Mr. Xhafer Murati from Podujeva.

Challenged decision

2. The Applicant does not specify what decision of the public authority he challenges, although he alleges that his rights, guaranteed by the law and the Constitution, have been violated.

Subject matter

3. The subject matter is the alleged exercising of the right to 20% share from the privatization of SOE „Ramiz Sadiku“ (hereinafter: SOE „Ramiz Sadiku“).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 (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 10 December 2013, the Applicant filed his Referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 13 January 2014, the President of the Court, by Decision no. GJR. KI223/13, appointed Judge Kadri Kryeziu as Judge Rapporteur. On the same date, the President, by Decision no. KSH. KI223/13, appointed the Review Panel composed of Judges: Robert Carolan (Presiding), Ivan Čukalović and Almiro Rodrigues.

7. On 27 January 2014, the Court by letter [ref. no.: 118/14], notified the Applicant of the registration of Referral and requested from him to submit to the Constitutional Court the relevant decisions of the public authorities.

8. No response has been received from the Applicant.

9. On 2 April 2014, after having considered the report of the Judge Rapporteur, the Review Panel made a recommendation to the Court on inadmissibility of the Referral.

Summary of facts

10. On 10 December 2013, the Applicant submitted to the Court the Referral, by using „the Referral Form for filing the Referral". As to the description of facts, he only stated that *„he wants to be paid 20% share from the privatization of SOE „Ramiz Sadiku"*. Regarding justification of Referral and alleged breaches of the Constitution, he only stated: *„ I am not certain on the accuracy of the Constitutional Articles, however I believe my right to work has been violated, because the worker's rights are guaranteed by the Constitution and the Law.*
Finally, the Applicant in statement of the relief sought wrote only: "I want to realize my right on 20% that I am entitled to as a former employee of the company "Ramiz Sadiku."

11. The Applicant attached: Decision on establishment of employment relationship, Insurance registration, Decision on personal income,

Decision of enterprise „Ramiz Sadiku“and Certificate on regulation of military obligation.

12. On 27 January 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 required information and documents, the Court will not be able to consider the Referral.

Applicant's allegations

13. The Applicant alleges that:

> *"I seek 20% of the payment that company Ramiz Sadiku did not pay to me under the pretext that the time limit to submit the documents has expired. However in my opinion the time limit was too short and I was abroad and could not submit the documents."*

14. The Applicant further alleges that:

> "I am not certain on the accuracy of the Constitutional Articles, however I believe my right to work has been violated, because the worker's rights are guaranteed by the Constitution and the Law".

15. The Applicant requests from the Court:

> "I want to realize my right on 20% that I am entitled to as a former employee of company "Ramiz Sadiku" because my former colleagues have received it but I was not even taken into consideration for the 20%. Therefore with a lot of understanding I request that my right is also realized and my referral is approved by me."

Admissibility of the Referral

16. The Court assesses beforehand whether the Applicant has met all the admissibility requirements, laid down in the Constitution and further specified in the Law and the Rules of Procedure.

17. In this respect, the Court refers to Article 113.7 [Jurisdiction and Authorized Parties] of the Constitution, which provides*:*